

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA Nos. 66, 67 & 68/JP/2022
निर्धारण वर्ष/Assessment Years : 2005-06, 2012-13 & 13-14.

Income Tax Officer (Exemptions) Ward-1, Jaipur.	बनाम Vs.	Rajasthan Cricket Association, North Block, SMS Stadium, Jan path, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAATR 0798 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Ms Manisha Chandra, CIT

निर्धारिती की ओर से / Assessee by : Shri Shyam Lal Agarwal, CA

सुनवाई की तारीख / Date of Hearing : 24.03.2022.

घोषणा की तारीख / Date of Pronouncement : 21/06/2022.

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

These are three appeals filed by the Revenue against three separate orders of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 24.12.2021 for the assessment years 2005-06, 2012-13 and 2013-14 respectively. Since all these appeals involved common issues and are inter connected, therefore, the same were heard together and are being disposed off by this consolidated order.

ITA No. 66/JP/2022

The grounds raised by the revenue in ITA No. 66/JP/2022 are as under:-

1. On the facts and the circumstances of the case and in law, the Id. CIT (Appeals) has erred in allowing exemption u/s 11 of the I.T. Act 1961 to the assessee despite the fact that the proviso to section 2(15) is invoked in the case of the assessee as the activities of the assessee are being run on commercial basis, there being no element of charity.
2. Any other question of law as deemed fit in the facts and circumstances of the case may also be framed before the Hon'ble Tribunal in the interest of justice.

2. The brief facts of the case are that the assessee is a society trust registered under Rajasthan Society Trust Registration Act, 1958 and also registered under Sport Association's Registration Accreditation Act, 2005 with the main object of promotion and development of the game of Cricket in the State of Rajasthan. The assessee society filed its return of income on 08.02.2006 declaring total income at NIL after claiming the exemption U/s 11/12 of the Income Tax Act, 1961. The assessment was completed u/s 143(3) of the Income Tax Act 1961 on Nil income dated 31.12.2007. The ITO reopened the assessment vide notice u/s 148 dated 20.12.2011 and completed the assessment under section 147 of the IT Act on 29.03.2013 at a total income of Rs. 20,28,203/- by making addition on account of net surplus as per income and expenditure account at Rs. 15,37,806/- and disallowance of claim of depreciation at Rs. 4,90,397/-. The AO has initiated proceedings u/s 147 on the basis of the order of CIT (Exemption), Jaipur u/s 12AA(3) dated 27.12.2010 by which the registration granted u/s 12AA was withdrawn w.e.f. AY 2005-06. The AO by disallowing the benefit u/s 11 assessed the total income of Rs 20,28,203/-. The AO mentioned in the order dated 29.03.2013 that withdrawal of registration by Ld. CIT

(Exemptions) was sufficient reason to believe that surplus or expenditure which has been claimed as exempted was not exempt and the assessee society is not entitled to exemption u/s 11 and 12 of the Act.

3. Being aggrieved, the assessee challenged the action of the AO before the Id. CIT(A) and relied upon various decisions of this Tribunal including the decision in assessee's own case specifically the decision of the ITAT Jaipur in ITA no. 544/JP/2013 vide its order dated 09.06.2016 by which the registration has been restored under section 12A and further the decision of the ITAT in ITA no. 388/JP/2012, 944/JP/2013 and 921/JP/2013 and further the order of ITAT Jaipur in ITA no. 1355/JP/2018, 1356/JP/2018 and 284/JP/2020 in respect to assessment, allowing the benefit of section 11 & 12 of the Act. The assessee society further referred to the judgment of the Honorable Rajasthan High Court in rejecting the appeal of the Department in Appeal nos. 252/2017 and 257/2017. The relevant findings of the Id CIT(A) are contained at para 8.3 of his order which read as under:

"8.3.2. On perusal of the submission of the appellant and the enclosed documents, it is noted that the ITAT Jaipur in ITA No. 544/JP/2013 vide its order dated 09. 06. 2016 has restored the registration u/s 12A. Relevant Para 5 of the above order is extracted as below :

"5 . We have heard the rival contentions of both the parties and perused the material available on the record. It is undisputed fact that the assessee was granted registration under section 12A on 25/11/1988, which has been withdrawn twice by the Id CIT. The issue has been set aside by the Coordinate Bench to reconsider the withdrawn of registration, which was also challenged by

the revenue before the Hon'ble Rajasthan High Court, who has allowed the assessee's prayer and directed to consider the application afresh without influencing any of the observation made by the appellate authority. The assessee has been provided reasonable opportunity of being heard by the Id CIT .The assessee trust made it clear that this amendment in object of memorandum in 2005 was due to change made in the Rajasthan Sports (registration, Recognition and Regulation of Association) Act, 2005. The amended objects were not voluntary change. The assessee has to follow the said law related to sports activity. The comparison given by the Id. CIT in his order dated 28/03/2013 does not show any fundamental deviation from the original charitable activities to non-charitable activity. The assessee's object to promote the cricket by providing/involving various activities at the district level to state level through coaching provided by coaches, ground and facilities etc. Therefore the assessee's activities are charitable. The other activities are incidental or conducive of the main activity. The case law referred by the assessee particularly the Hon'ble Delhi High Court decision in the case of Mool Chand Khairati Trust (supra) is squarely applicable as the assessee amend the provisions, does not change the character of the assessee from charitable to non-charitable or commercial. At the time of registration, the Id. CIT has to consider section 12AA(3) and he has to consider two conditions for rejection of registration granted (i) the activities of the trust are not genuine, (ii) are not being carried out in accordance with the objective of trust as the case may be .The Id CIT has not found any infirmity in the activities carried out by the RCA as non-genuine or not being carried out as per

*object of the trust. It is also a fact that the game of cricket become very potential which reference to revenue compare to other games, therefore, the revenue generated by the RCA are substantial but this ground cannot be used to cancel the registration granted by the Id CIT as predominant object of the trust is charitable and substantial revenue generated is incidental to the main object. If, the Id Assessing Officer found any violation in application of fund, he can make disallowance u/s 11 of the Act. **Thus, we are of the considered view that the Id CIT was not right in withdrawing the registration granted u/s 12A of the Act. Accordingly, the assessee's appeal is allowed.***

8.3.3 Further, The above order of ITAT has also been affirmed by Hon'ble High Court vide order dated 21/11/2017 (common order for appeal no 236/2016; 252 and 257 of 2017. The relevant para is extracted as under:

"11. If there is any breach of any condition/s then they may cancel the registration, however, they have to follow the procedure. The contention that non communication of changes of purpose will automatically cancel the registration, in our (downloaded on 21/02/2020 at 10:28 AM)(43 of 43)[ITA- 236/2016] considered opinion, is not a valid argument. However, in view of the specific clause which has been there under form 10A, we are of the considered opinion that it will be open for the department while making assessment to follow provision of section 11(5) and section 13 to disallow the expense of the income as the case maybe, if the same is not income in expense as per the approved bye-law but nonetheless cancellation of registration is uncalled for."

8.3.4 In view of the above position, since the registration u/s 12A has been restored, the very basis for reopening the assessment does not exist and the reopening cannot survive. Therefore, the assessment denying the benefit u/s 11 does not survive. Consequently, the AO is directed to delete the additions made and the ground of appeal from No. 1 to No 5 are allowed."

Hence the Id. CIT (A) has deleted the addition and accepted the claim of the assessee being eligible for exemption under Sections 11 and 12 of the Act. Aggrieved by the order of the Id. CIT(A), the Revenue has filed the present appeal.

4. Before us, the Id. D/R has submitted that the AO has reopened the assessment because of withdrawal of registration by the Id. CIT (Exemptions) under section 12AA(3). Since, the registration has been granted by the order of ITAT Jaipur Bench in ITA N0. 544/JP/2013 dated 09.06.2016 and also upheld by Honorable Rajasthan High Court, at this juncture the issue is covered in favor of the Assessee.

5. On the other hand, the Ld AR mentioned the detailed facts of the case and relevant decisions of this Coordinate Bench of the ITAT Jaipur in assessee's own case and also the decision of Hon'ble Rajasthan High Court citing the operating part of the decision, as mentioned in the order of the Ld. CIT (A). Further the Ld AR also referred the detailed order of the ITAT Jaipur Bench in ITA No. 1355 & 1356/JP/2018 dated 25.11.2020 wherein the full facts have been dealt with and the relevant cases of Hon'ble High Court and Hon'ble Supreme Court have been referred are also relied. The Ld A/R further requested that since the registration has been restored and the benefit of section 11 & 12 have been directed to be allowed under the said decisions, the appeal of the department should be dismissed.

6. We have heard the rival contentions and perused the material available on record. Firstly, it is not in dispute that the registration of the assessee society u/s 12A has been restored by the Tribunal vide its order dated 09.06.2016 and on appeal by the Revenue, the order so passed by the Tribunal has been affirmed by the Hon'ble Rajasthan High Court in Appeal no. 236/2016 dated 21.11.2017. Therefore, the primary condition for availing exemption under section 11 and 12 of the Act that the assessee society should be registered u/s 12A is satisfied in the instant case.

6.1 At the outset, we find that the issue involved in the year under consideration has been elaborately discussed and adjudicated by the Coordinate Bench of the Tribunal, in the assessee's own case in ITA Nos. 1355 and 1356/JP/2018 dated 25.11.2020 for the assessment years 2010-11 and 11-12 following the various decisions of the ITAT Jaipur Benches and the judgments of Hon'ble High Court and Hon'ble Supreme Court and allowed the claim of the assessee. We feel it convenient to reproduce the relevant findings in the said order dated 25.11.2020 as under :-

" 29. The Coordinate Bench, while disposing off the assessee's society's ground regarding rejection of claim U/s 11 and 12 of the Act, held that respective representatives of the parties have adopted the same arguments and contentions as were raised in ITA NO. 388/JP/2012 and thereafter referring to the detailed findings in ITA No. 388/JP/2012 contained at para 4 to 7 of its order has allowed the claim of exemption under section 11 and 12 of the Act. We deem it appropriate to reproduce the said findings in *verbatim* as under:

"4. We have considered, the rival contentions, perused the material available records. The only issue to be examined under the facts of the present case is whether the Assessing Officer was justified in declining the claim of the deduction u/s 11 of the Act. The Assessing Officer however observed that a perusal of the financial figures reveals that the applicant has generally

accumulated surplus u/s 11(2) of the Act in last 4 or 5 years, which indicate that the assessee is earning huge surplus from the activities carried out by it. The Assessing Officer further observed that the assessee's investment is increasing, this shows that the assessee is converting the surplus into investment which in turn has strengthened its capacity to earn more. Therefore, he concluded that the assessee exist for purpose of earning profit and the applicant is not promoting sports on non-profit basis. The assessing Officer further observed that that the assessee had built a premises in the name of Rajasthan Cricket Academy, which has been given on rent to a service provider on a monthly rent of Rs. 75,000/-. The agreement executed with the service provider states that booking for 28 rooms will be made through service provider. The Assessing Officer reproduced the clause 2.2.1 of the agreement and inferred that the said clauses leave no doubt for the commercial exploitation of the property by the service provider under the direct control of the RCA. He observed that in the present case the service provider is paying to the RCA for using the premises as hotel. It is clear for the same that the motive of RCA is to maximize the profit. He observed that RCA is generating huge profit year after year and its expenditure on sports promotion coaching maintenance of premises and facilities etc. is very low. The Assessing Officer further observed that there is no denial that the object of the assessee's institution is promotion of sports which as per CBDT circular is charitable purpose. But the activities undertaken by the RCA clearly shows that the main activity is commercial exploitation of public craze over cricket. The assessing officer placed reliance on the judgment of the Hon'ble Calcutta High Court rendered in the case of Cricket Association of Bengal Vs. Commissioner of Income Tax 371 ITR 277.

5. It is observed by the AO that the entire character and focus of the RCA has become totally commercial. Therefore, the

Assessing Officer proceeded to disallow expenditure and the exemption claimed by the assessee. Thus, the exemption was denied on the basis that the assessee was involved into a commercial activity. The Id. CIT(A) concurred the view of the Assessing Officer on the same basis. Before advertng to the rival contentions it would be appropriate to reproduce the relevant provision of law. The section 2(15) of the Income Tax Act that defines charitable purpose which is reproduced as under:

" Section 2(15) - Charitable purpose include relief of the poor, education, medical relief, [preservation of environment(including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest] and the advancement o 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 o trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, or 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:]”

The Revenue has heavily relied upon the aforementioned provision. It is stated that the activity of the assessee trust falls within the category of general public utility. Therefore, the proviso to section 2(15) would come into play. It is submitted that the looking to the quantum volume and nature of receipt goes to demonstrate that the assessee is engaged into commercial activity and for the purposes of making profit. Per contra it is contended that the assessee is an association registered under Rajasthan Sports (Registration, Recognition and Regulation of Association) Act, 2005 and formed with objective of promoting of sport of cricket within the state of Rajasthan. RCA, under a memorandum of understanding with Rajasthan State Council has exclusive use and possession of SwaiMansingh Stadium for the purpose of organizing

national and international matches. The main object of the association is to control, supervise, regulate, or encourage, promote and develop the game of cricket in the areas under the jurisdiction of Association on no profit or no loss basis. It is contended that the assessee was holding registration under section 12A of the Act with effect from 25th Nov. 1988, and thus was claiming exemption u/s 11 on this basis. The Id. CIT, withdrew the registration under section 12A of the Income Tax Act, pertaining to the Assessment year 2005-06 onwards. However, on appeal to the Tribunal the issue of registration was set aside to the Id. CIT to decide it afresh. The Id. CIT again withdrew registration under section 12A. However, the registration was granted in ITA No. 544/JP/2013. Our attention was drawn to the Assessee's paper book page nos. 13 to 30. It is contended that section 11 of the Income Tax Act provides exemption in respect of income of charitable or religious trusts if the same is applied towards the objects of the trusts. It is the contention of the assessee that the sole basis of declining exemption was that there was huge surplus earned by the assessee in respect of one-day international match held between India and Pakistan. It is the contentions of the assessee that a match between India and Pakistan always generates higher receipts as the number of audience is higher. It is also pointed out that the match between other countries could not even fetch 70 to 80% of the collection. It is also contended that all the payments in the shape of sponsorship, advertisement, TV rights etc. are received directly by BCCI. Further, BCCI delegates the organization of matches to state association and in turn state association gets some funds from promotion and expansion of their charitable activities. It is also submitted that major benefits by organizing these matches is that local team, being trained by the RCA, get opportunity to learn from experience of coaches of international level by assisting them during practice matches and by witnessing the matches played by the international players, by spending time with them etc. It is submitted that organizing such matches results into the promotion of sports of cricket surplus if any generated is purely incidental in nature and the

assessee cannot be deemed to carry out activity in nature of trade, commerce or business. It is also contended that the association has been organizing matches in the remote areas in Rajasthan. It is submitted that the Assessing Officer observed that the association was involving into commercial activities and the society had accumulated of surplus increase in the investment, control over the players by observing this however, he failed to appreciate that normally the surplus was the result of subsidies only and not from the conducting of tournament on commercial basis. The subsidies are a form of financial aid granted for promoting a specific cause, which is ultimately for the benefit of overall section of public but never or the benefit of an individual organization. It is contended that the subsidy received by the RCA is utilized in the promotion and development of sports of cricket in state at each level, i.e. from mufasils areas to big cities like Jaipur. It is also contended that renting out by premise by RCA has been viewed adversely in the context it was submitted that RCA is formed with a sole objective of promoting cricket and with the view to achieve the desired objective the renting of premises as done is wholly and exclusively for the purpose of cricket and no other activity of whatsoever nature has been carried out neither it is engaged in the systematic activity as hotelier. Thus, the main act of association is fully in the direction of achieving its basic object of promoting cricket. It is contended that RCA is provide technical and financial support to the all District Cricket Association i.e. providing equipments, nets, balls, etc. without any consideration on other side RCA is getting only affiliation fee from them which is very nominal (Rs. 200/- only). The RCA has providing grants to Districts of a substantial amount of Rs. 39,20,763/-. RCA is organizing various matches of national level tournaments like Ranji Trophy, Irani Trophy, Dilip Trophy, Maharana Bhagwat Singh Trophy, Salim Durrani Trophy etc., without having any surplus rather these were organized for the development of game of cricket at national level and to identify the players who can represent the country at international level and in the year 2007-08 RCA has made expenditure of over Rs. 1.12 crores. It is contended that the

surplus if any generated by the assessee by the assessee was merely incidental to the main object that is promotion of sport of cricket and in no way by running business of cricket as has been alleged by the Revenue.

We find that the Hon'ble Madras High Court under the identical facts, in the case of Tamil Nadu Cricket Association vs the Director of Income Tax(E) has held:

"As seen from the observation of the Income Tax Appellate Tribunal, although generally it accepted the case of the assessee that the physical aspect of the game was one in accordance with the objects, the quantum of receipts apparently led the Income Tax Appellate Tribunal and the Revenue to come to the conclusion that the activities are commercial and hence by Section 2(15) proviso to the Act, the receipt from BCCI could not be called as subsidy. As for the observation of the Income Tax Appellate Tribunal that the twin conditions stood satisfied is concerned, it is not denied by the Revenue that at the time of granting registration, the Commissioner had satisfied himself about the objects of the trust and the genuineness of the activities as falling within the meaning of 'charitable purpose', as it stood in 2003. The Revenue does not deny as a matter of fact that the objects remain as it was in 2003 and there is no change in its content to call the assessee's object as not genuine. There are no materials to indicate that the grant of registration was not based on material indicating object of general public utility.

The assessee is a member of Board of Control of Cricket in India (BCCI), which in turn is a member of ICC (International Cricket Council). BCCI allots test matches with visiting foreign team and one day international matches to various member cricket association which organize the matches in their stadia. The franchisees conduct matches in the Stadia belonging to the State Cricket Association. The State Association is entitled to all in-stadia sponsorship advertisement and beverage revenue and it incurs expenses for the conduct of the matches. BCCI earns revenue by way of sponsorship and media right as well as franchisee revenue for IPL and it distributes 70% of the revenue to the member cricket association. Thus the assessee is also the recipient of the revenue. Thus, for invoking Section 12AA read with section 2(15) of the Act, Revenue has to show that the

activities are not fitting with the objects of the Association and that the dominant activities are in the nature of trade, commerce and business. We do not think that by the volume of receipt one can draw the inference that the activity is commercial. The Income Tax Appellate Tribunal's view that it is an entertainment and hence offended Section 2 (15) of the Act does not appear to be correct and the same is based on its own impression on free ticket, payment of entertainment tax and presence of cheer group and given the irrelevant consideration. These considerations are not germane in considering the question as to whether the activities are genuine or carried on in accordance with the objects of the Association. We can only say that the Income Tax Appellate Tribunal rested its decision on consideration which are not relevant or considering the test specified under Section 12AA(3) to impose commercial character to the activity of the Association. In the circumstance, we agree with the assessee that the Revenue has not made out any ground to cancel the registration under Section 12AA(3) of the Act."

The Id. DR has strongly relied on the decision of the coordinate bench in the case of Rajasthan Housing Board Vs. CIT 21 [taxmann.com](#) 77 and also decision in the case of Ahemdabad Urban Development Authority vs. CIT(2016) 69 [taxmann.com](#) 381 and also the decision of coordinate bench in the case of Entertainment Society of Goa Vs. CIT 34 [taxmann.com](#) (210) (Panji) so far as the decision of the coordinate bench in the case of Rajasthan Housing Board and Ahemdabad Urban Development authority are concerned are no more binding precedents in view of the subsequent judgment of Hon'ble Jurisdictional High Court in the Jodhpur Development Authority rendered in the case of CIT Vs. Jodhpur Development Authority 287 ITR 473(Raj.)

6. *The allegations of the Assessing Officer is that in the case of assessee the major income arise not from the game of Cricket but from the business of Cricket. It is alleged by the Assessing Officer that major source of income are from TV Subsidy, Sale of advertisement, surplus from one-day international between India and Pakistan income from RCA Cricket Academy and interest income. All these activities are more in the nature of business of cricket than the promotion of game of Cricket. As per AO, though, the word 'Business' is not defined in the Income Tax*

Act. It has been held to postulate the existence of certain elements in the activity of assessee, which would invest it with the character of business such motive must pervade the whole series of transaction effected by the person in course of his activity. The characteristic of volume, frequency to continuity and regularity of the activity accompanied by profit motive. On the part of the assessee have been held to indicate an intention to continue the activity as business. In this back-drop of allegation we need to examine whether the allegation of the Assessing Officer is in consonance with the statutory provision governing the issue and judicial pronouncement made in this respect. The revenue has not doubted that the assessee has conducted matches of the Cricket. The only suspicion with regard to the activity is that during the one-day international played between India and Pakistan, there was huge surplus and the assessee had rented out rooms to belonging to the society at a very higher rate. Therefore, it can be inferred that the Assessing Officer is swayed by the volume of receipts. These identical facts, were also before the Hon'ble Madras High Court in the case of Tamil Nadu Cricket V. The Director of Income Tax(E)(supra) wherein the Hon'ble Court opined that by the volume of receipt inference that activity is commercial cannot be drawn. It was observed by the Hon'ble High Court, that the basis of the decision of the Tribunal was on irrelevant consideration. It was held that these considerations are not germane in considering the question whether the activities are genuine or carried on with the object of the association.

It is also noteworthy that as per section 11(4A) substituted by the Finance Act, 1983 with effect from 1/4/1984 sub section 1 or sub section 2 or sub section 3 or sub section 3A shall not apply in relation to any income of a trust or an institution, being profit and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be institutions and separate Books of accounts are maintained by such trust or institution in respect of such business. Now, coming to the allegation of the Assessing Officer that the

major source of income are TV subsidy, sale of advertisement surplus from ODI between India and Pakistan income from RCA Cricket academy and interest income. It is not in dispute that TV subsidy, sale on advertisement surplus from ODI between India and Pakistan income from RCA Cricket Academy are all relating to the conduct of Cricket matches by the society. It is undisputed fact that without conduct of matches income cannot be derived. Therefore, it can be safely inferred that these incomes are related to the incidental activity of the association. These incomes would not accrue without the game of Cricket. The main thrust of revenue's argument is that for allowing exemption under section 11 of the Act, the Assessing Officer need to examine whether the proviso to section 2(15) of the Act is attracted or not. It is the contention of the revenue that assessee would fall under the limb of any other object of general public utility to which category only the proviso to section 2(15) applies. It is contended that if proviso 2(15) attracted, assessee loses benefit of exemption as per section 13(8). Therefore, it is submitted that only question to be decided is to whether assessee is engaged in commercial activity for fee or other consideration. It is also contended that nature of receipt about hands of the assessee by way of sharing of sponsorship of media rights with BCCI as well as match revenue for conducted various cricket matches. It is contended that in the assessment year 2008-09, the assessee has earned surplus of Rs. 5.88 crores out of receipts in the shape of advertisement, canteen, and tickets of Rs.7.81 crores which amounts to super normally profit. The other hand, contention of the assessee is that the argument of the revenue is misplaced as the authorities below failed to appreciate the facts that expression trade, commerce or business is to be understood as a regular and systematic activity with the prime motive to earn profit. Whereas the association never acted as a professional advertiser, TV producer etc. No matches or any game other than Cricket or no other events are organized to attract audience rather only cricket matches are being organized whether the same result into profit or loss. It is contended that all Cricket Matches do not attract

audience but due to historical background in the case of match between India and Pakistan audience for such match remains abnormally high. Therefore, under these peculiarity of fact it making inference that the assessee is engaged into commercial activities is not justified.

7. We have given our thoughtful consideration to the rival submissions of the parties. If volume of receipts and constant increase into surplus is considered, this necessity gives impression of commercial activity. Let us appreciate the facts in light of various judicial pronouncement. The Hon'ble Supreme Court in the case of Commissioner of Sale Tax vs Sai Publication Fund 258 ITR 70(SC) has held:

"There is no dispute that the primary and dominant activity of the trust is to spread the message of Saibaba. This main activity does not amount to "business". The activity of publishing and selling literature, books and other literature is obviously incidental or ancillary to the main activity of spreading the message of Saibaba and not to any business as such even without a profit motive and it is in a way a means to achieve the object of the trust though which the message of Saibaba is spread. It is clear from the trust deed and objects contained therein that it was not established with an intention of carrying on the business/occupation of selling or supplying goods. This being the position, it cannot be said that the trust carries on the business of selling and supplying goods so as to fall within the meaning of "dealer" under section 2(11) of the Act.

No doubts, the definition of "business" given in section 2(5A) of the Act even without profit motive is wide enough to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any transaction in connection with or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern. If the main activity is not

business, then any transaction incidental or ancillary would not normally amount to "business" unless an independent intention to carry on "business" in the incidental or ancillary activity is established. In such cases, the onus of proof of an independent intention to carry on "business" connected with or incidental or ancillary sales will rest on the department. Thus, if the main activity of a person is not trade, commerce, etc., ordinarily incidental or ancillary activity may not come within the meaning of "business". To put it differently, the inclusion of incidental or ancillary activity in the definition of "business" presupposes the existence of trade, commerce, etc."

In the light of the above judgment it can be safely inferred that if the activity is not independent of main activity of the assessee in that event such ancillary activity would not fall within the term "business". The objection of the Assessing Officer is that, that the other activities have predominated the main activity. This reasoning of the assessing officer is based upon the receipts of the assessee from the other activity. But it is undisputed fact that these all activities are dependent upon conducting of the match. The allegation is that the matches are conducted totally on commercial lines. For this reasoning the assessing officer is again considered the quantum of amounts received from BCCI as TV subsidies and subsidy from Cricket Tournament from the records. It is the contention of the assessee that the main source of receipt was the match conducted between India vs. Pakistan. This fact is not refuted by the revenue by placing any contrary material. The Coordinate Bench of this Tribunal in the case of District Cricket Association vs. DIT, wherein the Coordinate Bench has decided the issue in para 10.9 of the order as under:

"Thus respectfully following the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association (supra), we have to hold that the amounts received by the assessee from a) ground booking charge, b) health club charges, c) income from corporate boxes, d) lawn booking income, e) sponsorship money and sale of ticket, advertisement, souvenirs and other such

receipts do not result in the assessee being held a undertaking activities in the nature of "trade, commerce and business". These receipts are intrinsically related, interconnected and interwoven with the charitable activity and cannot be viewed separately. The activities resulting in the said receipts are also charitable activities and not "trade, commerce or business" activities."

Further the Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax vs. Jodhpur Development Authority 287 CTR 0473 (Raj) has held as under:

"16. As noticed hereinabove, the contention of the Revenue is that since the assessee are involved in carrying on activities in the nature of trade and commerce, by virtue of first proviso to Section 2(15), their activity/object cannot be recognized as for charitable purpose so as to make them entitled for registration u/s 12A of the Act of 1961.

17. Section 2(15) of the Act of 1961 which defines 'charitable purposes' 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 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 twenty-five lakh rupees or less in the previous year".

18. The 'charitable purpose' as defined under section 2(15) and particularly, the expression 'any other object of general public utility' used therein, have been interpreted by the Hon'ble by the Supreme Court and various High Courts in catena of decisions, which may be beneficially referred.

19. In Andhra Chamber as commerce's case (supra), while considering the expression 'object of general public utility' as used

in Section 4 (3) of the Income Tax Act, 1922, the Hon'ble Supreme Court observed:

"The Expression "object of general public utility" in s.4(3) would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served thereby if it includes the taking of steps to urge or oppose legislation affecting trade, commerce or manufacture. If the primary purpose be advancement o objects of general public utility, it would remain charitable even I an incidental entry into thepolitical domain for achieving that purpose e.g. promotion of or opposition to legislation concerning that purpose, I contemplated."
(emphasis added)

20. *In sole Trustee, Lok Shikshana Trust vs. CIT, (1975) 101 ITR, 254, the Hon'ble Supreme Court observed:*

"If the profit must necessarily feed a charitable purpose under the terms of the trust, the mere facts that the activities o the trust yield profit will not alter the charitable character of the trust. The restrictive condition that purpose should not involve the carrying on of any activity for profit would be satisfied if profit making is not the object."

21. *In the matter of "Additional CIT vs. Surat Art Silk Cloth Manufactures Association", (1980) 121 ITR, 1, the Hon'ble Supreme Court held that if the primary or dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. The court further observed that true meaning of the words in section 2(15) viz. 'not involving carrying on any activity of profit' is that when the purpose of a trust or institution is advancement of an object of general public utility, it is that object of genral public utility which must not involve carrying on of any activity for profit and not its advancement or attainment. The court observed that what is inhibited by these last ten words is the linking of activity or profit with the object of general public utility and not its linking with the accomplishment or carrying out other object. Thus, so long as purpose does not involve carrying on or any activity for profit, the requirement of definition would be met and it is immaterial how the money's for achieving or implementing such purpose are found whether by carrying on an activity for profit or not.*

22. *In Andhra Pradesh Road Transport Corporation's case (supra), the Hon'ble Supreme Court while relying upon the earlier decisions in the matter of "additional CIT vs. Surat Art Silk cloth*

Manufactures Association”, (19800 121 ITR 1 and “CIT Vs. Bar Council of Maharashtra”, (1981) 130 ITR 28 (SC), held that if predominant object is to carry out a charitable purpose and not earn profit, the purpose would not lose its charitable character merely because some profit arises from the activity.

23. *In Gujarat Maritime Board’s case (supra), the Hon’be Supreme Court after due consideration of various earlier decisions, observed:*

“We have perused a number of decisions of this court which have interpreted the words, in section 2(15), namely, “any other object of general public utility”. From the said decisions it emerges that the said expression is of the wide t connotation. The word “general” in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose (CIT v. Ahmedabad Rana Caste Association [(183) 140 ITR 1 (SC)]. The said expression would prima facie include all objects which promote the welfare of the general public. If cannot be said that a purpose would cease to be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry (CIT v. Andhra Chamber of Commerce[1965] 55 ITR 722 (SC)). If the primary or predominant object of any institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity (Addl. CIT v. Surat Art silk Cloth manufacturers Association [1980] 121 ITR 1 (SC). The present case in our view is squarely covered by the judgment of this court in the case of CIT v. Andhra Pradesh State Road Transport Corporation [1986] 159 ITR1 (SC) in which it has been held that since the corporation was established for purpose of providing efficient transport system, having no profit motive, though it earns income in the process, it is not liable to income-tax.

Applying the ratio of the said judgment in the case of Andhra Pradesh State Road Transport Corporation [1986] 159ITR 1©, we find that, in the present case, the Gujarat Maritime Board is establish for the predominant purpose of development of minor ports within the State of Gujarat, the management and control of the Board is essentially with the State Government and there is no profit motive, a indicated by the provisions of sections 73, 74 and 75 of the 1981 Act. The income earned by the Board is deployed for the development of minor ports in the State of Gujarat. In the circumstance , in our view the judgment of this court in Andhra Pradesh State Road Transport Corporation [1986] 159 ITR 1 squarely applies to the facts of the present case”. (emphasis added)

24. *In “Commissioner of Income Tax v. Krishi Upaj mandi Samiti, jaisalmer”, (2011) 331 ITR 135 (Raj.), a Bench of this court while*

considering the entitlement of Krishi Upaj Mandi Samiti, a statutory body, constituted and established under the Rajasthan Agricultural Produce Market Act, 1961, observed that may be the income received by the Samiti by way of cess or mandi fees is not shown to be spent wholly for the purpose of relief of the poor, education, or medical relief, but under the scheme of the act, being the Rajasthan Agricultural Produce Markets Act, 1961, the entire amount received by the samiti is required to be spent for the purposes mentioned therein, which obviously include advancement of "any other object of general public utility'.

25. *In Lukhnow Development Authority's case (supra), while examining the question regarding applicability o proviso to Section 2(15), Allahabad High Court observed:*

"29. For the applicability of proviso to Section 2(15), the activities of the trust should be carried out on commercial lines with intention to make profit. Where the trust is carrying out its activities on non-commercial lines with no motive to earn profits, or fulfillment of its aims and objectives, which are charitable in nature and in the process earn some profit, the same would not be hit by proviso to section 2(15). The aims and objects of the Mere selling some product at a profit will not ipso facto hit assessee by applying proviso to Section 2(15) and deny exemption available under section 11. The intention of the trustees and the manner in which the activities of the charitable trust institution are undertaking are highly relevant to decided the issue of applicability of proviso to section 2 (15)."

26. *Coming to the decision of Jammu & Kashmir High Court in Jammu Development Authority's case (supra), relied upon by learned counsel for the Revenue, reveal that the appeal preferred by the Jammu Development Authority was dismissed by the court observing that there are findings of facts that the assessee-appellant has not been acting to advance any of the object concerning general public utility. Further while referring to first proviso to Section 2(15), the court has observed that "we find that no substantial question of law much less a substantial question of law would emerge from the impugned order of Income Tax Appellate Tribunal warranting admission of the appeal." A bare perusal of the order reveal that the catena of decisions of the Hon'ble Supreme Court referred to hereinabove, interpreting the effect of first proviso in context of the main provision of Section 2(15), which defines 'charitable purpose', were not brought to the notice of the court and therefore, the said order passed by the court by merely recording its ipse dixit does not help the Revenue in any manner.*

From various decisions of the Hon'ble Supreme Court discussed hereinabove, the settled position of law emerges is that if the

primary or predominant object of an institution is charitable, any other which might not be charitable but which is ancillary or incidental to the dominant purpose, may be involving element of profit, would be prevent the institution from being a valid charitable trust."

In the light of the above binding precedents, we are unable to affirm the view of the revenue. In the present case, material as placed before us suggests that the Assessing Officer is swayed by the figures and volume of receipts. Admittedly, such receipts are intermittent and not regular and also is dependent on the conduct of cricket match. It is not other way round that the cricket matches are dependent upon such activities. The undisputed facts are that the assessee is registered under the Rajasthan Sports (registration, recognition and regulation) Act 2005 and formed with the objective of promoting the sports of cricket within the state of Rajasthan so main objective or activity of the assessee is promotion of the cricket. The association is organizing tournament like Ranji Trophy, Irani Trophy, Dilip Trophy, Maharaj Bhagwat Singh Trophy, Salim Durrani Trophy etc. the Assessing Officer has not doubted about these activities of the association. It is also brought to our notice that in the international one day match between south Africa and India, the association suffered deficits of Rs. 1.6 crores. It is also brought to our notice that the RCA has also incurred in various other expenses with a view to promote the game of Cricket viz. on coaching camps of Rs. 20,40,360/-, state cricket activities of Rs. 1,08,60,566/-, Ground expense of Rs. 33,97,435/- and international tournament expenses of Rs. 2,09,16,911/-. These facts go to demonstrate that the assessee has been predominantly engaged into the activity of promoting cricket match. The counsel for the assessee has placed reliance on the judgment of the Hon'ble Delhi High Court rendered in the case of Institute of Chartered Accountant vs Director General of Income Tax, wherein the Hon'ble High Court held that even though fee are charged by the petitioner Institute for providing coaching classes and holding interviews with respect of campus placement, the said activity cannot be stated to be rendering

of service in relation to any trade, commerce or business as such activities are undertaken by the petitioner institute in furtherance of its main object which has held earlier are not trade, commerce or business. In the present case also the main activity of the assessee is conducting of the cricket match which falls under the category of general public utility. This fact is not disputed by the Revenue. All these activities are ancillary to the main activity. Therefore, we are of the considered view that the Assessing Officer was not justified in declining the exemption.

Ld. CIT (DR) vehemently urge that first proviso to clause (15), Section 2 of the Act, therefore, as per section 13(8) of the Act nothing contained in section 11 or Section 12 shall operate, so as to exclude of income of total income of previous year of the present. As we have held that in the light of the various judicial pronouncement proviso to clause (15) to Section 2 of the Act would not be applicable on the facts of the present case. Ld. DR has relied on the decision of the co-ordinate Bench in the case of Entertainment Society of Goa Vs. CIT (2013) 34 [Taxmann.com](http://www.taxmann.com) 201(Panji). This decision does not help the Revenue in view of judgments of Hon'ble Madras High Court and Delhi High Court cited (supra). Therefore, this argument of the Ld. CIT (DR) is also devoid of any merit.

In view, of the above discussion ground nos. 2 to 8 of the of the assessee's appeal are allowed."

30. In the aforesaid decision, the Coordinate Bench has held that the main objective of the assessee society is promotion of cricket and considering the various activities organized by the assessee society by way of organizing international one day cricket matches, domestic cricket tournaments, cricket coaching camps and taking into consideration the receipts and expenditure in relation to such activities, it was held that the assessee is predominantly been engaged in the activities of promotion of cricket. It has also been held that the Assessing officer is swayed by the figures and volume of receipts from

one-day international cricket matches and subsidies received from BCCI in form of TV subsidy and other subsidy from cricket tournaments, however such receipts are intermittent and not regular and depend upon the conduct of the cricket matches itself and are therefore incidental and ancillary to the conduct of cricket matches and are not independent activities being carried on with an independent intention to carry on business and relying on the decisions of Hon'ble Supreme Court in case of Commissioner of sales tax vs Sai Publication Fund (supra), Hon'ble Rajasthan High Court decision in case of CIT vs Jodhpur Development Authority (supra), Hon'ble Madras High Court in case of Tamil Naidu Cricket Association vs DIT(E) (supra), Hon'ble Delhi High Court in case of ICAI vs DGIT (supra) and Delhi Benches of the Tribunal in case of District Cricket Association vs DIT(supra) held that the proviso to section 2(15) would not be applicable and the exemption so claimed by the assessee was allowed u/s 11 and 12 of the Act. Given that there are no changes in the facts and circumstances of the present case in terms of nature of activities and operations being carried out by the assessee society in the financial year relevant to the impugned assessment year, we donot see a valid reason to deviate from the said decision taken by the Coordinate Bench which has been passed after elaborating discussing each of the contentions raised by the Revenue as well as judicial precedents laid down by various Courts.

31. We further note that against the said decision of the Coordinate Bench, the Revenue has thereafter moved an appeal before the **Hon'ble Rajasthan High Court** in D.B. Income Tax Appeal No. 252/2017 wherein the following substantial questions of law were admitted by the Hon'ble Rajasthan High Court:

- "i) *Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in allowing exemption u/s. 11 of the IT Act, 1961 in spite of the fact that the proviso to Section 2(15) is invoked in the case of assessee as the activities of the assessee being run on commercial basis and there being no element of charity?*

- ii) *Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in holding that the assessee is liable to claim depreciation of Rs.2,16,62,215/- on the assets which were claimed as application u/s. 11 at the time of purchase?"*

32. The Hon'ble High Court has taken into consideration the nature of activities undertaken by the assessee society and nature of receipts being accounted for in its books of accounts in form of one day international cricket match, income from advertisement, sale of tickets, TV subsidy, etc, at para 6.2 of its order which read as under:

6.2 *He contended that the following income which is received by the assessee through Commercial Activity reads as under:—*

(4) Commercial Activity:-

Besides that, it is seen that the activities of the RCA is commercial. It is judicially accepted proposition that where profit making is the predominant object of the activity, the trust would lose exemption as a charitable trust. No doubt, it would be impossible for persons in charge of a trust or institution to so carry out activity that the expenditure balances the income and there is no resulting profit. But certainly, if the consideration is charged at market rate, than it can not be said that there is an element of charity. % of profit involved in the charging for the services is major factor which will decide whether the same is tainted with commerciality or charity.

In the context of sports, promoting cricket would be a charitable activity if it did not involve any element of trade, commerce or business. The conduct of certain activities and receipt of income from these activities clearly shows that these activities are totally commercial and there is no element of charity in the conduct of RCI. Perusal of the relevant details clearly shows that the activities fall in the definition of 'Business'. The facts of A.Y. 2008-09 are indicative of the intention of the RCA that RCA is engaged in minting money in variety of ways.

Annual Accounts for the F.Y. 2007-08 for income under following heads:-

India V/s Pakistan (One day international)

<i>Income from Advertisement</i>	<i>2,92,50,000/-</i>
<i>Income from Canteen</i>	<i>3,15,000/-</i>
<i>Income from Tickets</i>	<i>4,66,32,500/-</i>

<i>T.V. Subsidy</i>	<i>6,83,46,048/-</i>
<i>Sale of Advertisement</i>	<i>10,00,000/-</i>

Further, during the course of assessment proceedings of A.Y. 2008-09, it is found by the A.O. that the assessee has let out hotel situated near SMS Stadium on following consideration.

"The RCA will receive fees of Rs.75,000/-(Rupees Seventy Five thousand Only) per month from the service provider as for grant of facilities to the service provider. This sum shall be enhanced by @ 15% per year for each subsequent year."

Ongoing through the agreement made between Rajasthan Cricket Association and Hotel Radiant Star Hospitalities Pvt. Limited, Jaipur, it is seen that the activity of the RCA is being done on commercial basis.

With the above discussion it is clear that the activities of the trust are not being carried out in accordance with the objects of hetrust as registered by the department on 25.11.1988. The registration u/s 12A of the I.T. Act, 1961 granted to the assessee from the A.Y. 2005-06 and onwards is therefore, withdrawn."

33. The Hon'ble High Court has also taken into consideration the CBDT Circular dated 24/09/1984 wherein promotion of sports and games were considered as charitable activities within the meaning of Section 2(15) of the Act and the relevant para reads as under:

'7.1 He also relied upon the Government Circular dt. 24.9.1984 wherein CBDT has issued circular and has explained charitable purpose as under:—

"SECTION 2(15) CHARITABLE PURPOSE

10. Whether promotion of sports and games can be considered to be charitable purpose

1. The expression "charitable purpose" is defined in section 2(15) to include relief of the poor, education, medical relief and the advancement of any other object of general public utility.

2. The question whether promotion of sports and games can be considered as being a charitable purpose has been examined. The Board are advised that the advancement of any object beneficial to the public or section of the public as distinguished from an individual or group of individuals would be an object of general public utility. In view

thereof, promotion of sports and games is considered to be a charitable purpose within the meaning of section 2(15). Therefore, an association or institution engaged in the promotion of sports and games can claim exemption under section 11 of the Act, even if it is not approved under section 10(23) relating to exemption from tax of sports associations and institutions having their objects as the promotion, control, regulation and, encouragement of specified sports and games."

34. Thereafter taken into consideration the decision of the Hon'ble Supreme Court in the case of ACIT Vs Surat City Gymkhana (2008) 14 SCC 169, CIT-1, Jodhpur Vs Jodhpur Development Authority (2016) 287 CRT 473 (Raj), Tamil Nadu Cricket Association Vs DIT (2013) 86 CCH 212, DIT(E) Vs The Chembur Gymkhana (2012) 345 ITR 86 and DIT(E) Vs Khan Gymkhana (2016) 385 ITR 162 (Bom) has decided the matter in favour of the assessee and against the department and the findings and the directions of the Hon'ble Rajasthan High Court are contained at para 8 to 12 of its order which read as under:

- '8. *We have heard counsel for the parties.*
9. *In our considered opinion, the contention which has been raised pursuant to the observations and amendment which is made under Section 12AA of the Income Tax Act and proviso which is impressed by the counsel for the department and Section 2(15) of the Act and proviso to Section 12AA which has been amended w.e.f. 1.4.2009 which has been introduced in the Finance Act w.e.f. 1.4.2012, will not apply in the present case inasmuch as all proceedings are for the financial years 2005-06, 2008-09 & 2009-10.*
10. *However, it is true that in one of the case where it has been made effective from 1.4.2009 therefore, in one of the appeal for the assessment year 2009-10 the same will apply to proviso. While considering the matter, the real purpose of registration is to be seen that the object falls within the definition of Section 12AA and proviso.*
11. *If there is any breach of any condition/s then they may cancel the registration, however, they have to follow the procedure. The contention that non communication of changes of purpose will*

automatically cancel the registration, in our considered opinion, is not a valid argument. However, in view of the specific clause which has been there under Form 10A, we are of the considered opinion that it will be open for the department while making assessment to follow provision of Section 11(5) and Section 13 to disallow the expenses of the income as the case may be, if the same is not income in expenses as per the approved bye-laws but nonetheless cancellation of registration is uncalled for.

- 12.** *In that view of the matter, all the issues are answered in favour of the assessee and against the department. However, we make it clear that earlier order which has been passed by the High Court, we are not modifying in any manner whatsoever, it will be open for the department to take appropriate proceedings in accordance with law.”*

35. We therefore find that the order so passed by the Coordinate Bench has been affirmed by the Hon'ble Rajasthan High Court and is thus binding on this Tribunal. It is relevant to note that besides the aforesaid matter, the matter relating to granting of registration U/s 12AA as well as granting exemption U/s 11 of the Act for the A.Y. 2008-09 were also considered by the Hon'ble Rajasthan High Court while passing aforesaid consolidated order dated 21.11.2017 in D.B. Income Tax Appeal No. 236/2016, D.B. Income Tax appeal No. 252/2017 and D.B. Income Tax appeal No. 257/2017. In the aforesaid order, the Hon'ble High Court has held that it will be open for the Department to take appropriate action in respect of expenses and income which are not in accordance with approved by-laws. In other words, where the activities are not conducted in accordance with the approved by-laws, the Department is at liberty to take action as per law. In the instant case, we find that there is no finding recorded by the Assessing officer that the activities and operations of the assessee society are not in accordance with its approved objects and by-laws. Further, nothing has been brought to our notice by the Id CIT D/R during the course of

hearing that any of the activities of the assessee society are not in accordance with its objects and bye-laws. Therefore, the said decision of the Hon'ble Rajasthan High Court will apply with equal force for the impugned assessment year, being the decision of the Jurisdictional High Court in assessee's own case where the facts and circumstances of the case are identical. Further, it is a well settled legal proposition, as has been laid down by the Courts from time to time and which has been reiterated by the **Hon'ble Supreme Court** in case of **Godrej & Boyce Manufacturing Company Ltd.** (394 ITR 449) that:

"While it is true that the principle of res judicata would not apply to assessment proceedings under the Act, the need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out which conspicuously is absent in the present case. In this regard we may remind ourselves of what has been observed by this Court in Radhasoami Satsang v. CIT (193 ITR 321).

"We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

There has to be compelling reasons for a departure from the past settled position wherein the assessee society has been held to be engaged in the field of sports and its predominant activity being the promotion of Cricket in the State of Rajasthan all these years and such reasons have to be spelt out clearly by the Assessing officer. It has been contended by the Id A/R that there is no change in the nature of

activities and the activities are the same as carried out by the assessee society as in earlier year. As we have noted above, even on perusal of the assessment orders and the findings of the Assessing officer, there is no finding recorded by the Assessing officer that the nature of activities being carried on by the assessee society has changed since last years and even during the course of hearing, the Id CIT D/R has not submitted anything contrary to the contentions so advanced by the Id A/R and as found from the perusal of past assessment orders. We therefore find that where the undisputed facts are that these are the same activities which the assessee society has been carrying on all these years and then on what basis, the same activities are treated as promotion of sport of cricket in all the past years and for the year under consideration, the Assessing officer hold that these are not sport promotion activities and thus, not charitable in nature. On this ground alone, where there are no changes in the facts and circumstances of the case, following the rule of consistency as upheld by the Courts from time to time and more so in view of the fact that the matter is covered by the decision of the Hon'ble Jurisdictional High Court, we are of the considered view that there is no basis to interfere with the consistent position which has been accepted in the earlier years that is, to hold that the predominant object of the assessee society is promotion of sport of cricket and all its activities are guided towards achieving the said objectives and thus, the proviso to section 2(15) doesn't apply in the instant case.

36. We also refer to the decision of the **Hon'ble Gujarat High Court** in case of **DIT (Exemptions) vs Gujarat Cricket Association** (supra) and the relevant findings read as under:

"35. It appears from the line of reasoning adopted by the Assessing Officer and the CIT(A) that both are absolutely mesmerized or rather hypnotized by the word "BCCI" The corpus with the BCCI may be huge and the BCCI may be indulging in commercial transactions like TV rights, IPL matches etc. However, we fail to understand what has the BCCI to do directly with the assessee. The assessee is a registered charitable trust. It has its own objects. It has its own activities for the purpose of promoting the game of cricket, or in other words, imparting

education in the game of cricket. The BCCI may ask the Association to host a cricket match at the international level once in a year or two. However, that by itself, is not sufficient to draw an inference that the assessee-Association is indulging in commercial activity with an element of profit motive.

36. *We are quite amazed with some of the findings recorded by the Assessing Officer as well as the CIT(A). One of the findings recorded is that the Association should not sell tickets for watching the cricket matches. Are the authorities trying to convey that the Association should not sell tickets even when it comes to international matches. How does the Revenue expect the Association to distribute the tickets in such circumstances.*

37. *Having regard to the materials on record, we are convinced that the main and predominant object and activity of the assessee is to promote, regulate and control the game of cricket in the State of Gujarat. The undisputed fact is that over a period of years, this activity has been recognized by the Income-tax Department as a charitable activity and the registration under section 12A of the Act was granted to the assessee. A number of assessment orders under section 143(3) were passed, wherein the assessee was held eligible for the exemption under sections 11 and 12 of the Act. It appears that it is only after the Proviso came to be inserted that, all of a sudden, the department now believes that the activity of the assessee is commercial in nature and no longer charitable. It is difficult for us to take the view that the assessee could be said to be carrying on "trade, commerce or business" under the garb of the activity being "general public utility". Merely because an activity is performed in an organized manner, that alone, will not make such activities as business/commercial activity. The profit motive is one essential ingredient which is apparently missing in the case on hand. In carrying out an activity, one may earn profit or one may incur loss. But for making it as a business activity, the presence of the profit motive is sine qua non.*

38. *In the case on hand, the ultimate beneficiary is either the cricketer or the game of cricket. The assessee is not charging any fees or revenue from the cricketer who is the ultimate beneficiary. Thus there is no quid pro quo relationship with the cricketer. The assessee is promoting cricket on the charitable basis as far as real beneficiary is concerned. Whenever the revenue is earned, the same is not on commercial lines and the same could be said to be earned without any commercial attributes. The revenue is generated for recovering the cost, at least partly if not in full."*

“136. It is important to note that prior to the introduction of the Proviso to section 2(15) of the Act, the assessee-Association was granted registration under section 12A of the Act. From this, it is clear that prior to the introduction of the Proviso to section 2(15) of the Act, the authority, upon due consideration of all the relevant aspects, arrived at the satisfaction that the assessee-Association was established for charitable purposes... The Association continues to be recognised as a charitable institution. The certificate issued under section 12A, after due inquiry, is still in force. If the Proviso had not been introduced by virtue of the Finance Act, 2008 w.e.f 1st April, 2009, the assessee Association would have been recognized as a charity and would have been recognized as an institution established for the purpose of advancement of an object of general public utility. The argument of the learned senior counsel on behalf of the Revenue is that in view of the introduction of the Proviso to section 2(15), the assessee-Association is not entitled to seek exemption. The said proviso has two parts. The first part has reference to the carrying on of any activity in the nature of trade, commerce or business. The second part has reference to any activity of rendering any service —in relation to any trade, commerce or business. Both these parts are further subject to the condition that the activities so carried out are for a cess or fee or any other consideration, irrespective of the nature or use or application or retention of the income from such activities. In other words, if, by virtue of a cess' or fee' or any other consideration, income is generated by any of the two sets of activities referred to above, the nature of use of such income or application or retention of such income is irrelevant for the purposes of construing the activities as charitable or not.

137. To be clear, if an activity in the nature of trade, commerce or business is carried on and it generates income, the fact that such income is applied for charitable purposes, would not make any difference and the activity would nonetheless not be regarded as being carried on for a charitable purpose. We have seen that by virtue of section 25 of the Companies Act, the petitioner is enjoined to plough back its income in furtherance of its object and the declaration of dividends is prohibited. If a literal interpretation is to be given to the proviso, then it may be concluded that this fact would have no bearing on determining the nature of the activity carried on by the petitioner. But, we feel that in deciding whether any activity is in the nature of trade, commerce or business, it has to be examined whether there is an element of profit making or not. Similarly, while considering whether any activity is one of rendering any service in relation to any trade, commerce or business, the element of profit making is also very important.”

“141. From the aforesaid decisions, it is apparent that merely because the Association puts up tickets of the international cricket matches for sale and earns some profit out of the same, it would not lose its character of having been established for a charitable purpose. It is also important to note that we must examine as to what is the dominant activity of the institution in question. If the dominant activity of the institution was not business or trade or commerce, then any such incidental or ancillary activity would also not fall within the categories of the trade, commerce or business. It is clear from the facts of the present case that the driving force is not the desire to earn profit but the object is to promote the game of cricket and nurture the best of the talent.”

“148. Carrying on an 'activity in the nature of trade, commerce, or business' or rendering of any service in relation to trade etc. is sine qua non for taking away the character of charitable purpose. An activity in the nature of trade, commerce or business is always carried on with the prior object of earning income. What is relevant is the intention of the person before undertaking such activity. A line of distinction needs to be drawn between the activities undertaken by a society, otherwise satisfying the prescription of section 2(15) 'prior to the insertion of proviso, which are aimed at earning income divorced from the objects for which it is charitable por unaparte and the activities which are aimed at the attainment of the objects for which It was set up por otraparte. Whereas the former fall within the mandate of the proviso to section 2(15), the latter do not. The obvious reason is that the latter activities are in furtherance of the charitable objects of such society and income, if any, resulting from such activities and does not convert the otherwise charitable activity [within the definition of section 2(15)] into carrying on of a business, trade or commerce. It can be understood with the help of a simple illustration. Supposing an association set up for the promotion of a particular trade, has its own premises' from which it carries out the activities for the promotion of such trade. If the association lets out its premises from time to time for enhancing its income, which letting out has no relation with the objects for which it was set up as a charitable institution, namely, the promotion of that particular trade, the resultant activity will amount to carrying on trade, commerce or business so as to fall within proviso to section 2(15). On the other hand, if it uses its premises for undertaking activities for which it was set up and is a charitable institution, and while doing so, there results some income, such income will not amount to carrying on any trade, commerce or business. The crux of the matter is to understand the object of carrying on the activity which resulted into income. If the object is to simply earn income de hors the promotion of

objects for which it was set up, it will fall within the ambit of proviso to section 2(15) and if the object of the activity is to promote the objects for which it was set up, then it will not be caught within the sweep of the proviso notwithstanding the fact that there results some income from carrying out such activity. The core of the matter is to see whether the activity which resulted into some income or loss was carried on with the object of doing some trade, commerce or business, etc., or it was in furtherance of the objects (non-business) etc., for which the assessee was set up. In other words, the predominant object of the activities should be seen as to whether it is aimed at carrying on some business, trade or commerce or the furtherance of the object for which it was set up. If it falls in the first category, then, the case would be covered within the proviso to section 2(15) and, in the otherwise scenario, the assessee will be construed to have carried on its activities of general public utility. (see Society of Indian Automobile Manufactures v. ITO [2016] 71 taxmann.com 138/159 ITD 659 (Delhi - Trib.)”

“163.*We sum up our final conclusions as under;*

In carrying on the charitable activities, certain surplus may ensue. However, earning of surplus, itself, should not be construed as if the assessee existed for profit. The word "profit" means that the owners of the entity have a right to withdraw the surplus for any purpose including the personal purpose.

It is not in dispute that the three Associations have not distributed any profits outside the organization. The profits, if any, are ploughed back into the very activities of promotion and development of the sport of cricket and, therefore, the assesseees cannot be termed to be carrying out commercial activities in the nature of trade, commerce or business.

It is not correct to say that as the assesseees received share of income from the BCCI, their activities could be said to be the activities of the BCCI. Undoubtedly, the activities of the BCCI are commercial in nature. The activities of the BCCI is in the form of exhibition of sports and earn profit out of it. However, if the Associations host any international match once in a year or two at the behest of the BCCI, then the income of the Associations from the sale of tickets etc., in such circumstances, would not portray the character of commercial nature.

The State Cricket Associations and the BCCI are distinct taxable units and must be treated as such. It would not be correct to say that a member body can be held liable for taxation on account of

the activities of the apex body.

Irrespective of the nature of the activities of the BCCI (commercial or charitable), what is pertinent for the purpose of determining the nature of the activities of the assessee, is the object and the activities of the assessee and not that of the BCCI. The nature of the activities of the assessee cannot take its colour from the nature of the activities of the donor.”

37. We find that in the aforesaid decision, the Hon'ble Gujarat High Court in the context of proviso to section 2(15) held that in deciding whether any activity is in nature of trade, commerce or business or any service in relation to any trade, commerce or business, the element of profit making is essential. If the object is to simply earn income dehors the promotion of objects for which it was set up, it will fall within the ambit of the proviso to section 2(15) and if the object of the activity is to promote the objects for which it was set up, then it will not be caught within the sweep of the proviso notwithstanding the fact that there results in some income from carrying on such activity. In other words, the predominant object of the assessee should be seen as to whether it is aimed at carrying on business or the furtherance of the object for which it was set up. Further, it has been held that earning of surplus itself should not be construed as if the assessee existed for profit and what is relevant to determine is whether the profits and surplus so generated has been distributed outside the organization and where on facts, the profits and surplus are ploughed back into the activities of promotion and development of sport of cricket, the assessee cannot be termed to be carrying out commercial activities in the nature of trade, commerce or business. Further, making a distinction between the state cricket associations and the BCCI, it has been held that these are separate and distinct organizations and taxable entities in their individual capacity and merely on account of the fact that a state cricket association is a member body of BCCI, it cannot be held liable for activities of BCCI and what is only relevant is objects and activities of the state cricket association and not that of BCCI while deciding its

taxability. It has been held that the activities of BCCI in form of exhibition of sports and earning profit out of it may be commercial in nature, however, the fact that the BCCI distributes and the state cricket association receive a share of such receipts, the activities of BCCI cannot be construed as activities of the state cricket association. Further, it has also been held that where any state cricket association hosts any international matches at the behest of BCCI, the income from sale of tickets would not portray the character of commercial nature. We find that by said decision of the Hon'ble Gujarat High Court, the decision of Chandigarh Benches of the Tribunal in case of Punjab Cricket Association vs ACIT (supra) stand distinguished as in that case, we find that the findings of the Coordinate Bench are guided to a large extent by the status of BCCI and its constituents, conduct of its activities and how it has treated the payment to state cricket association in its books of accounts. We find that the said decision of the Hon'ble Gujarat High Court rather reinforces the earlier decision of the Coordinate Bench in assessee's own case for the earlier year as also approved by the Hon'ble Rajasthan High Court.

38. Applying the legal proposition so laid down by the Courts in the instant case, we find that the predominant object of the assessee society remains the promotion, organization and control of the game of cricket in the state of Rajasthan as apparent from the following objectives as per Article 5 of the memorandum of the assessee society:

(a) to promote, organize, manage and control the game of cricket within its jurisdiction.

(b) To control and improve quality and standards of the game of Cricket in Rajasthan, lay down policies, roadmaps, guidelines and make rules and regulations (and amend or alter them) in all matters relating to the game of Cricket, recognizing that the primary stakeholders are the Players and Cricket fans in Rajasthan, and that accountability, transparency and purity and integrity of the Game are the core values

(c) To provide for measures necessary for promotion and development of the game of Cricket in Rajasthan, welfare and interest of Cricketers and elimination of unethical and unfair practices in the Game of cricket in Rajasthan; and for that purpose, organize coaching schemes, establish coaching academies, hold tournaments, exhibition matches,

Test Matches, ODIs, Twenty/20, T-10 and any other matches and take other required steps;

(d) To strive for sportsmanship and professionalism in the game of Cricket and its governance and administration; inculcate principles of transparency and ethical standards in players, team officials, umpires and administrators; and to ban doping, age fraud, sexual harassment and all other forms of in-equality and discrimination.”

39. And therefore, the receipts from sale of tickets from one day international and IPL matches are incidental and ancillary to its predominant object of the promotion of sport of cricket and cannot be construed as commercial in character attracting the proviso to section 2(15). Further, other receipts in form of IPL subvention, TV subsidy from BCCI and other receipts etc are dependent upon the conduct of the cricket matches itself and are therefore incidental and ancillary to the conduct of cricket matches and are not independent activities being carried on with an independent intent to carry on business and thus, doesn't attract the proviso to section 2(15) of the Act. Lastly, the assessee society generating surplus from these receipts after meeting its expenditure on year to year basis is not reflective of its intent and existence for profit. It is not the case of the Revenue that such surplus are distributed by the assessee society to its members rather the admitted facts are that such surplus is ploughed back by the assessee society for building the necessary infrastructure and conduct of other capacity building activities for the promotion of the sport of cricket in the state of Rajasthan. Similar issue has been examined at length by the Coordinate Bench in case of **Assistant Commissioner of Income-tax (Exemption), Jaipur Vs Mahima Shiksha Samiti** [2017] 79 taxmann.com 38 (Jaipur - Trib.) and the relevant findings read as under:

“14. On perusal of the assessment order, it is noted that the prime reason for denial of exemption under section 11 of the Act by the Assessing officer is systematic generation of surplus year after year under various heads of income by the assessee society. As per Assessing officer, the systematic generation of surplus year after year establishes that various educational institutions are being run by assessee society with profit motive and not for any charitable purposes. The institutions are being run on commercial basis by charging hefty fees and

generating heavy surplus from its education activity just like a business establishment with dominant motive being to earn profits. Negating the submissions of the assessee society that it is imparting education through various institutions and therefore carrying on charitable activity within the meaning of section 2(15), the Assessing officer held that looking at the fee structure of the institutions run by the assessee society, the children of common people and weaker section cannot afford to take education in these institutes and imparting education at such high cost cannot be treated as that of general public utility. Therefore, it was held that assessee society is not carrying on any charitable activity and surplus generated every year under various heads of fees cannot be held to be 'income from property held for charitable purposes' for the purposes of section 11(1) of the Act and the assessee society is therefore not entitled to exemption u/s 11 of the Act. In addition, the Assessing officer noted that the assessee society has allowed various benefits to persons covered under section 13(3) and in view of the provisions of section 13(1), the assessee society is not held eligible for exemption under section 11 of the Act.

15. *Here, we refer to the decision of Hon'ble Supreme Court in case of Queen's Education Society v. CIT [\[2015\] 372 ITR 699/231 Taxman 286/55 taxmann.com 255](#) where relevant principles of law have been laid down to determine whether an educational institution exists solely for educational purposes and not for profit. In that case, the provisions of section 10(23C)(iiiad) of the Act were under consideration of Hon'ble Supreme Court . The Revenue therein has argued that the legislature and the language employed in the statute doesn't contemplate making of large profits and if an educational institution, in fact, makes large profits, then even though it may plough such profits back into the purchase of assets for education, yet such institution cannot be said to be existing solely for educational purposes and it would really be for profit. The Hon'ble Supreme Court negated the said line of arguments put forward by Revenue and referred to its earlier decisions rendered in case of Addl. CIT v. Surat Art Silk Cloth Mfg. [\[1978\] 121 ITR 1/\[1979\] 2 Taxman 501 \(SC\)](#), Aditanar Educational Institution v. Addl. CIT [\[1997\] 224 ITR 310/90 Taxman 528 \(SC\)](#) and American Hotel & Lodging Assn. Educational Institute v. CBDT [\[2008\] 301 ITR 86/170 Taxman 306 \(SC\)](#) and laid down the following principles in law as set out in paragraph 11 of its decision which reads as under:*

'11. the law common to section 10(23C)(iiiad) and (vi) may be summed up as follows:

Where an educational institution carries on the activity of education

primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for education purposes and becomes an institution for the purpose of making profit.

The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.

A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes

The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons.'

16. *The Hon'ble Supreme Court in above decision also approved the decision of Hon'ble Punjab and Haryana High Court in case of **Pinegrove International Charitable Trust** v. Union of India [\[2010\] 188 Taxman 402/327 ITR 73](#). In that case, Chief CIT, Chandigarh withdrew the exemption under section 10(23C)(vi) stating that the profits are substantial and arising year after year and not incidental as held in case of Aditanar Educational Institution and the assessee should reduce the fees and apply a fresh. In that background, the Hon'ble Punjab and Haryana High Court held as under:*

"8.13 From the aforesaid discussion, the following principles of law can be summed up –

It is obligatory on the part of Chief Commissioner of Income-tax or the Director which are the prescribed authorities, to comply with proviso thirteen (un-numbered). Accordingly , it has to be ascertained whether the educational institution has been applying its profit wholly and exclusively to the object for which the institution is established. Merely because an institution has earned profit would not be deciding factor to conclude that the educational institution exists for profit.

The provisions of section 10(23C)(vi) of the Act are analogous to the erstwhile section 10(22) of the Act, as has been laid down by Hon'ble Supreme Court in the case of American Hotel and Lodging association (supra). To decide the entitlement of an institution for exemption u/s 10(23C)(vi) of the Act, the test of

predominant object of the activity has to be applied by posing the question whether it exists solely for education and not to earn profit [see 5 Judges constitution Bench Judgment in the case of Surat Art Silk Cloth Manufacturers Association (supra)]. It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not result in change of character of the institution that it exists solely for educational purpose. A workable solution has been provided by Hon'ble Supreme Court in para 33 of its judgment in American Hotel and Lodging Association's case (supra). Thus on an application made by an institution, the prescribed authority can grant approval subject to such terms and conditions as it may deem fit provided that they are not in conflict with the provisions of the Act. The parameters of earning profit beyond 15% and its investment wholly for educational purposes may be expressly stipulated as per the statutory requirement. Thereafter the Assessing Authority may ensure compliance of those conditions. The cases where exemption has been granted earlier and the assessment is complete with the finding that there is no contravention of the statutory provisions, need not be reopened. However, after grant of approval if it comes to the notice of the prescribed authority that the conditions on which approval was given, have been violated or the circumstances mentioned in 13th proviso exist, then by following the procedure envisaged in 13th proviso, the prescribed authority can withdraw the approval.

The capital expenditure wholly and exclusively to the objects of education is entitled to exemption and would not constitute part of the total income.

The educational institutions which are registered as a society would continue to retain their character as such and would be eligible to apply for exemption under section 10(23C)(vi) of the Act.

Where more than 15% of income of an educational institution is accumulated on or after 1st April, 2002, the period of accumulation of the amount exceeding 15% is not permissible beyond five years, provided the excess income has been applied or accumulated for application wholly and exclusively for the purpose of education."

17. *The Hon'ble Supreme Court also approved the decision of Hon'ble Bombay High Court in case of **Tolani Education Society v. Dy. DIT (Exemptions)** [2013] 351 ITR 184/214 Taxman 58/30 taxmann.com 165 as under:*

"24.Also in *Tolani Education Society v. Deputy Director of Income Tax (Exemption) & Ors.*, [\[2013\] 351 ITR 184](#), the Bombay High Court has expressed a view inline with the Punjab and Haryana High Court view, following the judgments of this Court in the *Surat Art Silk Manufacturers Association Case* and *Aditanar Educational Institution case* as follows:

....The fact that the Petitioner has a surplus of income over expenditure for the three years in question, cannot by any stretch of logical reasoning lead to the conclusion that the Petitioner does not exist solely for educational purposes or, as that Chief Commissioner held that the Petitioner exists for profit. The test to be applied is as to whether the predominant nature of the activity is educational. In the present case, the sole and dominant nature of the activity is education and the Petitioner exists solely for the purposes of imparting education. An incidental surplus which is generated, and which has resulted in additions to the fixed assets is utilized as the balance sheet would indicate towards upgrading the facilities of the college including for the purchase of library books and the improvement of infrastructure. With the advancement of technology, no college or institution can afford to remain stagnant. The Income-tax Act, 1961 does not condition the grant of an exemption under Section 10(23C) on the requirement that a college must maintain the status-quo, as it were, in regard to its knowledge based infrastructure. Nor for that matter is an educational institution prohibited from upgrading its infrastructure on educational facilities save on the pain of losing the benefit of the exemption under Section 10(23C). Imposing such a condition which is not contained in the statute would lead to a perversion of the basic purpose for which such exemptions have been granted to educational institutions. Knowledge in contemporary times is technology driven. Educational institutions have to modernise, upgrade and respond to the changing ethos of education. Education has to be responsive to a rapidly evolving society. The provisions of Section 10(23C) cannot be interpreted regressively to deny exemptions. So long as the institution exists solely for educational purposes and not for profit, the test is met." (Emphasis supplied)

18. Though the above referred decision of the Hon'ble Supreme Court in case of *Queen's educational society* has been rendered in the context of section 10(23C)(iiiad) where the legislature has used the words "income received by any person on behalf of educational institution existing solely for education purposes and not for the purposes of profit", in our view, the proposition in law is equally relevant and applicable in context of section 11 of the Act where the legislature has used the words "income derived from property held under trust wholly for charitable purposes" and wherein similar provisions exist in terms of accumulation and plough back of surplus for educational purposes as the intent behind both the provisions is essentially the same. The said analogy also becomes clear from the fact that the Hon'ble Supreme Court in case of *Queen*

Education Society has itself referred to and approved its earlier decision in case of *S.R.M.M.C.T.M Tiruppani Trust v. CIT* [\[1998\] 230 ITR 636/96 Taxman 635](#) which was rendered in context of section 11 while discussing the principle of accumulation and utilization of surplus for educational purposes in para 19 of its order as under:

"...9. In the present case, the assessee is not claiming any benefit u/s 11(2) as it cannot, because in respect of this assessment year, the assessee has not complied with the conditions laid down in section 11(2). The assessee however, is entitled to claim the benefit of section 11(1)(a). In the present case the assessee has applied Rs. 8 lakhs for charitable purposes in India by purchasing a building which is to be utilized as a hospital. This income, therefore, is entitled to an exemption u/s 11(1). In addition u/s 11(1)(a), the assessee can accumulate 25% of its total income pertaining to the relevant assessment year and claim exemption in respect thereof. Section 11(1)(a) does not require investment of this limited accumulation in government securities. The balance income of Rs. 1,64,210.03 constitutes less than 25% of the income for the assessment year 1970-71. Therefore, the assessee is entitled to accumulate this income and claim exemption from Income tax u/s 11(1)(a)."

19. Subsequently, the Hon'ble Supreme Court in its subsequent decision in case of *Visvesvaraya Technological University v. Asstt. CIT* [\[2016\] 384 ITR 87/239 Taxman 395/68 taxmann.com 287](#), in context of section 10(23C)(iiiab), referred to principles laid down in *Queen's education society (supra)* and stated that one further test as laid down in *Surat Art Silk Cloth Manufacturer's Association (supra)* and culled out in *American Hotel & Lodging Association Educational Institute (supra)* may be added which is as follows:

"In order to ascertain whether the institute is carried on with the object of making profit or not it is the duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established ."

In the said decision, it further states that the above principle has been specifically reiterated in paragraph 19 of the decision in *Queen's Educational Society (supra)* in the following terms:

"The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall out of Section 10(23C) is to ignore the language of the section and to ignore the tests laid down in *Surat Art Silk Cloth case (CIT v. Surat Art Silk Cloth Manufacturer's Association [1980] 2 SCC 31)* *Aditanar case (Aditanar Educational Institution v. CIT [1997] 3 SCC 346)* and *American Hotel & Lodging Association, Educational Institute v. CBDT [2008] 10 SCC 509)*. It is clear that when a surplus is ploughed back for educational

purposes, the educational institution exists solely for educational purposes and not for purposes of profit."

In that case, the facts of the case before the Hon'ble Supreme Court were that the University had generated huge surplus of about Rs. 500 crores from the year 1999 to 2010 by realising fees under different heads in consonance with the power vested in the University. The difference between the fees collected and actual expenditure was significant and represents only a minuscule part of the fees collected. No remission, rebate or concession in the amount of fees charged under the different heads were granted to the students. At the same time, it was noted that University has grown, number of private engineering colleges affiliated to it has increased from about 64 to 194, the infrastructure of the University has increased offering educational avenues to an increasing number of students in different and varied subjects. The University has spent about Rs. 504 crores and available surplus in the year 2010 to the tune of Rs. 440 crores was also intended to be applied for different infrastructural work.

In the above factual matrix, it was noted by the Hon'ble Supreme Court that there is no manner of doubt that the surplus accumulated over the years has been ploughed back for educational purposes and it was held that the appellant University exists solely for educational purposes and not for the purposes of profit.

20. *In our view, the above decision of Hon'ble Supreme Court in case of Visvesvaraya Technological University supports the case of assessee society where under similar fact pattern the surplus has been generated over the period of time and at the same time, the same has been ploughed back and utilised for the purposes of promotion of education through setting up educational institutions, operating them and also upgrading them from time to time for further benefits to the students at large. The society has also established a university, "Jaipur National University" for the promotion of technical and other higher education where the Society is the sponsoring Mahima Shiksha Samiti, Jaipur v. ACIT,(Exemption), Jaipur body of the University and has helped set up the University and its infrastructure. Here, it would be relevant to note the surplus that has been generated by the assessee society over the years starting AYs 1999-00 to 2011-12 and to what extent the same has been utilised over the years:*

Assessment Year	Surplus as per Audited balance sheet (Rs.)	Application of Funds in Fixed Assets as per Audited balance sheet (Rs.)
1999-00	1,62,46,018.00	1,50,20,208.00
2000-01	2,36,72,347.34	1,30,51,311.00
2001-02	2,84,80,341.36	2,40,39,164.00
2002-03	2,53,17,807.95	5,14,73,987.00
2003-04	2,83,71,052.55	9,65,26,288.00
2004-05	2,80,82,530.20	7,27,88,255.00
2005-06	4,18,59,223.00	4,75,03,260.00

2006-07	5,96,81,354.00	5,12,75,041.00
2007-08	6,77,92,066.00	11,25,15,384.00
2008-09	12,44,29,983.15	9,87,57,585.00
2009-10	6,36,87,969.81	1,89,47,976.00
Sub Total	50,76,20,693.36	60,18,98,460.00
2010-11	8,37,24,064.55	27,48,064.00
2011-12	8,60,16,075.33	8,75,24,252.00
Total	67,73,60,833.24	69,21,70,776.00

On perusal of above figures, it is clear that over the period of 11 years, it is no doubt that the assessee society has generated surplus of Rs. 50.76 Crores but at the same time, the whole of the said surplus has been ploughed back and utilised on infrastructure to the tune of Rs. 60.19 Crores (including borrowings) . Even for the two years under consideration, there is surplus of Rs. 16.97 Crores and out of that, Rs. 9 crores have already been spent on the infrastructure.

21. *The CBDT has also come out with a clarification vide its circular No. 14/2015 dated 17th August, 2015, wherein, the guidance to the Field Officers has been provided precisely on the issue under consideration on generation of surplus out of gross receipt, the relevant para is reproduced as follows:—*

"3. Generation of surplus out of gross receipts:

A doubt has been raised whether generation of surplus out of gross receipts would necessarily 'breach' the threshold condition that the educational institution should exist 'solely for educational purpose and not for the purpose of profit'. Perusal of prescribed provisions clearly reveal that mere generation of surplus cannot be a basis for rejection of application u/s 10(23C)(vi) on the ground that it amounts to an activity of the nature of profit making. In fact, the third Proviso to the said clause clearly provides that accumulation of income is permissible subject to the manner prescribed therein provided such accumulation is to be applied "wholly and exclusively to the objects for which it is established". Hence, it is clarified that mere generation of surplus by educational institution from year to year cannot be a basis for rejection of application u/s 10(23C)(vi) if it is used for educational purposes unless the accumulation is contrary to the manner prescribed under law."

22. *A perusal of the above clarification issued by CBDT clearly shows that while examining that an educational institute exists solely for educational purpose or for the purpose of the profit, mere generation of surplus from year to year cannot be basis to hold that it exists for the purpose of the profit as sufficient safeguards have been provided whereby accumulation of income is permissible subject to the manner prescribed therein provided such accumulation is to be applied wholly and exclusively to the objects for which it is established. In our view, the view of the CBDT is in consonance with the express wordings provided and intended by the legislature in 10(23C)(vi) and in conformity with*

the law laid down by the Hon'ble Supreme Court in case of Queens Education Society where it is provided that where the surplus is ploughed back for education purposes, the educational institution exists solely for educational purposes and not for purposes of profit. The same will apply with equal force in context of section 11 as similar safeguards have been provided in terms of accumulation and utilisation of surplus so generated for the purposes of charitable purposes in terms of section 11(2) of the Act.

23. *It is further noted that similar issue has come up in the past right from AYs 2001-02 to 2009-10 wherein the exemption u/s 11 has been denied to the assessee society on account of generating surplus year on year. However, the Coordinate Benches have consistently taken a view that looking at the scheme of exemption as envisaged in the statute, generating surplus cannot be basis for denial of exemption under section 11 of the Act.*

24. *In light of above discussions, in the instant case, we are of the considered view that given that the assessee society is generating surplus year after year is not the deciding factor to determine whether it is eligible for exemption under section 11 of the Act. And on this ground alone, the exemption claimed by the assessee society under section 11 can not be denied."*

40. In light of aforesaid discussion and in the entirety of the facts and circumstances of the case and respectfully following the decisions of the Hon'ble Supreme Court, Hon'ble Rajasthan High Court and Hon'ble Gujarat High Court and of the Coordinate Benches referred supra, the matter is decided in favour of the assessee society and against the Revenue. In the result, the appeal of the Revenue is dismissed. "

6.2 Taking into consideration the aforesaid discussions and in the entirety of the facts and circumstances of the case and also respectfully following the decisions of the Hon'ble Supreme Court, Hon'ble Rajasthan High Court in assessee's own case and the decisions of the Coordinate Benches of the Tribunal, supra, Ground no.1 of the appeal is decided against the revenue and in favour of the assessee.

Ground no. 2 is general in nature and needs no adjudication.

7. In result, the appeal of the revenue is dismissed.

ITA No. 67 & 68/JP/2022

8. These two appeals of the Revenue in ITA No. 67 & 68/JP/2022 for the assessment years 2012-13 and 2013-14 are wholly on similar facts and grounds. With the consent of both the parties, the ITA no. 67/JP/2022 for the assessment year 2012-13 is taken as lead case for the purpose of adjudication and the decisions arrived at, will be applicable to other appeal i.e. ITA No. 68/JP/2022. The grounds raised by the revenue in ITA no. 67/JP/2022 are as under :-

1. "On the facts and the circumstances of the case and in law the Ld. CIT (Appeals) has erred in allowing exemption u/s 11 of the I. T. Act, 1961 to the assessee despite the fact that the proviso of section 2 (15) is invoked in the case of assessee as the activities of the assessee are being run on commercial basis, there being no element of charity .
2. On the facts and circumstances of the case and in law, the Id. CIT (A) has erred in allowing the expense towards grand to District Cricket Association (DCA) of Rs. 2,85,03,980/- without appreciation of the fact that the activities of the assessee society cannot be treated as charitable activity and accordingly provisions of section 11 and 12 of the Income Tax Act were not applicable in the assessee's case .
3. On the facts and circumstances of the case the assessee has erred in adopting the accrual and not the payment system of accounting as the Trust/AOP/Society Institution exempted under the Income Tax Act is not employed to adopt Accrual system of Accounting.
4. Any other question of law as deemed fit in the facts and circumstances of the case may also be framed before the Hon'ble Tribunal in the interest of justice."

Ground No. 1.

9. We have already adjudicated the similar ground of the revenue in ITA No. 66/JP/2022 for the assessment year 2005-06, supra, wherein after elaborate discussions and following the decisions of the Coordinate Benches of ITAT Jaipur and the judgments of Hon'ble Supreme Court and Hon'ble High Courts, decided the issue in favour of the assessee by allowing the claim of the assessee. Thus, this ground of

the revenue is covered by the decision rendered above and the ground no. 1 of the revenue is dismissed.

Ground No. 2

10. This ground of the revenue relates to allowing the expenses towards grants to District Cricket Associations of Rs. 2,85,03,980/-.

11. In this regard, the Id A/R submitted that the AO has erred in law as well as in facts in disallowing grants to the District Cricket Associations amounting to Rs. 2,85,03,980/- allegedly on the ground that these expenses are capital in nature or in nature of application of income and, therefore, not allowable as revenue expenses since the AO has assessed the assessee as a commercial venture. On appeal before the Ld. CIT (A), the assessee submitted the detailed facts and argued that the same is covered under Aims and Objects in the Constitution of Rajasthan Cricket Association and further that, since now, the registration has been restored under section 12A, all application are allowable under section 11 of the Act. Further, the assessee has mentioned that the very similar matter has been decided in assessee's own case in ITA no. 284/JP/2020 dated 25.11.2020 for the assessment year 2011-12 in favour of the assessee. The Id. A/R further submitted that the Id. CIT (A) while adjudicating the matter, following the decision of the Jaipur Bench of the Tribunal in the assessee's own case in ITA No. 284/JP/2020 dated 25.11.2020 for the assessment year 2011-12 decided the matter in para 8.3.1 of his order, in favour of the assessee, as under :-

“ 8.3.1 The issue is related to disallowing the grant of Rs. 2,85,03,980/- made to the District Associations holding that the same is of capital nature or in nature of application of income and therefore, not allowable as revenue expenditure. It is noted

that similar disallowance was made for A.Y 2011-12 and CIT(Appeals) had held the matter against the appellant and appeal was filed before the Hon'ble ITAT, Jaipur in ITA no. 284/JP/2020 wherein vide order dated 25.11.2020 has decided the issue in favour of the appellant. The gist of the decision has already been extracted in the reply of the appellant reproduced in the preceding para. In view of the similar facts involved in the current year and respectfully following the decision of the Hon'ble ITAT in favour of the appellant, the issue is decided in favour of the appellant and the Ground No. 3 is allowed."

Therefore, the Id. A/R prayed that the expenditure incurred by way of grants to various district cricket association may be allowed to the assessee.

12. On the other hand, the Ld. D/R. submitted that this issue is covered in favor of the assessee by the decision of Coordinate Bench of the Tribunal in ITA no. 284/JP/2020.

13. We have heard the rival contentions and perused the material available on record. At the outset, we find that the matter under consideration is squarely covered by the decision of Coordinate Bench of the ITAT Jaipur in the assessee's own case in ITA No. 1355, 1356/JP/2018 and ITA No. 284/JP/2020 dated 25.11.2020 wherein in para 50 the matter has been decided as under :-

" 50. We have heard the rival contentions and perused the material available on record. During the year under consideration, the assessee has given grants to various district cricket association amounting to Rs. 1,87,70,025/-in the nature of subsidy, grants for infrastructure development and for buying cricket equipments. The Assessing officer has disallowed the same primarily for the reason that the assessee is not eligible for exemption under section 11 and 12 of the Act being not registered u/s 12A and the said expenditure is either in the nature of capital expenditure or in the nature of application of income. We find

that by incurring such expenditure by way of grants to the district cricket association, the assessee society is contributing to creation of necessary infrastructure and purchase of equipments however such infrastructure and equipments results in creation/enhancement of existing/new infrastructure or acquisition of assets in the hands of the district cricket association, however as far as the assessee society is concerned, such an expenditure doesn't result in creation of any asset or advantage of enduring benefit in the hands of the assessee society and therefore, the same cannot be termed as capital expenditure. Further, there is no dispute that the assessee is duly registered u/s 12A of the Act and is eligible for exemption under section 11 and 12 of the Act and therefore, the said expenditure is clearly in nature of application of income as the same has a direct nexus with the objectives of the assessee society in terms of promotion of sport of cricket in the state of Rajasthan. In the result, the matter is decided in favour of the assessee and against the Revenue and the ground of appeal so taken by the assessee society is thus allowed."

We, therefore, following the decision of the Coordinate Bench of the ITAT Jaipur in assessee's own case, supra, allow the expenditure incurred by the assessee by way of grants given to various District Cricket Association amounting to Rs. 2,85,03,980/- as claimed by the assessee . Accordingly ground no. 2 of the revenue is dismissed.

Ground no. 3 relates to adopting accrual system of accounting and not the payment system of accounting as the Trust/AOP/Society/Institution exempted under the IT Act is not employed to adopt accrual system of accounting.

14. The brief facts of the case are that during the course of scrutiny assessment proceedings, the AO noticed that in the Balance Sheet the assessee has shown provision for expenses of Rs. 2,30,26,342/-. As per the AO, the provisions are not

allowable and thus the assessee was required to furnish the details of the provisions made as well as justification for the claim. The AO held that for claiming any expenditure it should have been incurred and provisions are not the expenditure incurred. It is an estimate for the expenses to be incurred in subsequent period. In absence of details furnished by the assessee, the AO disallowed the provision for expenses of Rs. 2,30,26,342/- and added to the total income of the assessee. Aggrieved by the order, the assessee preferred appeal before the Id. CIT (A). The assessee furnished the written submissions dated 14.01.2021 before the Id. CIT (A) explaining the provision of expenses. The Id. CIT (Appeals) considering the submissions of the assessee, allowed the claim of the assessee by observing in para 10.3.1 as under :-

“10.3.1. The issue is disallowance of provision of expenses of Rs. 2,30,26,342/- on the ground that in the absence of information as to whether same has been incurred or not. From the submissions of the appellant, it is clear that the appellant did not claim the above amount as applied during the year. If the appellant has not claimed any amount as applied, the question of its disallowance naturally does not arise. The AO may verify the same and subject to the same the disallowance is deleted and Ground No. 5 of the appeal is allowed.”

15. Before us, the Id. D/R submitted that the ground raised is basically for method of accounting in relation to the provision of expenses as mentioned in the order of the AO, for which the Id. CIT(A) has also mentioned in para 10.3.1, that AO may examine if there is any application claimed of the amount given in the Balance Sheet as provision apart from the expenditure as per the Income and Expenditure Account, this was just to draw the attention of the Hon'ble Bench.

16. On the other hand, the Id. A/R submitted that the method of accounting followed by the assessee Rajasthan Cricket Association is as per provisions of section 145(1) of the Income Tax Act 1961, the income chargeable under the head "Income from Other Sources", shall also be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The assessee is following the mercantile system of accounting consistently, which is clearly allowed as per the provisions of the Act and duly accepted by the department in assessee's own case in assessment of earlier years as well and the said provision is followed universally. The provisions are accounted and adjusted from time to time and year to year and only the closing balance as at the end of the year is reported in the Balance Sheet, it cannot be claimed separately. The revenue expenditure accounted for in the Income and Expenditure account is only claimed as revenue application. The Ld. CIT (A) has already given the opportunity to the AO and if any separate claim is there, he may so examine. Hence the ground of the revenue does not survive. It is, therefore, requested that the ground no. 3 of the revenue shall be dismissed.

17. We have heard the rival contentions, perused the material available on record and it is noted that the method of accounting shall be cash or mercantile as per section 145(1) of the Income Tax Act 1961, as consistently followed is allowed. Regarding the provision of expenses, it is noted that the same is provided and adjusted from year to year and the amount shown in the Balance Sheet is the closing balance at the end of the year. Regarding the separate claim, if any, the Id. CIT (A) has already given opportunity to the AO in this matter. Accordingly, the Ground no. 3 of revenue is dismissed.

Ground no. 4 is general in nature and needs no separate adjudication.

18. In the result, appeal of the Department is dismissed.

ITA No. 68/JP/2022

20. All the grounds taken by revenue in this appeal are exactly similar to grounds taken in ITA No. 67/JP/2022, except figures, supra. As stated herein above in para 9, and agreed by both the parties, since all the grounds taken in this appeal are covered by our decision arrived at in ITA No. 67/JP/2022, shall apply mutatis mutandis to this appeal also. Therefore, considering the similar facts and circumstances of the case and following our decision in ITA No. 67/JP/2022, we allow the claims of the assessee and dismissed the appeal of the revenue.

21. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 21/06/2022.

Sd/-
(राठौड़ कमलेश जयंतभाई,)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 21/06/2022.

das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- ITO Exemptions, Ward, Jaipur.
2. प्रत्यर्थी / The Respondent-Rajasthan Cricket Association, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 66, 67 & 68/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

