

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE**

श्री चन्द्रमोहन गर्ग, न्यायिक सदस्य

तथा

श्री ओ.पी.मीना, लेखा सदस्य के समक्ष

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL
MEMBER**

AND

SHRI O.P.MEENA, ACCOUNTANT MEMBER

**ITA No.782/Ind/2014
Assessment Year: 2012-13**

| | | |
|---|----------------------|-----------------------|
| Madhya Pradesh Cricket Association Holkar Stadium, 7, Race Course Road, Indore | बनाम/ Vs. | DCIT, 1(1), Indore |
| (Appellant) | | (Revenue) |
| P.A. No.AAATG3527C | | |

| | |
|-------------------------------|---|
| Appellant by | Shri Anil Kamal Garg, & Shri Arpit Gaur (AR) |
| Revenue by | Shri Lal Chand (CIT-DR) |
| Date of Hearing: | 21.03.2017 |
| Date of Pronouncement: | 14.06.2017 |

आदेश / O R D E R

PER CHANDRAMOHAN GARG, J.M:

This appeal has been filed by the Assessee against the order of Ld. Commissioner of Income Tax(Appeals)-I, Indore (in short 'CIT'), dated 26.08.2014 passed in the first appeal No.580/2013-14/319 of the Act, for the A.Y. 2012-13.

2. The grounds raised by the Assessee reads as follows:

“1. That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred, both on facts and in law, in confirming action of the learned AO in making disallowance of the claim of the appellant for grant of exemption of its entire income under ss.11(1)(a) and 11(2) of the Act.

2(a) That the learned CIT(A) grossly erred, both on facts and in law, in arriving at a finding that the appellant association is not eligible for claim of exemption under s.11 read with sub-section (8) of section 13 of the Income Tax Act, 1961, on extraneous considerations.

(b) That, the learned CIT(A) grossly erred, both on facts and in law, in not following the principle of consistency and disregarding the claim of the appellant Association for exemption of its income under ss.11 & 12 of the Act, without considering the material fact that even after coming into force amendment in clause(15) of section 2 of the Act, by the Finance Act, 2009, w.e.f. 1-4-2009, such exemptions were duly granted to the appellant Association in the assessments framed under s.143(3) of the Income Tax Act, 1961, for the A.Y. 2010-11 & A.Y. 2011-12 and there was no material change in the facts for the assessment year under consideration.

(c) That, the Learned CIT(A) grossly erred, both on facts and in law, in not considering the material facts that Hon’ble CIT(Admin), after in depth analysis of the objects and activities of the appellant Association had, impliedly, reached to a conclusion that the first proviso to section 2(15) of the Income Tax Act, 1961, had no application in the appellant’s case, inasmuch, the proceedings for cancellation of registration under s. 12AA(3) of the Act were duly dropped by the Hon’ble CIT(Admit.).

3(a) That, the Learned CIT(A) grossly erred, both on facts and in law, in giving a finding that by holding IPL Matches and One-Day International Cricket Matches, ;the activities of the appellant Association had fallen in the category of the activities in the nature of trade, commerce or business, or rendering of services in relation to any trade, commerce or business, as contemplated under first proviso to clause (15) of section 2 of the Income Tax Act, 1961.

(b) That, the Learned CIT(A) grossly erred, both on facts and in law, in not considering the material fact that the

appellant Association is altogether a separate legal entity from that of the BCCI and the appellant Association as not in any manner involved in the so-called commercial activities carried out by the BCCI in organizing IPL Matches.

(c) That, the Learned CIT(A) grossly erred in giving a finding that by hosting IPL Matches, the appellant Association had rendered service to BCCI and further erred in holding that such services were rendered in relation to any trade, commerce or business, for a cess or a fees or for any consideration.

(d) That, the Learned CIT(A) grossly erred, both on facts and in law, in not appreciating the material fact that the appellant had hosted One-Day International Match and IPL Matches in its stadium solely with its predominant objective of promoting game of cricket in Madhya Pradesh without any commercial or profit motive. The Learned AO also erred in not appreciating the material fact that even in the earlier years, the One-Day International Matches were hosted by it and hosting of such matches was duly regarded by the earlier Income-Tax Authority as advancement of object of general public utility, thereby falling within the ambit of clause(15) of section 2 of the Income Tax Act, 1961, which defines the expression “Charitable purpose”.

(e) That, the Learned CIT(A) grossly erred in holding that the activities of the appellant Association do not fall within the ambit of “charitable purpose” on extraneous considerations such as charging of some amount by the appellant Association against sale of tickets of matches or non-provision of tickets to poor spectators for free of cost or incurring of certain expenditure for purchase of tickets of IPL Matches for its members and others, etc..”

3. Briefly stated of the facts giving rise to this appeal are that in the statement of computation of income filed along with return for A.Y. 2012-13, the assessee had shown gross receipts of Rs.32,06,37,525/-. The AO further noted that the assessee had claimed set off of Rs.4,80,95,629/- u/s 11(1) of

the I.T. Act, 1961 (for short 'the Act') being 15% of the gross receipts and assessee had also claimed to have applied Rs.11,88,81,442/- towards its objects u/s 11(2) of the I.T. Act. The assessee filed its return showing income at nil and in support of this claim, the assessee had also furnished Form No.10B as required under Rule 17B of the I.T. Rules r.w.s. 12A(b) of the Income Tax Act. The Assessing Officer framed assessment order u/s 143(3) of the Act at assessed income of Rs.15,82,55,168/- by holding that the assessee's activities did not fall in the activity outlined by the legislature in proviso (1) & (2) to section 2(15) of the Act and thus, he disallowed the assessee's claim of exemption u/s 11(1)(a) & 11(2) of the Act amounting to Rs.4,80,95,629/- and Rs.11,88,81,442/- respectively.

4. The aggrieved assessee carried the matter before the Ld. CIT(A) but without success as the appeal of the assessee was dismissed by the first appellate authority upholding the order of the AO. Now the empty handed assessee is before the Tribunal in this second appeal with the grounds as reproduced hereinabove in para 2.

5. We have heard both the parties and also perused the relevant material placed on the record of the Tribunal, *inter alia*, assessment order, impugned order of the Ld. CIT(A) and written synopsis/arguments of appellant association spread over 32 pages along with exhibit P-1 to P-4, assessee's paper book spread over 310 pages and judgments compilation paper book spread over 189 pages of the assessee.

6. The Ld. Authorized Representative (in short 'Ld. AR') submitted that the Madhya Pradesh Cricket Association (hereinafter 'appellant association') has been formed as a Societies Registrikaran Adhiniyam Act, 1973 under Registration No.4751 dated 05.05.1976. The Ld. AR further submitted that the main objects of the appellant Association are to control, supervise, regulate and encourage game of cricket in the state of Madhya Pradesh. A copy of the constitution of the appellant Association is placed at Page No. 20 to 31 of the assessee's paper book (for short APB). The Ld. AR mainly reiterated the written synopsis/statements and main submissions argued before us can be summarized under following points:

- (i) The entire income of the appellant association was exempted u/s 10(23) of the Act up till A.Y. 2002-03. Up till omission of clause (23) of section 10 of the Income Tax Act, 1961 made by the Finance Act, 2002 w.e.f. 01.04.2003, the income of the appellant association was fully exempted.
- (ii) The appellant association has been granted certificate of registration under section 12A(a) of the Act w.e.f. 01.04.2001 which is in enforce and in existence till date.
- (iii) Notice or cancellation of Registration u/s 12AA of the Act was issued on 11.06.2010 (assessee's paper book page 181) and after considering the reply of the assessee vide dated 25.06.2010 (assessee's paper book page No. 182 to 187) the Commissioner of Income Tax-I, Indore, being an authority of the higher wisdom, dropped proceedings u/s 12AA(3) of the

Act approving the existence and continuity of registration u/s 12A granted to the appellant association w.e.f. 01.04.2001.

(iv) The Ld. AR has also submitted that there is no change in the objects of the appellant associations since its inception and thus, return of income was filed u/s 139(1) of the Act for A.Y. 2012-13 claiming exemption u/s 11 & 12 of the Act.

(v) The AO framed the assessment denying the exemption u/s 11(1)(a) & 11(2) by invoking provisions of section 13(8) of the Act, read with proviso section 2(15) of the Act and Ld. CIT(A) was not justified in denying relief to the assessee.

(vi) It is also a contention of the assessee that there is no change in the objects and activities of the appellant association since its inception on 21.08.1960, under its bye-laws, with the predominant objects of controlling, supervising, regulating and encouraging the game of Cricket in the state of Madhya Pradesh. Thus, he contended that activities of the appellant association fall within the expression "charitable purpose" as advancement of the objects for the benefit of a section of public has been held to be charitable in nature.

(vii) The Ld. AR also pointed out that as per CBDT circular No.395 dated 24.09.1984 it was also clarified that the object of promotion of sports has to be treated as a charitable object and had the objects of the appellant not charitable, it would not have been granted benefit of exemption under section 10(23) of the Act till A.Y. 2001-02.

(viii) The appellant has consistently been granted benefit of exemption under sections 11 & 12 of the Act from A.Y. 2002-03 to A.Y. 2011-12. The assessments framed under section

143(3) of the Act after making amendment in the statute by way of insertion of first and second provisos to section 2(15) of the Act and claim of exemption u/s 11 & 12 of the Act has been admitted and accepted for A.Y. 2011-12. The same AO who passed impugned assessment order for A.Y. 2012-13 accepted the claim of appellant for A.Y. 2010-11, immediately after amendment in section 2(15) of the Act, therefore, as per rule of consistency the claim of assessee on the same footing cannot be rejected for A.Y. 2012-13.

(ix) It was also contended that even in the assessments framed under section 143(3) of the Act for the succeeding assessment years the claim of exemption in A.Y. 2013-14 & 2014-15 has been admitted and accepted and copies of the same have been submitted as Exhibit P-3 & P-4 to the written synopsis.

(x) Ld. AR vehemently contended according to the AO, the activities of holding One-Day International match and IPL Matches are commercial activities; finding of holding One-Day International match for first time is not factually correct as the same were also held in earlier years and for the appellant, there cannot be any distinction between One-Day and IPL matches with other matches. However, the Ld. AR in all fairness accepted that A.Y. 2012-13 was the first year wherein IPL matches were held first time.

(xi) The Ld. AR strenuously contended that principle of res judicata does not apply but rule of consistency applies in the Income Tax proceedings as per decision of Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT (1992) 193 ITR 321(SC).

(xii) The Ld. AR also submitted that the appellant is eligible for claim of exemption u/s 11 & 12 of the Act even in the wake of the amendment made by the Finance Act, 2009, w.e.f. 1.4.2009, by insertion of provisos to section 2(15) of the Act.

(xiii) The Ld. Counsel referring to the circular No.11 dated 19.12.2008 issued by the CBDT for explaining the scope and purpose of the first proviso to section 2(15) of the Act and submitted that the object of amendment is not to hit the genuine charitable organization/associations which are carrying out the objects of general public utility but only to hit those entities which are wearing the mask of charity but in reality, they are carrying out commercial activities.

(xiv) Activities of appellant association have been duly examined by the Ld. Commissioner of Income Tax (Admin.) by initiating proceedings under section 12AA(3) twice at earlier point of time, but the proceedings were dropped on both the occasions.

(xv) The Ld. AR pointed out that once an authority of the higher wisdom had not formed any adverse view during proceeding u/s 12AA(3) of the Act then the AO was not correct in forming some other view without there being any change in the facts, circumstances and activities of the appellant.

(xvi) The Ld. AR vehemently pointed out that the predominant object of the appellant association to promote and supervise game of cricket in the state of Madhya Pradesh and for pursuing predominant object, hosting One-Day International cricket matches is inevitable and thus such matches including One-Day and IPL were also hosted during the period under

consideration i.e. F.Y. 2011-12 pertaining to A.Y. 2012-13. It is also contention of the Ld. AR that T20 cricket match in IPL tournaments is just a newly designed format of cricket, thus, IPL tournaments are entirely shows of BCCI and not of the appellant association.

(xvii) The Ld. AR also contended that IPL matches were not hosted by the appellant with any commercial angle and on the contrary, there resulted a loss to the appellant association from hosting such matches because against the gross receipts of Rs.60,00,000/- the appellant association has incurred an expenditure of a sum of Rs.95,87,472/- thereby resulting into a net deficiency of Rs.35,87,472/- there from.

(xviii) The appellant association is not involved in auction of team players or any other commercial activity related to IPL and if there had been any profit motive or commercial angle, the appellant would not have hosted IPL matches with commercial motive. Placing reliance on the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association vs. DIT (2013) 86 CCH 212 (Chen HC), the Ld. AR contended that while examining the issue of cancellation of registration under section 12AA(3), at para 56, it has been held that organizing IPL matches cannot be treated to be an activity in the nature of trade, commerce and business. The Ld. AR also pointed out that ratio of the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association has been followed by Hon'ble ITAT, Delhi Bench in the case of Delhi & District Cricket Association vs. DIT (2015) 168 TTJ 425 (Del). The Ld. Counsel lastly pointed out that

grounds taken by the AO for rejection of claim of appellant association u/s 11 & 12 of the Act are not tenable and in view of various judicial pronouncement the findings of the AO deserves to be struck down on this count only.

(xix) The Ld. AR strongly contended that the findings of the Ld. CIT(A), upholding the rejection of claim by the AO, are either not correct or not germane to the issue or have already been adjudicated by various judicial forums in favour of the appellant association therefore, the appeals of the appellant association may kindly be allowed on all grounds.

(xx). The Ld. AR finally submitted that as the assessee is different from BCCI and appellant is a separate entity therefore, the ratio of the decision of ITAT, Mumbai Bench in the case of BCCI vs. ITO (5)(1)(2) Mumbai (2012) 136 ITD 301 (Mumbai ITAT) cannot be applied to the present case blindly for denying exemption u/s 11 & 12 of the Act.

8. For above submissions and contentions the Ld. AR has placed reliance on the ratio of the following orders/judgments:

1. *CIT vs. Gujarat Maritime Board (2007) 295ITR 561 (SC)*
2. *RadhasoamiSatsang vs. CIT (1992) 193ITR 321 (SC)*
3. *Tamil Nadu Cricket Association vs. DIT(Exemptions) (2014) 360 ITR 633 (Mad.HC)*
4. *Delhi & District Cricket Asssocation vs. DIT (2015) 38 ITR 326 (Irib-Delhi)*
5. *Hyderabad Cricket Association vs. CIT (2016) 48 CCH 0119 (Trib-Hyd)*
6. *Director of Income Tax (Exemptions) vs. All India Football Federation (2015) 43ITR 0656 (Irib-Delhi)*
7. *India Trade Promotion Organization vs. Director of Income Tax (Exemptions) & Others (2015) 374 ITR 0333 (Delhi)*
8. *CIT vs. Andhra Pradesh State Road Corporation (1986)*

- 159ITR 1 (SC)
9. *The Institute of Chartered Accountants of India & ANR. Vs. Director General of Income Tax (Exemptions) &ORS. (2012) 347ITR 0099 (Delhi)*
 10. *Himachal Pradesh Environment Protection and Pollution Control Board vs. Commissioner of Income Tax (2011) 9 ITR 0604 (Irib.-Chd)*
 11. *Sevagram Ashram Pratishtan vs. Commissioner of income Tax (2010) 36 DTR 0409 (Trib.-Ngp)*
 12. *Bombay Presidency Golf Club Ltd. vs. Director of Income Tax (Exemptions) (2012) 75 DTR 0379 (Trib-Mum)*
 13. *The Indian Merchants Chambers vs. Deputy Director of Income Tax (Exemption)-II (2016) 47 CCH 0353 (Trib-Mum)*
 14. *Indian Medical Association vs. Additional Director of Income Tax (2016) 47 CCH 0298 (Trib-Delhi)*
 15. *Society of Indian Automobile Manufacturers vs. Income Tax officer (2016) 47 CCH 0196 (Trib-Delhi)*
 16. *Amritsar Improvement Trust vs. Assistant Commissioner of Income Tax (2016) 48 ITR 0080(Trib-Amr)*
 17. *Income Tax Officer vs. Indian Leather Products Association (2015) 45 CCH 0475(Trib-Kol)*
 18. *Calcutta Cricket & Football Club vs. Income Tax Officer (2016) 8 TMI 466 (Trib-Kol)*
 19. *Deputy Director of Income Tax vs. PHD Chamber of Commerce and Industry (2015) 44 CCH 0800 (Trib-Delhi)*

9. Replying to the above the Ld. CIT-DR strongly supporting action of AO as well as first appellate order submitted that the conduct of IPL matches cannot be a charitable activity and it cannot be compared with all other activities towards promotion of cricket like test matches and other cricket tournaments. Ld. CIT-DR vehemently pointed out that if the conduct of IPL matches is taken as charitable activity then every activity would be charitable and the provisions of section 2(15) of the Act along with proviso thereto would become itos.

10. The Ld. CIT-DR, first of all, drew our attention towards provisions of section 11 of the act and thereafter took us

through extract of CBDT circular No.11/2008 dated 19.12.2008 (supra) for contending that the entities carrying on activities of advancement of any object of General Public Utility embodied in the expression 'Charitable Purpose' defined in section 2(15) of the Act in the nature of trade, commerce or business would not be eligible for exemption u/s 11 of the Act. Ld. CIT-DR especially drew our attention towards para 3 of the CBDT Circular (supra) and submitted that the newly inserted proviso to section 2(15) of the Act would apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose' contained in section 2(15) of the Act. The Ld. DR, therefore, contended that such entity will not be eligible for exemption under section 11 & 10(23C) of the Act if they carry on commercial activities and such an entity is carrying on an activity in the nature of trade, commerce or business which is a question of fact and will be decided on the basis of the nature, scope, extent and frequency of the activity.

11. The Ld. CIT-DR further drew our attention towards relevant parts paras 4.2.4 to 4.1.6 of assessment order and submitted that the AO after thoughtful and logical analysis of the entire facts and circumstances of the case rightly held that the Indian Premier League(IPL) matches have been conducted under the supervision of BCCI since 2008 and from IPL is expected to bring BCCI an income of approximately US\$1.6 billion over a period of 5 to 10 years since its inception. The aforesaid income is expected to earned mainly from tickets, media rights and sponsorship. He also submitted that the

television rights were given to Sony Entertainment Television (Set Max) and Singapore based World Sport Group with a record deal at a cost of US\$1.026 billion. Thus, the activity of BCCI under the name Indian Premier League was purely a commercial activity. The Ld. CIT-DR again drew our attention towards order of ITAT, Mumbai Bench in the case of BCCI vs. ITO (supra) and contended that almost total receipts of the assessee are coming from BCCI for conducting of cricket matches including IPL matches and the activities of BCCI has been held in the nature of commercial activity therefore, the recipient appellant association cannot be held as eligible for exemption u/s 11 & 12 of the Act.

12. Ld. DR also submitted that as a matter of fact IPL matches is a big game of big money which is an entertainment industry by itself, thus, this activity falls out of the purview of the expression charitable in nature as mentioned in section 2(15) of the Act. Accordingly, the income earned by the BCCI has been assessed by the Income Tax Department as business income, therefore, it has to be inevitably follows that any assistance services rendered by any entity, institution or association akin to assessee organizing IPL matches and earning gross receipts from BCCI towards conduct of such activity would tantamount to be an activity in the nature of trade, commerce or business and cannot be titled as advancement of any object of general public utility and for “charitable purpose”.

12. Ld. CIT-DR also submitted that the appellant association is trying to mislead the fact by submitting that the appellant

association had received Rs.60,00,000/- from BCCI and due to huge expenditure it has to incurred bear loss of Rs. 35,87,472/- there from. The Ld. DR submitted that it is a contention of appellant association that Rs.60,00,000/- was to be recovered from BCCI however this amount could not be recovered till date. The Ld. CIT-DR submitted that there is not document showing that appellant association was entitled to receive Rs.60,00,000/- from the BCCI or from the respective teams who played IPL matches in Indore. He also pointed out that there is no action by the appellant association against the BCCI or respective teams to recover this due which shows that the assessee merely make accounting entry in its books of accounts to narrowed down the amounts of receipts on account of IPL and to show deficit or loss for misleading the facts.

13. The Ld. DR also submitted that as per statement of account submitted by the assessee before the authorities below as per statement annexed and forming part of audit report shows that during the A.Y. 2012-13 the total receipts of assessee from subvention & subsidies as per schedule 15 were Rs. 25,86,06,324/- out of which Rs.55,20,000/- were from various tournaments and remaining amount Rs.25,30,86,324/- were received from BCCI, therefore, the contention of incurring loss from IPL cannot be held has tenable especially when appellant association has not submitted any piece of document evdience or contract under which it received huge amount from BCCI and therefore, adverse reference against appellant association has to be

taken and conclusion drawn by the authorities below may kindly be upheld. The Ld. DR also submitted that the BCCI conducted IPL matches by playing huge amounts to assessee-association and in turn besides sale of tickets also collected huge amount from sale of media rights, television rights and sponsorship etc. thus, it was an activity with profit motive in the nature of business and the same can be taken as an activity in the motive of business with profit motive.

14. The Ld. DR lastly drew our attention to para 9 to 11 of the first appellate order at page 44 to 47 and submitted that these facts have been noted and properly considered by the first appellate authority. The Ld. CIT-DR again pointed out that “object of general public utility” does not mean object beneficial to whole of mankind, because whole of mankind cannot visit IPL matches, due to high rated entry tickets as the artificial ban put on common man & his complete exclusion from attending IPL matches by fixing a very high entry fees beyond reach of common man definitely excludes IPL matches from the object of general public utility. The Ld. CIT-DR submitted that IPL matches has in fact, aided in dividing society between haves & have nots and thus it has become an engine of furthering capitalism in society. The Ld. CIT-DR strongly contended that the Competition Commission of India has slapped a penalty of Rs.52.24 crore on BCCI for abusing its dominant position and directed it to “cease and desist” from any practice in future denying market access to potential competitors.

15. The Ld. CIT-DR took us through order of ITAT, Mumbai Bench in the case of BCCI v. ITO(supra) also drew our attentions towards the judgment of Hon'ble Bombay High Court in the case of BCCI v. ACIT Central Circle 35 (2012) 21 taxmann.com 103 (Bom) wherein it has been held that reopening of case of BCCI u/s 147 of I.T. Act was correct, because it failed to disclose the fact of lodging an FIR against its secretary for misappropriation of funds. The Ld. DR further submitted that main source of appellant association are huge receipts from BCCI and the Hon'ble Supreme Court of India had to intervene and restrain the chairman of BCCI from discharge of his duties till the investigation of betting charges against his son-in-law and allegations of conflict of interest are being investigated. Thus, it was contended by the Ld. CIT-DR that all these factum of IPL matches and activities of BCCI are narrated to bring home the fact of conversion of gentlemen's game into a thoroughly commercial venture with all its vices and complete lack of transparency.

16. The Ld. DR further drew our attention towards relevant paras of the order of the ITAT, Mumbai Bench, as reproduced by the first appellate authority in para 12 of his order, and submitted that the appellant has conducted two matches of IPL during A.Y. 2012-13 without changing of its object clause, by saying that its object clause was broad & did not require any further change to conduct IPL matches which is a misconception of appellant as IPL matches is totally new commercial format of cricket matches of 20 overs, where games are played as a commercial venture and very activity

right from sale of tickets to preparation of grounds, allocation of ground advertisement right, media rights, auction of franchises & auction of players are all done on commercial lines. The Ld. DR also submitted that however, there is no direct evidence regarding betting in the IPL matches but it is well known facts that on the allegation of betting the Hon'ble Supreme Court intervene and prevented the then BCCI, President from taking part in the BCCI activities, till the end of investigation on the charge of betting on his son-in-law and his aides.

17. Ld. CIT-DR submitted that the appellant association sold IPL tickets for exorbitant price and therefore, IPL is not charitable but a commercial in nature. The Ld. DR also pointed out that the appellant association is conducted two IPL matches and rendered services to BCCI by showing a charge & fees of Rs.60,00,000/- and also charged entry fee of Rs. 1.96 crore from One-Day match hence the activity of appellant association cannot be held to charitable purpose and same is hit first provisos of section 2(15) of the Act.

18. The Ld. DR strenuously submitted that the ratio of the decision as relied by the assessee or mainly on the points and issues of cancellation of registration u/s 12AA(3) of the Act which is not applicable in the present case which pertains to the rejection of exemption u/s 11 & 12 of the Act. The Ld. CIT-DR further submitted that by conducting One-Day matches and two IPL matches towards receipt of huge amounts, without showing any base contract or document between payer BCCI and payee assessee association, is surely an

activity with profit motive in the nature of trade which under any stretch of imagination, cannot be termed as an activity of general public utility for charitable purposes. Thus, it was contended by the Ld. CIT-DR that conduct of IPL matches and One-Day matches were in nature of commercial venture is clearly hit by provisos section 2(15) of the Act and without changing its object was for conducting such matches of new format makes appellant association ineligible for getting exemption u/s 11 & 12 of the Act, hence action of the AO was rightly confirmed and uphold by the Ld. CIT(A). The CIT-DR submitted that in para 56 of the judgment of Hon'ble Madras High Court there is no finding that the IPL matches cannot be treated to be an activity in the nature of trade, commerce and business and this is a misleading and baseless contention of Ld. AR.

19. Placing rejoinder to the above submissions of revenue, the Ld. AR submitted that if open entry is given to the public to view the matches without any charge then it would be impossible to control the viewers and tickets have not been sold by the assessee association and there is no activity in the nature of trade, commerce or business which may hit by proviso 2(15) of the Act. The Ld. AR strenuously pointed out that the assessee association was being granted exemption u/s 11 of the Act continuously during immediately preceding years therefore, as per rule of consistency the exemption/deduction u/s 11 of the Act cannot be denied to the assessee on the flimsy grounds. The Ld. AR also drew our attention to page 11 of written synopsis/submissions dated

21.03.2017 and contended that as per income and expenditure statement for A.Y. 2008-09 to 2012-13 i.e. the year under consideration the assessee association is conducting charitable activity within the limits of its charitable objects of the association and there is no violation or deviation there from thus, exemption u/s 11 to 13 of the Act cannot be validly denied to the assessee and he finally prayed that orders of the authorities below may kindly be set aside and the Assessing Officer may kindly be directed to allow eligible exemption/deduction u/s 11 and other relevant provisions of the Act.

20. On careful consideration of above noted rival submissions, at the very outset, we note that the Assessing Officer made addition with following observation and findings:

“4.1.4 I have very carefully gone through the assessee’s above submission. Perusal of the assessee’s submission it is noticed that the assessee’s arguments may broadly be classified as under:-

(i) The assessee is an Association engaged in promoting game of Cricket in Madhya Pradesh and according to the CBDT’s circular no. 395 dated 24.09.1984, the object of promoting game of Cricket falls in the expression ‘Charitable purpose’ stipulated in section 2(15) of the I.T Act.

(ii) Nature of receipts in the earlier previous years were the same as in the previous year under consideration and the same were duly accepted by the Department in earlier years as charitable in nature.

(iii) As per the CBDT’s Circular No. 11/2008 dated 19.12.2008, the amendment in proviso to section 2(15) is aimed to deny benefits of exemption under sections 11 & 12 to only those entities which are either carrying out trade, commerce or business; or which are rendering any services in relation to any trade,

commerce or business by wearing a mask or device to hide their true purpose of existence.

(iv) In view of the amended definition of expression charitable purpose in section 2(15) of the I. T. Act, the Hon'ble Commissioner of Income Tax -1 Indore issued notice for cancellation of Registration u/s 12AA(3) of the I. T. Act on 22.09.2010. However, no action was taken by him. Thus, considering the expiry of sufficient time it was inferred by the assessee that the aforesaid proceedings were dropped.

(v) The assessee claimed that during the course of any charitable activity, any surplus accrued / arisen, the same could not be presumed that such activities were carried out with a commercial intent. In this context the assessee has relied upon the Hon'ble Supreme Court's decision in the case of ACIT vs Surat Art Silk Cloth Manufacturers Association 121 ITR 1 (SC).

(vi) The assessee relied upon the various ITAT's decision especially Rajkot, ITAT whereby on similar issue Commissioner of Income Tax order for cancelling registration u/s 12AA (3) was set-aside.

(vii) The assessee's case is quite different to that of the Tamil Nadu Cricket Association accordingly the ratio of the decision of the Hon'ble ITAT Chennai in this case is not applicable in its case.

(viii) The assessee had not made out any profit from IPL matches hosted during the previous year under consideration.

4.1.5 Before adjudicating on the assessee's above arguments it would be necessary to understand organizational structure of cricket in India, nature of receipts declared by the assessee during the previous year 2011-12 relevant to assessment year 2012-13 and the background of IPL 20 Twenty Matches.

4.1.5.1 In India the game of cricket is promoted and regulated under the general control of the national body by name Board of Control for cricket in India (BCCI). The assessee is bestowed with the responsibility of promoting and developing game of cricket in the State of Madhya Pradesh under the overall supervision and control of BCCI. Every State is having State-wise

Associations, like the assessee, to look after the matters of the game of cricket in their respective States. Under the State Associations like the assessee, there are District Associations too. The District Associations carry on similar activities within their Districts under the overall guidance and supervision of State Associations like the assessee. This is the organizational structure of the cricket bodies functioning in India.

4.1.5.1.2 In the above background the assessee has claimed that it is established for the purpose of promoting and developing the game of cricket in MP. Further this activity of promotion of cricket is an object of general public utility within the clarification made by the CBDT in its Circular no. 395 dated 24.09.1984. Therefore, the aforesaid activity of promotion of cricket is covered under the definition of 'Charitable Purpose' under section 2(15) of the I. T. Act.

4.1.5.2 In the above context it has to be mentioned that during the previous year under consideration the assessee hosted two IPL matches (Kochi Tuskers Vs Kings Punjab XI and Kochi Tuskers Vs Rajasthan Royals) on behalf of Board of Control for Cricket in India (BCCI). The assessee claimed to have received Rs.30,00,000/- for each match. In this context it has to be mentioned that no agreement / document correspondence between the BCCI and the assessee or the assessee and the Kochi Tuskers was furnished by the assessee despite being specifically asked to furnish aforesaid such document/ agreement.

4.1.5.2.1 This fact was duly admitted by the assessee' vide his letter dated 16.12.2013. The assessee further claimed that in organizing the aforesaid matches it had incurred expenditure of Rs.95,87,472/- and accordingly, the assessee claimed to have incurred loss of Rs.35,87,472/- on hosting the aforesaid matches.

4.1.5.2.2 Before proceeding further in the matter it would be necessary to understand the background of the Indian Premier League (IPL). The IPL is a Twenty 20 Cricket Championship in India. This Indian Premier League has been conducted under the supervision of Board of Control of Cricket in India (BCCI). It was

inaugurated in 2008. There were 8 Franchises that fielded 8 teams to play in the IPL in the Previous Year 2011-12. As per the information downloaded from Inter-net and is in Public Domain, it has been noticed that the original cost of the following 8 franchises who had fielded teams to IPL was as under:-

| Sr.No. | Name of the team | \$/ millions |
|--------|----------------------------------|--------------|
| 1 | Chennai Superking (CSK) | 91 |
| 2 | Delhi Deardevils (DD) | 84 |
| 3 | Knigs XI Punjab,(KXIP) | 76 |
| 4 | Kolkata Knight Riders(KKR) | 75.1 |
| 5 | Mumbai Indians(MI) | 111.9 |
| 6 | Rajasthan Royals(RR) | 67 |
| 7 | Royal Challengers Bangalore(RCB) | 111.6 |
| 8 | Sunrisers Hyderabad(SRH) | 159 |

4.1.5.2.3 Proceeding further in the matter it would be necessary to mention that the winning bidders for the 8 franchises were announced on 24.01.2008 and the base price for auction was US \$400 million. However, the auction fetched US\$723.59. Subsequently, on 21 March 2010 two teams from Pune and Kochhi were added and their base price was fixed at \$225 million. While Pune was bought for \$370 million, the Kochhi franchise was brought by Rendezvous Sports World Limited for \$333.3 million. It is also necessary to mention the players of India and Outside India were auctioned at a huge amount. Besides, the prize money for the first four teams was as under:-

| | | |
|-------|--------------|---------------|
| (i) | Champion | Rs.10 Crore |
| (ii) | Runners up | Rs.7.5 Crore |
| (iii) | third place | Rs.3.75 Crore |
| (iv) | Fourth place | Rs.3.75 Crore |

4.1.5.2.4 Still proceeding further the IPL is expected to bring BCCI and income of approximately US\$1.6 billion over a period of 5 to 10 years since its inception. The aforesaid income is expected to earn mainly from tickets, television rights and sponsorship. The television rights were given to Sony Entertainment

Television (Set Max) and Singapore based World Sport Group with a record deal at a cost of US \$ 1.026 billion.

4.1.5.2.5 From the above statically data as downloaded from Internet and in public domain it is apparent that the activity of BCCI under the name Indian Premier League was purely a commercial activity. Briefly it is reiterated that the teams fielded in the IPL are owned by different sponsors including Industrial Houses and Film Stars. They are selecting players on auction, they quote the highest price for the best players according to them. Every team is trying to bring in maximum number of prominent cricketers so that they have a better chance of winning the IPL matches. The capital invested by the owners of the team is redeemed by advertisement revenue. The owners of the IPL Teams are conducting these matches for the purpose of Harvesting Profits out of their investments. Thus, by any stretch of imagination it is not possible to call IPL matches as activities of general public utility. As a matter of fact IPL match is a big game of big money. In fact it is an entertainment industry by itself. Needless to say this activity falls out of the purview of the expression charitable in nature as mentioned in section 2(15) of the I. T. Act. Accordingly, the income earned by the BCCI has been assessed by the Income Tax Department as business income. From this it also inevitably follows that any assistance services rendered by an organization for organizing IPL matches and earning gross receipts from such activity would tantamount to commercial in nature.

4.1.5.2.6 In the above backdrop it would be reiterated that under the supervision of the BCCI, the assessee association had hosted following two IPL matches :-

- (i) Kochi Tuskers Vs Kings (xi) Punjab
- (ii) Kochi Tuskers Vs Rajasthan Royals

4.1.5.2.7 In hosting the above matches, the assessee association had claimed to have received Gross Receipts of Rs.60,00,000/- from BCCI. From this it is apparent that the assessee had rendered its services by providing its stadium and other facilities to BCCI

and Kochi Tusker to organize IPL matches. Hence by no stretch of imagination it can be assumed that the activities of the assessee association were not commercial in nature as defined in proviso to section 2(15) of the I. T. Act.

4.1.5.2.8 As regards the assessee's activity and nature of receipts it is also necessary to mention that during the previous year 2011-12 under consideration the assessee had conducted India Vs West Indies one day match. In the Income & Expenditure A/c, the assessee had shown gross receipts of Rs.1,35,82,988/- from this match. On examination of the details of tickets it was noticed that the rates of tickets charged by the assessee from the spectators ranges from Rs.250/- to Rs.3000/- per ticket. On further scanning of the particulars of rate of tickets as submitted by the assessee itself vide its letter dated 26.11.2013, it was noticed that major portion of the receipts were from the sale of tickets whose rates were Rs.2,500/- and Rs.3,000/- per ticket as per particulars given below :-

| S. No. | Particular | Number of tickets | Rate per Ticket | Gross Receipts |
|--------|----------------|-------------------|-----------------|------------------|
| 1 | Main Pavilion | 2861 | Rs.3000/- | Rs.8583000/- |
| 2 | Lower Pavilion | 1114 | Rs.2500/- | Rs.2785000/- |
| | | 3975 | | Rs.1,13,68,000/- |

4.1.5.2.8.1 Proceeding further in the matter examination of books of accounts revealed that no free tickets or tickets at concessional rates were given to the poor Spectators to watch the India vs West Indies Match or the IPL Matches. Contrary to this examination of Income & Expenditure A/c related to IPL matches revealed that the assessee claimed to have incurred expenditure of Rs.22,81,500/- towards purchase of tickets. It was further noticed that the aforesaid tickets were given to VIPs, High Dignitaries of the society and to its own members and that too after pay entertainment tax. This indifferent attitude and approach of the assessee towards poor section of

public desirous of watching IPL matches clearly led to the inevitable conclusion that its activity was far from the object of General Public Utility within the amended provisions of section 2(15) of the Act.

4.1.5.3 In the backdrop of above facts I now proceed to adjudicate on the assessee's arguments mentioned above.

4.1.5.3.1 As regards the assessee's first argument that it is engaged in promoting game of cricket and accordingly in view of the CBDT's Circular No. 395 dated 24.09.1984, the object of promoting game of cricket falls in the expression charitable purpose stipulated in section 2(15) of the I. T. Act, it would suffice to say that the promotion of cricket does fall in the definition of expression 'Charitable Purpose' in the spirit of Circular no. 395 dated 24.09.1984 for the purposes of section 11 & 12. However, it would be reiterated that the Legislature as per amended proviso (1) to section 2(15) w.e.f. 01.04.2008 has categorically stipulated that the activities falling in the limb of object of general public utility would be considered as charitable in nature if the same have not be carried out in the nature of trade or commerce or rendering service in the nature of trade or commerce. Needless to reiterate the extract of the section has already been discussed and analyzed in the preceding paras. Therefore, taking non-obstinate clause in section 2(15) into account as the gross receipts of the assessee's association was Rs.60,00,000/- i.e. much more than Rs.25,00,000/-, the activity of rendering services to BCCI for conducting of IPL matches falls out of the purview of expression 'charitable in nature' embodied in section 2(15) of the I. T. Act. I therefore do not find any merit in assessee's aforesaid argument.

4.1.5.3.2 As regards the assessee's second argument that nature of receipts in the earlier previous years were the same as in the previous year under consideration, it would again be suffice to say that assessee's this assertion is found to be totally devoid of any merit. In this context it would be reiterated that during the previous year under consideration the assessee had carried out IPL Matches. Examination of

details submitted by the assessee and the details available on records it was noticed that in earlier previous years no such IPL matches were hosted by the assessee. It would further be reiterated that the gross receipts from the IPL matches did fall in the category of receipts specified in the amended provisions of section 2(15) of the I. T. Act. Hence, assessee's this argument that its activities were the same in the previous year under consideration to that of earlier years is found to be factually incorrect and devoid of any merit. Accordingly, the assessee's much reliance on the ratio laid down in the various case laws cited by it with regard to maintenance of consistency in the Department's view on a particular issue is also found to be devoid of any merit.

4.1.5.3.3 In the above context this would not unnecessarily mean the activities carried out in the earlier previous years especially in the backdrop of amended provisions of section 2(15) of the Act were charitable in nature. As a matter of fact it is an admitted position of law that the doctrine of rest-judica is not applicable in IT proceedings. Hence, in view of this position of law also I do not find any merit in assessee's above contention.

4.1.5.3.4 As regards the assessee's third submission relying upon the Hon'ble CBDT's Circular No. 11/2008 dated 19.12.2008 and thereby claiming that the amended provisions of section 2(15) were applicable only in respect of the associations/trust who in the garb of charitable activities carried out commercial activity and not in its case, it would suffice to say that in view of the facts discussed in the preceding para it is apparent that the assessee did carry out activities of commercial nature in shape of hosting IPL matches and India Vs West Indies One Day Match.

4.1.5.3.4.1 Proceeding further in the matter it has to be mentioned that the Board in the Circular has very categorically stipulated that the facts of each case differ and accordingly in the backdrop of facts of the case discussed in the preceding paras it is apparent that the assessee did carry out the commercial

activities. Here it would not be out of place to mention that the concept of Advancement of General Public Utility has been changed with the amended provisions of section w.e.f. 01.04.2009. Accordingly, it would rather be incorrect on the part of the assessee to assert that it had not carried out any commercial activity as per Circular No. 11/2008 and the amended provisions of section 2(15) of the I.T Act. It would be reiterated that any receipt in carrying out the object of advancement of General Public Utility constitutes commercial activity subject to the monitory limit of aforesaid receipts specified in the section. Hence, taking into account detailed discussion made in the preceding paras especially in respect of the activity of hosting IPL Matches, it was apparent that the assessee in the guise of advancement of general public utility had carried out commercial activity.

4.1.5.3.4.1 Still proceeding further in the matter it would not be unnecessary to mention in the IPL matches virtually there was no room for the general public. The IPL matches were watched in the stadium by the Spectators who could afford the high price of tickets. Besides, the assessee after debiting the expenses under the head purchase of tickets distributed them to selected persons. Needless to say not a single ticket was distributed to a common or poor man. Therefore, by no stretch of imagination it can be held that this activity was meant for the advancement of public utility. Accordingly, it is apparent the assessee had not carried out its activities in the spirit of the legislature's intent embodied in section 2(15) and CBDT's Circulars relied upon by the assessee itself. I therefore do not find any merit in assessee's above contention.

4.1.5.3.5 As regards the assessee's fourth argument that no order of cancellation u/s 12AA(3) of the I.T. Act was passed by the Hon'ble Commissioner of Income Tax-I, Indore despite the fact that specific notice was issued by him on 22.09.2010, it would again be suffice to say that the jurisdiction of passing of order u/s 12AA(3) lies with him. Accordingly, it would rather be

incorrect on this platform to assert that the activities carried out by the assessee were purely charitable in nature within the provision of section 2(15) of the I. T. Act.

4.1.5.3.6 Before parting from the issue it has to be mentioned that section 12A provides the pre-condition for availing exemptions u/s 11 of the I.T Act. The registration u/e 12A is mandatory for availing exemptions but mere registration does not entitle the organization to claim exemption u/s 11 of the I.T Act. The Legislature in an unambiguous and plain language stipulated in section 11 that exemptions are available in the aforesaid section subject to various other conditions specified in the Act. In the case of CIT v Red Rose School (2007) 153 Taxman 19/212 CTR 394, the Hon'ble Supreme Court has held that registration u/s 12AA does not necessarily entitle the assessee to get its income excluded from the income of the previous year for the purpose of determination of tax liability. As a matter fact it only entitles the assessee to claim such exemptions which otherwise could not be claimed in the absence of registration u/s 12AA of the I.T Act.

4.1.5.3.6.1 Reliance is also placed upon the Hon'ble Supreme Court's decision in the case of CIT v U.P Forest Corporation reported in 230 ITR 945 (SC). The Hon'ble Supreme Court has held that an organization has to get itself registered u/s 12AA in order to avail exemption u/s 11 but whether the income of the organization can be regarded as being held for charitable purpose, requires investigation of facts and the High Court cannot in Writ proceedings, grant exemption to the assessee u/s 11 of the I.Y Act. The Hon'ble Supreme Court has held that a conjoint reading of section 11,12 and 12A makes it clear that registration u/s 12A is only a condition precedent for availing benefit u/s 11 of the I.T Act.

4.1.5.3.6.2 From the above it is apparent that the Legislature does cast an obligation on the Assessing Officer to investigate and examine the nature of receipts arising/accruing to the assessee from its activity in which registrations has been granted in the light of the amended provisions of section 2(15) of the

I.T Act . If the same does not fall within the parameters of conditions specified in sections 2(15) and 11 of the I.T Act, the assessee would not be entitled to avail benefits of section 11 and 12 of the I. T. Act. In this backdrop as pointed out in the preceding paras examination of the receipts it was noticed that the assessee's receipts were not charitable in nature within the meaning of the amended provisions of section 2(15) of the I.T Act despite the fact no order of cancellation was passed, I do not find any merit in assessee's this argument.

4.1.5.3.7 As regards the assessee's fifth argument by relying upon the Hon'ble Supreme Court's decision in the case of ACIT vs Surat Art Silk Cloth Manufacturers Association reported in 121 ITR 1 (SC) that it had not carried out any commercial activity, it would suffice to say that the Hon'ble Supreme Court has given the decision in respect of the position of law as envisaged in section 2(15) of the Act prevalent at that point of time. Needless to say as pointed out and discussed in the preceding paras as per the amended provisions of section 2(15) of the Act effective from 01.04.2009, the legislature has cast upon the duty upon the Assessing Officer to examine whether the assessee trust having objects of general public utility is involved in any activity of the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for cess or fee or any other consideration irrespective of the nature of the use or application or retention of the income from such activity. From this it follows that the end result of the aforesaid activities is immaterial for the purpose of determination of the charitable nature of the assessee. From this it also follows that even if there was no profit motive of the assessee in carrying out the charitable activity but there was an element of trade, commerce etc. in the activity the same will fall in the mischief of amended provisions of section 2(15) of the I. T. Act. Taking into account of the fact that the assessee had carried out the activities in commercial manner as discussed in the preceding paras it is apparent that the ratio of the Hon'ble Supreme Court's decision in the

light of amended provisions of section 2(15) of the Act is not applicable in the case of the assessee.

4.1.5.3.8 As regards the assessee's sixth argument by relying upon the Hon'ble ITAT Rajkot's decision dated 25.10.2013 in the case of Saurashtra Cricket Association v CIT, it would suffice to say that this decision is on the cancellation of registration u/s 12A of the I. T. Act. In the instant case the issue is not related with the cancellation of registration u/s 12A of the I. T. Act. As a matter of fact the issue is related with the charging of income in relation to the provisions of section 13(8) r.w.s 11 and 12 of the IT Act as discussed at length in the preceding paras. Besides the Hon'ble ITAT in para 16 of its order has very categorically held that the Assessing Officer is to examine the issue during the course of assessment proceedings. It has been held:

"The issue raised by the CIT, Rajkot-2, Rajkot in the impugned order regarding the activities of the trust can be examined by the Assessing Officer in the appropriate proceedings and our decision in resting only on the basis of the findings given by the ld. CIT, Rajkot-2, Rajkot in the impugned order which is not permissible keeping in view the limited power available to him u/s 12AA(3) of the Income Tax Act, 1961. Therefore, it would be open for the Assessing Officer to consider all the issue raised in the impugned order, if so advised, in the course of assessing proceedings of relevant years."

[Emphasis

Supplied]

4.1.5.3.8.1 In view of the above facts it is apparent that the assessee's much reliance on the Hon'ble Rajkot's decision is found to be totally misplaced.

4.1.5.3.9 As regards the assessee's seventh argument by distinguishing the facts of the case of Tamil Nadu Cricket Association Vs DIT Exemptions with that of the assessee, at the outset it is pertinent to mention that the assessee association had carried out One day International Cricket Matches and IPL Matches and accordingly in view of the amended provisions of section 2(15) of the I. T. Act the DIT (Exemptions)

cancelled the registration u/s 12AA(3) of the I. T. Act granted earlier. In this context without taking into account the distinction of the facts as borne out by the assessee it would suffice to say that the Hon'ble ITAT held that IPL Match conducted was by no stretch of imagination can be termed as charitable within the meaning of the amended provisions of section 2(15) of the I. T. Act. Thus, considering the facts discussed in the preceding paras and the fact that the assessee had also rendered services to the BCCI in holding IPL matches at its stadium, it is apparent that the assessee's activities were commercial in nature. Therefore, the assessee's attempt of distinguishing the facts of its case to that of Tamilnadu Cricket Association on other grounds is found to be totally misplaced.

4.1.5.4 As regards the assessee's eighth argument that no profit was earned by it from the IPL Matches it would again be suffice to say that it is an admitted fact that income includes loss. Therefore, it would rather be incorrect on the part of the assessee to asset that as no profit was earned from IPL matches, the activity of hosting IPL Matches, would fall out of the periphery of expression 'charitable purpose' mentioned in section 2(15) of the I.T Act.

4.1.5.5 In the above context it is also necessary to reiterate that the legislature has stipulated that the Assessing Authorities are to examine whether the activity related to general object of public utility was carried out in any commercial manner as discussed at length in the preceding paras. No where the legislature has stipulated that there should only be profit, only then the exemption granted u/s 11 is to be withdrawn. Hence, in view of this also the assessee's argument is also found to be devoid of any merit.

4.1.6 In view of the above I find that the assessee's all arguments are devoid of any merit. Accordingly, I hold that the assessee's activity did fall in the activity outlined by the legislature in proviso 1 & 2 to section 2(15) of the I. T. Act. I, therefore, disallow assessee's claim of exemption of Rs.4,80,95,629/- and

Rs.11,88,81,442/- u/s 11(1)(a) and 11(2) of the I.T Act.”

21. We further note that the Ld. CIT(A) dismissed appeal of the assessee with following conclusion and findings:

5. *“The only controversy in present case is whether appellant as a cricket association is eligible to get exemption of Rs.15,82,55,168/- u/s 11(1)(a) & 11(2) of I.T. Act on the ground that they are carrying out activity of promoting game of cricket or they are hit by provision of section 2(15) of the I.T. Act for carrying out one day matches & IPL matches on totally commercial lines.*

6. *Under the amended provisions of section 2(15) of the I.T. Act, the appellant’s case do not fall under main clauses of relief of poor or education or medical relief but it falls under residuary clause of “advancement of any other object of general public utility.” The hurdle which appellant is required to pass is whether such activity of advancement of any other object of general public utility is carried out with or without “commercial purpose.” The same will be examined in succeeding paras.*

7. *The first claim of appellant that rule of consistency should be followed as they are doing same activity year after year & they have been allowed exemption u/s 11 of I.T. Act, even after scrutiny u/s 143(3) of I.T. Act in AY 2010-11 & AY 2011-12, is devoid of truth. In year under consideration, appellant has conducted two IPL matches, which were never conducted in any previous year, which squarely falls under an “activity with commercial purpose” as is discussed in later paras. Hence the assessments of earlier year will have no bearing in present year, as facts have changed. Besides rule of consistency does not apply if the view taken earlier was contrary to amended provision of section 2(15) of the I.T. Act.*

8. *The second argument of appellant that proceedings for cancellation of registration u/s 12AA(3) of I.T. Act were dropped by CIT-I, Indore, does not give any credence to appellant’s case because firstly no written order of CIT-I, Indore was produced by appellant*

showing dropping of any proceedings of cancellation of registration. Even if without prejudice to aforesaid, we assume that CIT-I, Indore has issued such order, even that would not help appellant's case, because as held time & again by various courts & even in case of Saurashtra Cricket Association v/s CIT (ITAT Rajkot) order dated 25-10-2013, it was held that though in given circumstances registration u/s 12AA cannot be cancelled but activities of trust can always be examined by the assessing officer in assessment proceedings. Hence registration u/s 12AA in no way stops the assessing officer to examine the activities in a particular year and to hold them as "activity for commercial purpose" if so found.

9. Before discussing the activity conducted by appellant, let us see the break up of appellant's income. out of total receipts of Rs.30.62 crore, main amount of Rs.25.86 crore is received by appellant from parent body BCCI in name of "Subvention & Subsidies." Other main source is interest income of Rs.3.37 crores received on FDR's made from funds given by BCCI. Third main source of receipt of Rs.1.34 crore is receipt from India v/s West Indies one day match. That makes it pretty clear that BCCI is main fund provider, controller & decision maker for all activities conducted by appellant.

10. Now before discussing two IPL matches conducted by appellant, let us first discuss the one days match between India v/s West Indies, which resulted in receipts of Rs.1.96 crores. Just a one day match resulted in such net income of Rs.1.34 crores because not only main pavilion and lower pavilion tickets were sold at very high rates, but entire game was played as commercial venture, wherein organizer had a field day in allotting advertisement space in the play ground as also granting of media rights & fixing of ticket rates and in the entire process common main and real fans were kept out of the ground, as is obvious from statistics of sale of tickets.

11. But IPL is the real game changer in which game of cricket was given a backspace in a totally commercial venture, wherein not only the 8 Franchises of the IPL were auctioned and sold to highest bidders and well

known business houses, but even so called reputed cricket players were purchased in open auction like cattles by such franchise owners. This game of 20 overs become more like a marriage party, where the two teams were attired like bride & groom with spectators as baraties and the event was filled with music, dance of barely clad cheer girls, sale of souvenirs, eatable & and joy of hitting fours & sixes on every ball. What made this game a nightmare was its depiction of power & money since not only entry fees was made very high per ticket, but even price money was raised to Rs.10 crore to the winner team and such high stakes clearly threw common man out of the cricket grounds.

11.1. As if this was not enough, the advertisement rights & media rights became a big handle of manipulation and monopolistic control in hands of BCCI, many franchise team were caught in web on failing to explain source of funds & introduced slush funds to buy franchises and a whole new betting syndicate and match fixing syndicate came into existence.

11.2. Though “object of general public utility” does not mean object beneficial to whole of mankind, because whole of mankind cannot visit IPL matches, but the artificial ban put on common man & his complete exclusion from attending IPL matches by fixing a very high entry fees beyond reach of common man definitely excludes IPL matches from the object of general public utility. IPL matches has in fact aided in dividing society in haves & have nots and thus became an engine of furthering capitalism in society. The act of auction and allocation of teams & players to highest bidder highlights importance of financial muscle over sports which put game in backburner & converted it into a glamour event & commercial venture.

11.3. Competition commission of India recently slapped a penalty of Rs.52.24 crore on BCCI for abusing its dominant position and directed it to “cease and desist” from any practice in future denying market access to potential competitors. Virtually there is no

other competitor in the market nor anyone allowed to emerge due to BCCI's strategy of monopolizing the entire market, the order said. The commission observed that BCCI undermined the moral responsibility of a custodian and de facto regulator. The DG concluded that though BCCI is a society and supposed to be a non-profit organization, "its activities related to IPL such as grant of franchise rights, media rights and other sponsorship rights, where huge revenue is involved are different from so called no profit activities."

11.4. Even the High Court of Mumbai in its order in case of BCCI v/s ACIT Central Circle 35 [2012] 21 taxmann.com (Bom.) held that reopening of case of BCCI u/s 147 of I.T. Act for AY 2004-05 was correct, because it failed to disclose the fact of lodging an FIR against its secretary for misappropriation of funds. The Hon'ble Supreme Court of India had to intervene and restrain the chairman of BCCI from discharge of his duties till the investigation of betting charges against his son-in-law and allegations of conflict of interest are being investigated.

11.5. All these myriad dimensions of IPL match and activities of BCCI are narrated to bring home the fact of conversion of gentlemen's game into a thoroughly commercial venture with all its vices and complete lack of transparency.

12. Such model of cricket as envisaged in IPL was not covered in the objects of BCCI, and BCCI was caught on wrong foot in conducting such matches without intimating crucial changes in its relevant object clause, to the AO or DIT (Exemption). Hence the Hon'ble ITAT, Mumbai decided the case of BCCI v/s ITO5(1)(2), Mumbai [2012] 136 ITD 301 (Mumbai ITAT) against BCCI & held its entire income taxable. The relevant part of order is reproduced below:-

"Section 12A, read with sections 11 and 13, of the Income-tax Act, 1961 - Charitable or religious trust - Registration of - Whether when there is change in objects of assessee-society which has been granted registration under section 12A, it cannot claim

automatic benefits under sections 11 and 13 for those altered objects unless said changes are vetted by revenue authorities - Held, yes - Whether, therefore, if amended memorandum and rules and regulations of assessee-society are found to be in violation of provisions of Act, Assessing Officer is not bound by registration granted earlier under section 12A and, he is free to make assessment in accordance with law - Held, yes [In favour of revenue]

FACTS

The assessee was a society duly registered under the Tamil Nadu Registration Act, 1975. The main object was to promote the game of cricket. The assessee was registered under section 12A with the Director (Exemption) on 12-2-1996. The assessee filed its return of income for the assessment year 2007-08. During the course of assessment proceedings for assessment year 2007-08, the Assessing Officer noticed that the assessee society amended its memorandum and made amendments in the rules and regulations and that the same were not intimated to the Department. Thus, certain queries were raised. The assessee replied and intimated the amendments made to its memorandum and rules. The Director of Income-tax, after considering the reply, passed the impugned order holding that - (i) when the objects of the institution, which were the basis of grant of registration were altered after grant of such registration, the very foundation of registration having been removed by the voluntary act of the assessee, the registration would not survive. He further held that the decision was with the assessee to apply for fresh registration by enclosing changed memorandum and rules so that the authority granting the registration, may apply his mind to come to a conclusion that the registration was to be granted or not.

On appeal:

HELD

It is undisputed that the assessee-society amended its objects twice, i.e., firstly on 1-6-2006 and subsequently on 21-8-2007. These amended objects are yet to be

examined by the revenue authorities. The assessee-society has not intimated the changes in the objects to the revenue authorities for a period of about three years and it chose to intimate the changes only after being questioned by the Assessing Officer during the assessment proceedings. The registration was granted to the assessee society on 12-2-1996, based on the pre-amended memorandum and rules and regulations. [Para 16]

The findings of the Director of Income-tax was correct that granting of registration under section 12A, means granting of registration based on the objects and by-laws of the society as filed by the assessee along with the application for registration. Grant of registration under section 12A, does not mean that only the name of the society is registered. It means that the memorandum and by-laws are examined by the authorities and on being satisfied that the memorandum and by-laws fulfilled the conditions laid down under the Act, registration under section 12A, is granted and this, in turn, enables the assessee to avail the benefit of sections 11 to 13. Thus, what is registered is the society along with its memorandum and by-laws. If there are significant or material changes in the objects or bye-laws, it cannot be said that the registration under section 12A, can be extended to those amended objects and bye-laws. Any other view would defect the very purpose of registration. The assessee has made various amendments to the Memorandum of Association as well as in the Rules and Regulations. These changes have been highlighted during the course of hearing. Some of the amendments are material and substantive, one of them being holding ODIs and Twenty-20, any other matches, etc. [Para 17]

These amendments when read together leave no doubt that certain substantial and material changes have taken place to the memorandum, as well as to the rules and regulations which permit commercial interest to administrators in IPL, Champion League and Twenty-20. The revenue authorities definitely have a right to examine the question whether these changes in the memorandum, rules and regulations are in consonance

with the provisions of the Act so as to enable the assessee to continue to claim benefit as a charitable institution under sections 11, 12 and 13. [Para 21]

The benefits that flow from registration of an assessee under section 12A, cannot be extended to the amended clauses of the memorandum and rules and regulations, otherwise an absurd situation will arise. If an institution obtains registration under section 12A, on a certain objects and bye-laws, examined by the Director of Income-tax and thereafter, that institution amends its objects and regulations substantially, then to hold that the registration under section 12A would hold good for the amended objects and bye-laws would be against law and the scheme of the Act. Whether the amendment is substantial or otherwise, is also to be examined by the revenue authorities and it is not for the assessee to unilaterally declare that the amendments are not drastic or substantive. If the assessee does not intimate the Revenue of the amendments on the ground that there is no statutory requirement, the assessee, as a consequence, cannot claim the benefit that flows under section 12A, for these changed objects; otherwise it would amount to a situation where the assessee shifts the goalpost midway and continues to claim benefit. There might be no statutory requirement for intimating the Director of Income-tax of the changes in the memorandum and rules and regulations but if the assessee does not fulfil its undertaking to furnish the changes, then he cannot claim automatic benefits under sections 11 to 13 for those altered objects, rules and regulations. Benefits under the Act cannot be claimed unless the changes are vetted by the authorities. [Para 22]

The assessee drew attention of the Tribunal to the provisions of section 11(4)(a) and submitted that even if the assessee derives profit and gains of business, it does not automatically lose the benefits conferred under sections 11 to 13. This does not mean that the Act allows the assessee-society, to alter its objects and not intimate the same and seek approval from the revenue, but can still claim benefit under the Act. Definitely, the examination of these issues is in the domain of the

Assessing Officer while examining the claim of the assessee for exemption. It is well settled that the burden of proof, when exemption is claimed, is on the assessee. The assessee argues that changes in the rules and regulations are not the grounds on which benefit under sections 11 to 13 can be denied. When the rules and regulations can be amended so as to permit commercial interest to the administrators, it means, the memorandum and objects permit such activities. If the rules and regulations framed are not in violation of the objects, then any drastic change in the rules would determine the manner in which the objects of the association are to be understood. Hence, changes in the rules and regulations are also material and have to be intimated to the Revenue authorities for examination. Thus, there is no fault in the view taken by the Director of Income-tax that the assessee should take steps by intimating the changes it has made to its memorandum and rules and regulations to the revenue authorities and to get the same examined and approved so as to claim benefit under section 12A of the Act, for these objects also. The issue whether the changes in these objects vitiate the entire claim for exemption under sections 11 to 13, has to be examined by the Assessing Officer and it is the duty of the assessee to discharge the burden of proof that lies on it for claiming exemption. [Para 23]

The assessee submitted that the examination of such matters is in the domain of the Assessing Officer and when Director of Income-tax has not been granted specific power, he cannot withdraw or cancel the registration. [Para 24]

The revenue on the other hand, argues that it has not withdrawn or cancelled the registration granted under section 12A and that the Director of Income-tax has only availed of an opportunity to inform the legal position to the BCCI and has for its benefit enclosed a copy of the extracts from the book 'Charitable and Religious Trusts and Institutions' authored by the author Mr. S. Rajaratnam, so that the assessee takes suitable action. [Para 25]

When it is the stand of the revenue that the registration granted under section 12A, is not withdrawn or cancelled, the assessee-society should not have any grievance. If the Assessing Officer has not understood the letter of the Director of Income-tax dated 28-12-2009, as not withdrawing or cancelling of the registration granted under section 12A, then the assessee can rely on the stand of the revenue before the Tribunal which is that the registration granted on 12-2-1996, is not cancelled or withdrawn. No party can take contradictory stands in different proceedings on the same issue. [Para 26]

Be that as it may, as already stated that the registration under section 12A dated 12-6-1996, has not been extended to the amended clauses of the memorandum and rules and regulations of the society. If the amended memorandum and rules and regulations of the society or the activities of the assessee are such that they are in violation of the provisions of the Act, then the Assessing Officer is free to make assessments in accordance with law. In other words, the Assessing Officer is not bound by the registration granted under section 12A, to the extent the memorandum and rules and regulations have been amended. [Para 27]

To sum up, it is opined that the registration granted under section 12A, and the benefits flowing therefrom, cannot be extended to the amended objects of the society unless the Director of Income-tax examines the same and comes to a conclusion that the registration under section 12A, can be extended to the revised objects, memorandum and by-laws. It would be illogical to hold that once an institution is registered under section 12A, no matter whatever may be the changes in the objects, rules and regulations, for any number of times, the institution should be given the benefit of sections 11 to 13 of the Act, in view of the original registration granted under section 12A. The assessee-society should approach the registering authority with the changes and amendments so that the authorities could examine as to whether the amendments in question meet the requirement of law. Since the stand of the revenue, as already stated, is that the letter dated 18-11-2009, is

only advisory in nature and is not an exercise of a statutory power and that it is not a withdrawal or cancellation of registration under section 12A, the appeal is not maintainable under section 253. [Para 29]

In the result, assessee's appeal is dismissed as not maintainable. [Para 30]"

13. *Appellant has conducted two matches of IPL without changing its object clause, by saying that its object clause was broad & did not require any change to conduct IPL matches. But that is a misconception because IPL is totally new commercial format of cricket matches of 20 overs, where games are played as a commercial venture and every activity right from sale of tickets to preparation of grounds, allocation of ground advertisement rights, media rights, auction of franchises & auction of players are all done on commercial lines. Such format of IPL matches came into existence in 2006 and objects of appellant which were formulated on 21-08-1960 could not have envisaged such a new commercial format of the game. Hence appellant's object clause like BCCI needed to be changed, but by not changing its objects for conducting IPL matches has made it liable for withdrawal of claim of exemption u/s 11 of I.T. Act as held in case of BCCI [2012] 136 ITD 301 (Mumbai ITAT).*

14. *The argument that commercial aspect of IPL games was handled by BCCI & appellant only provided grounds for such matches, is also rejected. Because the appellant not only shared the booty of such commercial venture in terms of receiving major funds from BCCI in name of "subvention & subsidies" and simultaneously appellant was also following all rules for such games set by BCCI for example same Kochi Tuskers, Kings XI Punjab and Rajasthan Royals played those two matches conducted by appellant, wherein auctioned franchises were playing such games through auctioned players and even amount of entry ticket was very high as determined by BCCI. Media rights & advertisement rights were sold and even cheer girls were highlighting the event. If game in IPL format conducted by BCCI is a commercial*

venture, than any part of such venture conducted by appellant will also fall in nature of business.

15. It is also not material that appellant received only Rs.60 lakhs from two matches & expended Rs.95,87,472/- & thus incurred a loss of Rs.35,87,472/- in the two IPL matches. Second proviso to section 2(15) of I.T. Act speaks about “aggregate value of receipts” and not about profit or loss and receipts of Rs.60 lacs were shown by appellant from rendering of services to BCCI in conducting 2 IPL matches, which is in excess of limit of Rs.25 lakh placed by this section. In view of the same and also because appellant charged fees for 1 day match, the activity of any other object of general public utility shall not be a charitable purpose as per first proviso to section 2(15) of I.T. Act. As a result of this appellant is not eligible for claim of deduction u/s 11 of I.T. Act and its entire income has become taxable.

16. Since the amendment of section 2(15) of the I.T. Act the conducting of “commercial activity” by any such association has been brought under tax net and earlier decisions of courts in this regard prior to such amendment have become in-applicable

16.1 The new provisions of Section 2(15) of I.T. Act brought from 01-004-2009 are as follows:-

“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;]”

As per the amended provisions any activity of advancement of “any other object of general public utility shall not be charitable if such trade, commerce, business or rendering of service was done for a fees or cess or any other consideration irrespective of nature & use of such income, if such receipts exceeded Rs.25 lakhs. As a result the controversy of whether dominant activity was charitable or not was put to rest, because income of any charitable institution which carried out any commercial venture of any nature & charged fees, was made taxable beyond a certain limit, and such limit was also fixed at Rs.25 lakhs. The section now clearly said that even if such business income was applied towards charitable purpose or towards dominant activity which may be charitable in nature, income of charitable institution was still held taxable.

16.2 The decisions passed post amendment of section 2(15) of I.T. Act are relevant. In case of Punjab State Seed Certification Authority [2013] 144 ITD 671 (Chandigarh Trib.) it was held that though activity of certifying seeds fall within “advancement of any other object of general public utility” but in view of the fact that assessee society was charging fees from persons to whom said services were rendered, activity of assessee society could not be held to be a “Charitable purpose.” Similar view was also held in cases of Andhra Pradesh Seed certification Agency [2013] 356 ITR 360 (AP), Entertainment Society of Goa [2013] 59 SOT 103 (Panaji Trib.) (URO), Society for Citizen Services [2012] 139 ITD 307 (Amritsar), A.Y. Broadcast foundation [2011] 11 taxmann.com 240 (Ker.) and Young Men’s Christian Association [2014] 44 taxmann.com 335 (Madras).

16.3 In present case also since IPL tickets were being sold for a price that too exorbitant price therefore, IPL is not a charitable but a commercial venture. Since

appellant conducted two IPL matches and rendered services to BCCI by charging a fees of Rs.60 lakh (above Rs.25 lakh) and also charged entry fee of Rs.1.96 crore (above Rs.25 lakh) for 1 day match hence activities of appellant could not be held to be for charitable purposes and it is hit by first proviso to Section 2(15) of the I.T. Act.

17. Therefore it is held that by conducting such 1 day match and 2 IPL matches against receipt of fees which were in nature of commercial venture whose gross receipts were above Rs.25 lakh, appellant is hit by proviso to section 2(15) of the I.T. Act and by not changing its "object clause" for conducting a totally new format of IPL matches, appellant has rendered itself ineligible for getting exemption u/s 11 of I.T. Act.

18. Hence disallowance of exemption claimed of Rs.15,82,55,168/- u/s 11 of I.T. Act is hereby upheld, based on various reasons discussed above from para 5 to 17 of this order."

22. First of all, we find it appropriate to address and adjudicate first contention of the Ld. AR regarding applicability of principle of consistency and the ratio of the decision of Hon'ble Supreme Court in the case of Radhaswami Satsang v. CIT (supra). In this regard we may point out that the Ld. DR could not controvert this fact that the assessee association was granted exemption u/s 11 of the Act continuously during immediately preceding assessment years to the present A.Y. 2012-13. At the same time, we further note that on being asked by the bench the Ld. AR in all fairness under his command, submitted that in A.Y. 2012-13 first time IPL matches were conducted by the assessee association therefore, in this situation we safely presume that the facts and circumstances of A.Y. 2012-13 are not similar and identical to the immediately preceding assessment years. It is a well

accepted proposition that the rule of consistency applies only when facts and circumstances of two assessment years are identical and similar, thus, in our considered opinion benefit of the ratio of the decision of Hon'ble Supreme Court in the case of Radhaswami Satsang (supra) is not available for the assessee in the present case having dissimilar facts and circumstances from immediately proceedings years. Therefore, contention of Ld. AR regarding applicability of rule of consistency is not sustainable and hence we dismiss the same.

23. The next contention of the Ld. AR is that the appellant association has been granted certificate of registration under section 12A(a) of the Act w.e.f. 01.04.2001 which is still in enforce and in existence till date. It has also been argued on behalf of the assessee that the Ld. CIT(A) -1, Indore initiated proceedings for cancellation of Registration u/s 12AA(3) of the Act on the same was dropped approving the existence and continuity of registration granted to the appellant association, therefore, the exemption/deduction u/s 11 and other relevant provisions of the Act cannot be denied to the assessee. On these contentions, we are in agreement with the submissions of the Ld. DR that existence of registration u/s 12A of the Act is merely a prequalification for claiming exemption u/s 11(1)(a) & 11(2) and other relevant provisions of the Act and assessee does not automatically becomes entitle for such exemption merely because it has registration u/s 12A of the Act for the financial period under consideration. We may also point that while examining the claim of the assessee for exemption u/s 11 and other provisions of the Act, the AO is entitled and

empowered to examine the activities of the assessee on all four corners viz:

- (i) The assessee is carrying its activities within the ambit of charitable objects.
- (ii) The assessee is receiving and utilizing its funds for the purposes of its charitable objects only and there is no misuse or deviation of funds.
- (iii) The assessee is applying its funds in accordance with the provisions of the Act.
- (iv) The assessee's activities are not in the nature of trade, commerce or business with profit motive which may hit by proviso to section 2(15) of the Act and only thereafter, the assessee's claim for exemption u/s 11 of the Act may be allowed.

24. In view of above, we observe that merely because assessee is registered u/s 12A of the Act and proceedings for cancellation of such registration have been dropped by the Ld. CIT-1, Indore, even then the assessee does not automatically become entitle for exemption u/s 11 and other relevant provisions of the Act, therefore, contention of the Ld. AR are dismissed.

25. So far as, next contention of the Ld. AR is concerned that there is no change in the objects and activities of the appellant association since its inception on 21.08.1960, under its by-laws, with the predominant objects of controlling, supervising, regulating and encouraging the game of Cricket in the state of Madhya Pradesh and thus, activities of the appellant association fall within the expression "charitable purpose" as

advancement of the objects for the benefit of a section of public has been held to be charitable in nature. On these contentions of the Ld. AR, at the very outset we observed that the claim of the assessee has been based on the last limb of section 2(15) of the Act i.e. “objects of general public utility”. For claiming exemption u/s 11 of the Act onus is on the assessee to show that its activities fall within the expression “objects of general public utility” and it is not involved in carrying on any activity in the nature of trade, commerce and business or any activity of rendering in relation to any trade, commerce or business, for a cess or a fee or for any consideration, irrespective of nature of head or application, retention of the income from such activity.

26. Since, on being especially argued of the Bench by the Ld. AR fairly accepted that during the F.Y. 2011-12 pertaining to A.Y. 2012-13 the assessee conducted IPL matches first time, therefore, we decline to accept contention of the Ld. AR that there is no change in the activities of the appellant association since its inception on 21.08.1960. In the latter part of this order we would adjudicate the second limb of contention that whether activities of the appellant association fall within the expression of “charitable purposes” as advancement of the objects for the benefit of a general public i.e. “objects of general public utility”.

27. From the language used by the CBDT Circular No.395 dated 24.09.1984, we observe that the CBDT directed the revenue authorities that 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) of the Act relating to exemption from tax for sports associations and institutions having their objects as the promotion, control, regulation and, encouragement of specified sports and games including cricket. In the present case, it is not a case of the AO that the appellant association is not engaged in the promotion, control, regulation and encouragement of Cricket in the state of Madhya Pradesh, however the main allegation and basis of the AO for denying the exemption u/s 11 of the of the Act is that the assessee's activities did not fall in the activity outlined by the legislature in provisos 1 & 2 to section 2(15) of the Act. Therefore, CBDT Circular No.395 (supra) does not support the claim of any assessee akin to the present appellant for exemption u/s 11 of the Act, when its activities are hit by the newly inserted proviso to section 2(15) of the Act.

28. The next contention pressed into service for the adjudication by the Ld. AR is that the appellant association is eligible for claim u/s 11 & 12 of the Act even in the wake of the amendment made by Finance Act 2010, w.e.f. 01.04.2009, by insertion of proviso to section 2(15) of the Act. Referring to circular No.11 dated 19.12.2008 issued by the CBDT for explaining the scope and purpose of the first proviso to section 2(15) of the Act. The Ld. AR has also contended the object of amendment is not to hit the genuine charitable organization/associations which are carrying out the "objects of general public utility" but only to hit those entities which are wearing the mask of charity but in reality, they are

carrying out commercial activities with profit motive. To support this contention, Ld. AR also reiterated that the activities of the appellant association have been duly examined by the Ld. CIT(Admin.) by initiating proceedings u/s 12AA(3) of the Act twice, at earlier point of time, but the proceedings were dropped on both the occasions which again shows that the activities of the appellant association are in accordance with its charitable objects without any profit motive. On these contentions we are in agreement in the view pressed into service by the Ld. DR that merely, because proceedings of cancellation of registration proceedings u/s 12AA(3) of the Act have been dropped the claim of assessee association u/s 11 of the Act cannot be held automatically sustainable only on this ground as the AO is entitled and empowered to examine the claim of assessee on all angles prior to allowing exemption u/s 11 of the Act.

29. In the present case, interestingly, we observe that the department was regularly allowing exemption u/s 11 of the Act to the assessee after its registration u/s 12A of the Act w.e.f. 01.04.2001. However, the dispute arose, first time in A.Y. 2012-13, when the assessee association hold T20 cricket matches in IPL tournament, which is, as per Ld. AR, just a newly designed format of cricket, which are entirely shows of BCCI and not of the appellant association. The Ld. AR also contended that IPL matches were not hosted by the appellant with any commercial angle and on the contrary, there resulted a loss to the appellant association as after getting gross receipts the appellant association has to bear a loss of Rs.

35,87,472/- there from. On these contentions, the Ld. DR has pointed out that just to establish deficiency or loss the appellant association has shown gross receipts of Rs.60,00,000/- which are still pending for recovery and there is no sincere or forceful efforts by the assessee towards recovery of the same which shows non-seriousness of the appellant association and in this situation and conduct of assessee is only to limit the scope of enquiry be the AO regarding other huge amounts received by it from the BCCI. It also contended that, as per audit report, the assessee received Rs.25,86,06,324/- from BCCI, therefore, contention of incurring loss from IPL is not correct and tenable especially when appellant association has not submitted any piece of document or contract under which it received huge amount from BCCI. At the cost of repetition we may also point out that these observations also gets strong support from the fact that tickets of IPL on very high price were sold by the BCCI under permission and supervision of assessee and in turn the assessee received huge amount of that Rs.25 crores and on being asked by us, assessee has denied having any such document, contract or any other piece of evidence which could show us the purpose and agreement between the assessee and BCCI under which assessee allowed the BCCI to collect huge amounts by way of sale of tickets and in turn assessee got huge amounts from BCCI.

30. On careful consideration of rival submissions on this issue we are of the view that as we have already noted predominant object of the appellant association is to promote and supervise

the game of cricket in state of Madhya Pradesh but conduct of one-day international cricket matches and T20 IPL matches hosted during the period under consideration cannot be taken and accepted as an activity with an “objects of general public utility” unless the assessee established that it is not involved in carry on any activity in the nature of trade, commerce, or business or any activity rendering any service in relation to any trade, commerce, or business for cess or fee or any other consideration.

31. Undisputedly, BCCI is the controlling authority under which cricket is promoted and regulated in India and the assessee bestowed with the responsibility of promoting and developing game of cricket in the state of Madhya Pradesh under the overall control and supervision of BCCI. As per the organizational structure of cricket bodies functioning in India below BCCI every state is having State-wise Association to look after promotion and development of game of cricket in the respective states and there are District Cricket Association also which carry on similar activities within their respective districts under the guidance and supervision of State Association like the assessee. As per CBDT Circular No.395 dated 24.09.1984, the aforesaid activity of promotion of cricket is covered under the definition of ‘Charitable Purpose’ which is the last limb of section 2(15) of the Act.

32. In the light of above organizational structure developed in India for development and promotion of game of cricket, we may point out that during the period under consideration pertaining to A.Y. 2012-13 the assessee hosted two IPL

matches on behalf of the BCCI and claimed to have received Rs.30,00,000/- for each match total Rs.60,00,000/- and there is no agreement/contract or any other corresponding document between the BCCI and the assessee, despite being specifically asked by the authorities below and by us during the hearing before the Tribunal.

33. At this juncture, we feel it appropriate and necessary to understand the structure, object and modus operandi of conducting IPL matches in India as noted by the AO as well as CIT(A) and which remained uncontroverted in absence of any other positive material or evidence in favour of the assessee. Undisputedly, Indian Premier League(IPL) has been conducted under supervision of BCCI since 2008. The Ld. AO considered the information available in the public domain and noticed that original cost of 8 Franchises team was in millions/ US Dollars and the winning bidders for the 8 franchises were announced on 24.01.2008 and the base price for auction was \$400 million and the auction was finalized at US\$723.59. Subsequently, two more teams viz; Pune and Kochhi were also added and auctioned for \$370 million, and \$333.3 million respectively.

34. The AO also noted that the IPL was expected to bring BCCI and income of approximately \$1.6 billion over a period of 5 to 10 years since its inception and aforesaid income is expected to earn mainly from tickets, television rights and sponsorship. The television rights were given to Sony Entertainment Television a price of \$ 1.026 billion. In the light of above noted facts the AO observe that the activity of BCCI under the name

IPL was purely a commercial activity and it is a big game of big money which is an entertainment industry by itself. The authorities below in the light of above stated facts reached to a conclusion that the activity of IPL falls out of the purview of the expression charitable in nature as mentioned in section 2(15) of the Act and thus, the income earned by the BCCI has been assessed by the department as business income. Therefore, obvious conclusion inevitably follows is that any assistance services rendered by an organization, like present assessee association for organizing IPL matches and earning gross receipts from such activity would tantamount to commercial in nature.

35. Undisputedly, the assessee association had to receive Rs.60,00,000/- from BCCI and the assessee had rendered its services by providing its stadium and other facilities to BCCI and Kochi Tusker to organize IPL matches thereafter the authorities below found basis for holding that the activities of conducting of IPL matches by the appellant association was not organized with an objects of general public utility and with charitable purposes because the conduct of IPL matches was in the nature of trade, commerce, or business was in the nature of commercial activity with profit motive which is clearly hit by the first proviso to section 2(15) of the Act.

36. From the orders of the authorities below we also observe that the assessee had conducted India vs. West Indies one-day match during the period and assessee had shown gross receipts of Rs.1,35,82,988/-. From this match out of which major portion of the receipts were from the sale of tickets

having rates were Rs.2,500/- to 3,000/- per ticket. The AO has noted that no free or concessional tickets were given to the cricket lovers and poor spectators to watch the IPL and one-day matches and the assessee also claim to have incurred expenditure of Rs.22,81,500/- towards purchase of tickets which were given to so-called VIPs, High Dignitaries including members of the appellant association after paying entertainment tax. There is no iota of evidence to show that the appellant association distributed any tickets to the students, noted cricketers of the M.P. State and other persons who are directly or indirectly involved in the development of game of cricket in Madhya Pradesh. After noting above facts the authorities below held that organization and conducting of one-day and IPL matches were not undertaken with an objects of general public utility and the same was faraway with the charitable objects of the appellant association, therefore, the same is hit by the proviso to section 2(15) of the Act.

37. Above noted facts have not been controverted by the Ld. AR in any manner, however, he has placed strong reliance on the ratio of various decisions of Hon'ble Supreme Court, High Court and Coordinate Benches of the Tribunal to support the contentions and case of the assessee. In the later part of this order, we would provide/respectful consideration to the ratio of the decisions cited at bar by both the parties. From paras 4.1.5.3.1 to para 4.1.6 of the assessment order, as reproduced hereinabove, we observe that after considering totality of the facts and circumstances along with explanation and stand of the assessee the Assessing Officer adjudicated and negated all

the arguments of the assessee association. From the relevant para's 9 to 18 of the first appellate order, as reproduced hereinabove, we observe that that the Ld. CIT(A) gave a thoughtful consideration to the submissions of the appellant association and thereafter uphold the findings of the AO that by conducting one-day match and two IPL matches against receipts of fees which were in nature of commercial venture whose gross receipts were above Rs.25 lakh, the activities of appellant is hit by proviso to section 2(15) of the Act and by not changing its "object clause" for conducting a totally new formats of cricket i.e. IPL matches. The Appellant had rendered itself ineligible by getting exemption u/s 11 of the Act.

38. The Assessing Officer after considering the CBDT Circular No.395(supra), in the light of facts and circumstances of the present case, held that as per amended proviso first to section 2(15) w.e.f. 01.04.2008 it has been mandated that the activities falling in the last limb of section 2(15) of the Act i.e. "objects of general public utility" would be considered as charitable in nature if same have not been carried out in the nature of trade, commerce or rendering services in the nature of trade. In our considered opinion, when we consider the mandate of non-obstinate provision of the Act inserted as proviso to section 2(15) of the Act, then, we find that, in a case like present assessee, when the gross receipts of the assessee from subvention & subsidies was Rs.25,86,06,324/- and as per schedule 15 of the Income Tax expenditure account, the assessee received this amount from BCCI for conducting

various tournaments totaling of Rs.55,20,000/- whereas the assessee received Rs.25,30,86,324/- as general receipts from BCCI without producing any supportive documents, agreement or contract with payer BCCI. We further observe that the assessee was not showing IPL and one-day matches receipts therein. However, the same has been shown in schedule 20 at serial no.16 which is clear intentional and deliberate manipulation in showing receipts from BCCI towards conducting of IPL matches.

39. On careful consideration of entire facts and circumstances of the case, we note that the Ld. AR could not controvert this fact the assessee had carried out IPL matches for the first time during the A.Y. 2012-13 and the gross receipts from IPL matches fall within the ambit first & second provisos to section 2(15) of the Act. As we have already held in the earlier part of this order that the rule of consistency does not apply to the present case because the conduct of IPL matches creates a great difference between the activities carried out by the assessee association during the earlier assessment years. So far as clarification made by the CBDT circular No.11/2008 dated 19.12.2008 is concerned it was clarified by the CBDT that amended provisions of section 2(15) of the Act were applicable only in respect of organizations, entities, association/trust who in the garb of charitable activities or actually carried out commercial activities with profit motive as we are in agreement conclusion drawn by the authorities below that the assessee did carry out the activities of commercial nature in the form of hosting IPL matches and

one-day during the period under consideration and fetch huge amounts from BCCI, without doing any charity, with profit motive therefore, CBDT Circular No.11/2008(supra) supports the case of the AO and not of the appellant association.

40. At this juncture, it would also be relevant to note that the definition of advancement of general public utility has been elaborated and explained by the amended provisions of section 2(15) of the Act w.e.f. 01.04.2009 which provides that any receipts in carrying advancement of general public utility constitutes commercial activity subject to monetary limit of aforesaid receipts specified in second proviso to section 2(15) of the Act. Therefore, the facts noted in the earlier part of this order clearly shows that the activity of hosting IPL matches to assessee association was commercial activity with profit motive for the guise of advancement of general public utility and the same was only with profit motive without any charitable purposes and thus the same was not within the ambit of charitable objects of the appellant association. In this context, we are in agreement with the conclusion drawn by the authorities below that in the IPL matches there was no room for general public and not a single ticket was distributed to a common or poor man or to the students, coaches or sports teachers working in the state of Madhya Pradesh for development and promotion of cricket.

41. Per contra, from the facts explained by the assessee itself we clearly observe that the IPL matches were watched in the stadium by the spectators who were able to pay high price of tickets and the assessee tickets. It is from the factum of the

case that the assessee after debited the expenses under the head of purchase of tickets distributed them to selected persons of choice office bears of the association and not a single ticket was given to a person who is really indulged in development and promotion of game of cricket in the state of Madhya Pradesh being a common person not having sufficient financial resources to purchase high priced tickets of IPL and One-day matches. In these circumstances, we have no hesitation to hold that by no stretch of imagination it can be observed that the activity of assessee association, organizing IPL and One-day matches were in fact, an activity of the advancement of object of general public utility towards charitable purpose within the ambit of charitable objects of the assessee association, thus, contentions of Ld. AR are not acceptable and sustainable.

42. So far as, the issuance of notice and withdrawal of cancellation of registration proceedings u/s 12AA(3) is concerned. We have already held that merely because an authority of higher wisdom initiated proceedings for cancellation of registration u/s 12A of the Act granted to the assessee association and after hearing the stand of assessee dropped proceedings does not automatically mean that the activity of the appellant association are for charitable purpose with an object of general public utility. We may again point out that at the time allowing exemption u/s 11 of the Act. The Assessing Officer is empowered and entitled to examine the claim of assessee on all four corners as to whether the activities conducted by the assessee during the relevant F.Y.

were in fact, conducted for charitable purposes including the advancement of object of general public utility. In the present case the AO as well as the Ld. CIT(A) thoroughly examine the claim of assessee in the light of relevant facts and circumstances of the case along with financial results of the assessee and thereafter drawn a logical and a correct conclusion that the activities of appellant association in conducting IPL and One-day cricket matches were not towards charitable purposes and advancement of object of general public utility.

43. Furthermore, we clearly observe that the authorities below after logically analyzing the facts and circumstances of the case correctly held that the activity of appellant association in organizing and conducting IPL & one-day cricket matches was an activity in the nature of commerce with profit motive. Thus, the same is hit by the first proviso inserted by Finance (ii) Act 2009, w.e.f. 01.04.2009. At this juncture, it would be profitable to take respectful cognizance ratio of the Hon'ble Supreme Court in the case of CIT v. Red Rose School (supra), as relied by the Ld. DR wherein their lordship speaking of Apex Court of India held that registration u/s 12AA of the Act does not necessarily entitle the assessee to get its income excluded from the income of the previous year for the purpose of determination of tax liability. In the subsequent decision in the case of CIT vs. U.P. Forest Corporation (supra) the Hon'ble Supreme Court also held that an organization has to get itself registered u/s 12AA of the Act in order to avail exemption u/s 11 of the Act. In this decision their lordship also held that

whether the income of the organization can be regarded as being held for charitable purposes, requires investigation and verification of facts by the AO and Hon'ble High Court cannot grant exemption to the assessee u/s 11 of the Act. In our humble understanding of mandate of sections 11 & 12 of the Act, we are of the view that getting registration u/s 12A of the Act is merely prequalification for claiming exemption u/s 11 and other relevant provisions of the Act. An association or entity having registration u/s 12A of the Act does not automatically become entitle for exemption u/s 11 of the Act and heavy burden and onus lies on the assessee to establish its claim of exemption u/s 11 of the Act by way of establishing the fact that it conducted charitable activities as per its charitable object towards the advancement of "object of general public utility". In a case when such entity fails to establish its claim in the manner as stated above then its claim for exemption u/s 11 of the Act cannot be held as sustainable and the same deserves to be dismissed.

44. From the dicta lay down by the Hon'ble Supreme Court in the case of CIT vs. U.P. Forest corporation (supra), as relied by the Ld. DR, heavy burden lies on the assessee to establish its claim u/s 11 of the Act and the legislature has also casted official liability on the shoulders of the AO to examine, investigate and verify the nature of receipts accruing to the assessee from its charitable activities for which registration u/s 12A of the Act have been granted and such claim of assessee has to be logically evaluated in the light of amended provisions of section 2(15) of the Act.

45. The Ld. AR has also placed reliance on the various decisions including the decision of Hon'ble Supreme Court in the case of ACIT vs. Surat Art Silk Cloth Manufacturers Association (supra). On careful consideration of above rival submissions, first of all, we may respectfully point out that this judgment of Hon'ble Apex Court pertains to a case in respect of position of law privilege prior to insertion of proviso to section 2(15) of the Act and the same cannot be applied blindly to the present case which pertains to the post amended provisions of section 2(15) of the Act w.e.f. 01.04.2009. Therefore, we respectfully hold the benefit of the ratio of this decision cannot be given in favour of the assessee in the present case which is relevant to the post amended provisions of section 2(15) of the Act.

46. After insertion of proviso to section 2(15) of the Act the totally mandate of this provision has imposed a heavy liability on the shoulders of the AO to verify, investigate and examine the facts, whether the assessee having charitable objects of general public utility and at the same time, AO has to verify the claim of the assessee on another angle viz; the assessee trust have objects of general public utility is actually involved in the advancement of object of general public utility with no profit motive and it is not involved in 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 cess or fee or any other consideration irrespective of the nature of the use or application or retention of the income from such activity. Finally the onus is on the shoulders of

assessee to establish its claim that it is actually involved in conducting the advancement of object of general public utility without any profit motive within the ambit of its charitable objects and at the same time heavy burden like on the shoulders of AO to examine the same in the light of post amended provisions of section 2(15) of the Act and cumulative result of aforesaid exercise by the assessee and AO is that the exemption u/s 11 of the Act should be granted to the deserving entities and organization and the same should not be allowed to the entities which are involved in activity with profit motive in the nature of trade, commerce or business under the cover & mask of charitable purpose showing object of general public utility.

47. In the present case we satisfied with the conclusion drawn by the authorities below that the assessee had carried out the activity of conducting IPL and one-day cricket matches in commercial manner as we have held in the earlier part of this order, that the activities of the appellant association was not for the purpose of object of general public utility and the same was commercial activity with profit motive. So far as the decision of ITAT, Rajkot, in the case of Saurashtra Cricket Association vs. CIT (supra) is concerned on careful reading of this order. We observe that this decision is pertains to an appeal against order of cancellation of registration u/s 12A of the Act which is not a factum of present case, therefore, ratio of this decision cannot be applied in favour of the assessee to the present case.

The next main question posted to us for adjudication by the Ld. AR is that the assessee actually incurred loss/deficit in conducting one-day and IPL matches as the assessee had to incurred the expenses of Rs.95,87,472/- whereas the amount paid to it was only Rs.60,00,000/- resulting into loss/deficit of Rs.35,87,472/-. In this regard, we are in agreement with the contention of Ld. DR that even if the net result was no profit but when the motive of assessee for carrying out such activity is in the nature of business commerce with profit motive then the same will obviously, fall within the mischief of proviso to section 2(15) of the Act and the income also include deficit or loss.

48. At this juncture, we may again point out that the assessee has not submitted any document/submissions contract with BCCI neither before the authorities below nor before the Tribunal which could show the exact purpose and motive of BCCI in advancing Rs.25,86,06,324/- including specified amount of Rs.55,20,000/- which was given for conduct of specific tournament as listed in schedule 15 to income and expenditure account of the appellant association, where the BCCI is providing huge amounts to the appellant association and in turn the assessee is organizing various tournaments including IPL and one-day cricket matches in the nature of commercial activity with profit motive. Then in absence of any contract or agreement or documents showing basis and purpose of advancing such huge amounts, it has to be presumed that the assessee association is organizing and conducting its activities under the directions and dictate of

BCCI and BCCI itself is include in organizing IPL tournament every year in the nature of commerce with profit motive then the recipients appellants association cannot claim that it is involved in advancement of an object of general public utility with no profit motive, only with charitable purpose within the ambit of its charitable objects. Therefore, baseless contention of the Ld. AR that there was deficiency or loss to the assessee from conducting of IPL matches cannot be held as sustainable and thus, we dismiss the same.

49. The Ld. Counsel has placed reliance on the various decisions to support the case of the assessee. On careful consideration of these decisions, we find that the decision of Hon'ble Supreme Court in the case of CIT vs. Gujarat Maritime Board (supra) pertains to the issue of grant of registration u/s 12A of the Act. The decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association vs. DIT(E) (supra), decision of ITAT, Delhi in the case of Delhi & District Cricket Association vs. DIT(supra), decision of ITAT Hyderabad in the case of Hyderabad Cricket Association vs. CIT (supra) are pertains to issue of validity of cancellation of Registration u/s 12A of the Act which is not an issue in the present appeal, therefore, ratio of this decision cannot extend any benefit in favour of the assessee in the instant case. The decision of Hon'ble Delhi High Court in the case of India Trade Promotion Organization vs. DIT(E) pertains to grant of approval u/s 10(23C)(iv) of the Act which is not an issue in the present case, however, the Ld. AR has drawn our attention towards para no. 48 to 51 of this judgment to establish meaning of expression

envisage in first proviso to section 2(15) of the Act viz; trade, commerce and business and scope of “charitable purpose”. It would be profitable to reproduce para no. 48 to 55 of this order which reads as follows:

“48. With this in mind, it is to be seen as to what is meant by the expressions "trade", "commerce" or "business". The word "trade" was considered by the Supreme Court in its decision in the case of Khoday Distilleries Ltd and Others v. State of Karnataka and Others:

1995. (1) SCC574 whereby the Supreme Court held that "the primary meaning of the word 'trade' is the exchange of goods for goods or goods for money". Furthermore, in State of Andhra Pradesh v. H. Abdul Bakhi and Bros:

1964. (5) STC644(SC), the Supreme Court held that –the word "business" was of indefinite import and in a taxing statute, it is used in the sense of an occupation, or profession which occupies time, attention or labour of a person, and is clearly associated with the object of making profit”. This court, in ICAI (I) (supra) held that, while construing the term "business" as appearing in the proviso to Section 2(15), the object and purpose of the Section has to be kept in mind. It was observed therein that a very broad and extended definition of the term "business" was not intended for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act so as to include any transaction for a cess, fee or consideration. The Court specifically held that:—An activity would be considered 'business' if it is undertaken with a profit motive, but in some cases, this may not be determinative. Normally, the profit motive test should be satisfied, but in a given case activity may be regarded as a business even when profit motive cannot be established / proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business.

49. In *Bureau of Indian Standards (supra)*, this court, while considering whether the activities of the Bureau of Indian Standards (*supra*) in granting licences and trading certificates and charging of fee amounted to carrying on business, trade or commerce, held as under:—73. ... In these circumstances, —rendering any service in relation to trade, commerce or business cannot, in the opinion of the Court, receive such a wide construction as to enfold regulatory and sovereign authorities, set up under statutory enactments, and tasked to act as agencies of the State in public duties which cannot be discharged by private bodies. Often, apart from the controlling or parent statutes, like the BIS Act, these statutory bodies (including BIS) are empowered to frame rules or regulations, exercise co-ercive powers, including inspection, raids; they possess search and seizure powers and are invariably subjected to Parliamentary or legislative oversight. The primary object for setting up such regulatory bodies would be to ensure general public utility. The prescribing of standards, and enforcing those standards, through accreditation and continuing supervision through inspection etc., cannot be considered as trade, business or commercial activity, merely because the testing procedures, or accreditation involves charging of such fees. It cannot be said that the public utility activity of evolving, prescribing and enforcing standards, —involves the carrying on of trade or commercial activity.

50. In *ICAI(II) (supra)*, while considering whether the activities of ICAI fell within the proviso to Section 2(15) as introduced with effect from 01.04.2009, this court, after considering the Supreme Court decision in the case of *Commissioner of Sales Tax v. Sai Publication Fund: (2002) 258 ITR70SC* held: "Thus, if the dominant activity of the assessee was not business, then any incidental or ancillary activity would also not fall within the definition of business."

51. This court also observed in *ICAI(II) (supra)* that:—64. ... It is not necessary that a person should give something for free or at a concessional rate to qualify as being established for a charitable purpose. If the object and purpose of the institution is charitable, the fact that the

institution collects certain charges, does not alter the character of the institution. ... This court in ICAI (II) (*supra*) held:—67. The expressions —trade^{||}, —commerce^{||} and —business^{||} as occurring in the first proviso to section 2(15) of the Act must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organised manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. The purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of —charitable purpose^{||}. **The purpose of introducing the proviso to Section 2(15) of the Act can be understood from the Budget Speech of the Finance Minister while introducing the Finance Bill 2008. The relevant extract to the Speech is as under:..... —Charitable purpose^{||} includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under —charitable purpose^{||}. Obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.’ The expressions —business, —trade or —commerce as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organisation is charitable any incidental activity for furtherance of the object would not fall within the expressions — business, —trade or —commerce.**

(Emphasis respectfully supplied by us by undersigning)

52. With regard to the Surat Art Silk case (*supra*), this court, in ICAI (II) (*supra*) observed as under:—69. In the case of *Addl. Commissioner of Income Tax v. Surat Art Silk Cloth Manufacturers Association*: [1980]. 121 ITR1(SC), the Supreme Court held as under:—The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility would cease to be a charitable purpose. But where the predominant object of the activity is to any out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity.’ 70. Although in that case the statutory provisions being considered by the Supreme Court were different and the utilisation of income earned is, now, not a relevant consideration in view of the express words of the first proviso to section 2(15) of the Act, nonetheless the test of dominant object of an entity would be relevant to determine whether the entity is carrying on business or not. In the present case, there is little doubt that the objects of the activities of the petitioner are entirely for charitable purposes.¶ Finally in ICAI(II) (*supra*), this court, with reference to *H. Abdul Bakhi and Bros* (*supra*) observed as under:—71. Although, it is not essential that an activity be carried on for profit motive in order to be considered as business, but existence of profit motive would be a vital indicator in determining whether an organization is carrying on business or not. In the present case, the petitioner has submitted figures to indicate that expenditure on salaries and depreciation exceeds the surplus as generated from holding coaching classes. In addition, the petitioner institute provides study material and other academic support such as facilities of a library without any material additional costs. The Supreme Court in the case of *State of Andhra Pradesh v. H. Abdul Bakhi and Bros.* (*supra*) held as under: —The expression "business" though extensively used a word of indefinite import, in taxing statutes it is used in the sense of an occupation, or profession which occupies the time,

attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. (Underlining added) 72. There is nothing on record to indicate the assertion of the petitioner that its activities are not fuelled by profit motive is incorrect. Absence of profit motive, though not conclusive, does indicate that the petitioner is not carrying on any business.

53. From the said decision, it is apparent that merely because a fee or some other consideration is collected or received by an institution, 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, trade or commerce, then any such incidental or ancillary activity would also not fall within the categories of trade, commerce or business. It is clear from the facts of the present case that the driving force is not the desire to earn profits but, the object of promoting trade and commerce not for itself, but for the nation - both within India and outside India. Clearly, this is a charitable purpose, which has as its motive the advancement of an object of general public utility to which the exception carved out in the first proviso to Section 2(15) of the said Act would not apply. We say so, because, if a literal interpretation were to be given to the said proviso, then it would risk being hit by Article 14 (the equality clause enshrined in Article 14 of the Constitution). It is well-settled that the courts should always endeavour to uphold the Constitutional validity of a provision and, in doing so, the provision in question may have to be read down, as pointed out above, in Arun Kumar (supra).

54. It would be pertinent to reiterate that Section 2(15) is only a definition clause. Section 2 begins with the words, —in this Act, unless the context otherwise requires|. The expression "charitable purpose" appearing in Section 2(15) of the said Act has to be seen in the context of Section 10(23C)(iv). When the expression "charitable purpose", as

defined in Section 2(15) of the said Act, is read in the context of Section 10(23C)(iv) of the said Act, we would have to give up the strict and literal interpretation sought to be given to the expression "charitable purpose" by the revenue. With respect, we do not agree with the views of the Kerala and Andhra Pradesh High Courts.

55. It would be appropriate to also examine the observations of another Division Bench of this court in G.S.1 (supra). While considering Circular No.11 of 2008 issued by the CBDT, to which a reference has been made earlier in this judgment, the Division Bench held that it was evident from the said circular that the new proviso to Section 2(15) of the said Act was "applicable to assesses, who are engaged in commercial activities, i.e., carrying on business, trade or commerce, in the garb of 'public utilities' to avoid tax liability as it was noticed that the object 'general public utility' was sometimes used as a mask or device to hide the true purpose, which was 'trade, commerce or business'."

50. In view of above, we observe that the Hon'ble Finance Minister in the budget speech as noted and highlighted above, while introducing Finance Bill, 2008 explained the meaning of word charitable purpose and the expression business, trade or commerce as used first proviso to section 2(15) of the Act. Their lordship, after considering the ratio of all relevant decision on the issue, held that the insertion of proviso to section 2(15) of the Act, by virtue of Finance Act 2008, was directed to prevent the unholy practice of pure trade, commerce and business entities from masking their activities and portraying them in the garb of an activity with the object of a general public utility. This provision has been designed to hit at those institutions or organizations which having the advancement of the objects of general public utility at their hearts and were fact charity institutions. From the objects as

narrated by the Hon'ble Finance Minister as noted by their lordship in para 51(supra) while rendering proposition on the issue, is that the legislature inserted proviso to section 2(15) of the Act to remove mask and cover from the organization/trust entities which are involved in the activities with profit motive purely in the nature of trade, commerce or business and the object of insertion of proviso first was not to hit or make disentitle genuine charitable organization which are actually involved in the activities of advance object of general public utility with no profit motive.

51. Since in the earlier part of this order, we have held that holding IPL matches and one-day cricket matches in the directions of the BCCI, was an activity of commercial in nature with profit motive and there was no iota of evidence to show that the assessee association was in fact involved in the activity with charitable purpose with an object of general public utility without profit motive. Therefore, we respectfully held that benefit of ratio of this decision of Hon'ble Delhi High Court (supra) is not available in favour of the assessee in the instant case.

52. The order of ITAT, Chandigarh in the case of Himachal Pradesh Environment Protection and Pollution Control Board vs. Commissioner of Income Tax,(supra) decision of ITAT, Mumbai in the case of Bombay Presidency Golf Club Ltd. vs. DCIT(E) (supra) are pertain to a case wherein cancellation for registration u/s 12A of the Act was restored by the Tribunal which is not an issue in the present case. In the case of Sevagram Ashram Pratishtan vs. Commissioner of Income

Tax, (supra) ITAT, Nagpur held that the object of amended proviso to section 2(15) of the Act was to create a barrier for those entities/ assesseees who are engaged in business activities in the garb of charitable purpose and it is not meant for the assessee, who are really engaged in the activities of charitable purpose. In the present case, as we have hold, in the earlier part of this order, that the activities of appellant association in conducting IPL and one-day cricket matches was in the nature of commercial activity with profit motive without any charitable purpose, therefore, benefit of ratio of this order of ITAT, Nagpur(supra) is not available for the assessee.

53. The reliance has also been placed by the Ld. AR on the order of ITAT, Mumbai in the case of Indian Merchants Chambers vs. DDIT (Supra) wherein it has been held that the basic principle underlying the definition of “charitable purpose” remained unaltered even on amendment in the section 2(15) of the Act w.e.f. 01.04.2009, though the restrictive first proviso was inserted therein. When we apply the ratio of this order in the present case then, we find that, as discussed above in detail activity of the appellant association conducting IPL and one-day cricket matches was in the nature of commercial activity with profit motive which cannot be tagged or named as advancement of object of general public utility without profit motive, therefore, the activity of appellant trust is clearly hit by the first proviso to section 2(15) of the Act.

54. Reliance has also been placed by the Ld. AR on the decision of ITAT, Delhi in the case of Indian Medical Association vs. ADIT(supra) wherein it was held that mobilizing resources towards assessee's aims and objects that too within methods enshrined by trust deed which were ploughed back by society towards its aims & objects, would not cause any grievance to Revenue and hence exemption u/s 11 must be granted to the assessee. At this juncture, at the risk of repetition, we may point out that the proviso inserted w.e.f. 01.04.2009 to section 2(15) of the Act reads as follows:

“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.”

55. From careful vigilance reading of above noted proviso, it is clear that in the first limb the legislature has created a rider on the entities that the advancement of any other object of general public utility shall not be charitable purpose, if it involved the carrying on all 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 cess or fee or any other consideration in the last limb of proviso. The legislature further mandated that the nature for use or application, retention, of the income from such activity is not relevant for determining charitable purpose with an object of general public utility in the present case. The assessee is not

claiming having been used surplus or profit from IPL and One-day cricket matches or surplus from the amounts receipts from BCCI during the period but it is claiming that the conduct of all tournaments including IPL and One-day cricket matches were an activity of advancement of object of general public utility with the charitable purpose and without profit motive and the assessee could not establish these contentions and it miserably failed in controverting conclusion drawn by the authorities below that conduct of IPL & one-day matches was an activity of commercial in nature with profit motive hence, the benefit of the ratio of this decision is not available in favour of the assessee in the present case.

56. Ld. AR have also placed strong reliance on the order of ITAT, Delhi, in the case of Society of Indian Automobile Manufacturers vs. ITO(supra) wherein the issue was pertains to main activity vs ancillary activity. In this case, the Tribunal held that when the activities of the assessee were performed with prior object of promotion of growth of automobile industry in India, that is object of general public utility, hence activities of assessee in organizing seminars and conferences, etc. shall be seen de hors its main object of general public utility so as to bring case within ambit of first proviso to section 2(15) of the Act.

57. In the present case, there is no claim of assessee that the IPL and One-day cricket matches were conducted as ancillary activity to the main object of the assessee. At this juncture, it is necessary irrelevant to take cognizance of the order of ITAT, Mumbai in the case of BCCI vs. ITO(supra), as strongly relied

by the Ld. DR, wherein after evaluation of entire facts and circumstances and activities of BCCI, the Tribunal hold as follows:

“15. Rival contentions heard. On a careful consideration of the facts and circumstances of the case and on a perusal of the papers on record, as well as the case laws cited before us, we hold as follows:-

16. The undisputed facts are that the assessee society amended its objects twice i.e., firstly on 1st June 2006 and subsequently on 21st August 2007. These amended objects are yet to be examined by the Revenue authorities. The assessee society has not intimated the changes in the objects to the Revenue authorities for a period of about three years and it chose to intimate the changes only after being questioned by the Assessing Officer during the assessment proceedings. The changes made in the memorandum and in the rules and regulations on 1st June 2006, are available in the paper book from Pages-36 to 41, and the changes made on 21st August 2007, are available in the paper book from Pages-47 to 80. The registration was 10 The Board of Control for Cricket in India granted to the assessee society on 12th February 1996, based on the pre-amended memorandum and rules & regulations.

17. We agree with the findings of the DIT that granting of registration under [section 12A](#), means granting of registration based on the objects and by-laws of the society as filed by the assessee along with the application for registration. Grant of registration under [section 12A](#), does not mean that only the name of the society is registered. It means that the memorandum and by-laws are examined by the authorities and on being satisfied that the memorandum and by-laws fulfilled the conditions laid down under the Act, registration under [section 12A](#), is granted and this, in turn, enables the assessee to avail the benefit of [sections 11 to 13](#) of the Act. Thus, what is registered is the society along with its memorandum and by-laws. If there are significant or material changes in the objects or bye-laws, in our opinion, it cannot be said that

the registration under section 12A, can be extended to those amended objects and bye-laws. Any other view would defeat the very purpose of registration. The assessee has made various amendments to the Memorandum of Association as well as in the Rules and Regulations, which are placed in the paper book vide Pages-36 to 41. These changes have been highlighted during the course of hearing. We do not want to list out the amendments as the Revenue has not examined the same, clause by clause and come to any conclusion. Suffice to say that some of the amendments are material and substantive, one of them being holding ODIs and Twenty-20, any other matches, etc.

18. Now let us examine as to how the assessee views these changes. The assessee, in its 79th annual report 2007-08, has, under the head "DLF INDIAN PREMIER LEAGUE 2008 - CRICKETAINMENT", stated as follows:-

"A sporting extravaganza that captivated an entire nation is perhaps the best catchphrase to describe the event that was the inaugural season of the DLF Indian Premier League. Forty-four days of adrenaline-packed cricketing action captured the imagination of not only India, but the cricket-loving population the world over, virtually becoming an integral part of people's daily lives. The television gurus dubbed it the best ever reality television show, and what a show it was, combining the euphoria and victory with the ignominy of defeat 11 The Board of Control for Cricket in India and all as if written to a perfect script. A script that played out only when the last ball was bowled and the unfancied Rajasthan Royals of Jaipur emerged victorious.

The competition was the brainchild of Lalit Kumar Modi, currently the Vice President of the BCCI, and Chairman and Commissioner of DLF IPL. It was in 1994, that he started ideating on how a cricket-mad land like India could have a world class cricketing league like the National Basketball Association NBA or the National Football League (NFL) or even the English Premier League. The concept, as he envisaged it, was to merge sport and business for the greater good of the game. The outcome

was a global cricketing entertainment product, which will generate its strength from the millions of fans and sponsors likewise in the future. Globally, sports leagues have been modelled along the same lines, be in the English Premier League or the NBA.

The Governing Council of the IPL comprised former Test captains MAK Pataudi, Sunil Gavaskar and Ravi Shastri and I.S. Bindra. Chirayu Amin, Arjun Jetley, Rajeev Shukla and Lalit Modi.

The DLF Indian Premier League was the first time any Indian sport adopted the franchisee model in sports and conducted a Players' auction to ensure that each team in the league was balanced and competitive.

19. The said report, on this issue, concludes as follows:-

"The DLF Indian Premier League has thus get new standards in entertainments, in-stadia and on the TV. Imagine a domestic event in India being covered globally, and our young cricketers playing with the world's best, showcasing their skills and also learning with the best coaches and support staff to help them improve their game. Had anyone imagined this for Indian cricket a decade ago but it is reality today. Additionally, the adrenalin packed Twenty 20 format, which is fast paced and exciting has also appealed to a global audience. And who knows a couple of years down the line the DLF Indian Premier League could well have its first Chinese or American Players import playing for one of the eight franchises.

Projected as "Manoranjan Ka Baap" the league has thus more than lived up to all its claims and even set fresh records in TRP ratings, which have far outstripped TRPs for the soap serials. The sky is the limit, and hopefully, the DLF Indian Premier League will grow with each passing year to become the premier spectacle in Global Sport.*

**Father of Entertainment".*

20. We further note the following amendments to clause 6.2.4 of the Regulations for player, team officials, umpire and administrator.

"Prior to the amendment, Clause 6.2.4 of the Regulations for Players, Team officials, Umpires and Administrators, said "No administrator shall have, directly or indirectly any commercial interest in the matches and events conducted by the Board." After the amendment, though the clause said "no administrator shall have directly or indirectly any commercial interest in any of the events of the BCCI excluding IPL, Champions League and Twenty20".

21. These amendments when read together leaves us in no doubt that certain substantial and material changes have taken place to the memorandum, as well as to the rules and regulations which permit commercial interest to administrators in IPL, Champion League and Twenty20. In our opinion, the Revenue authorities definitely have a right to examine the question whether these changes in the memorandum, rules and regulations are in consonance with the provisions of the Act so as to enable the assessee to continue to claim benefit as a charitable institution under [section 11](#), [12](#) and [13](#) of the Act.

22. We are of the opinion that the benefits that flow from registration of an assessee under [section 12A](#), cannot be extended to the amended clauses of the memorandum and rules and regulations, otherwise an absurd situation will arise. If an institution obtains registration under [section 12A](#), on a certain objects and bye-laws, examined by the DIT and thereafter, that institution amends its objects and regulations substantially, then to hold that the registration under [section 12A](#) would hold good for the amended objects and bye-laws would be against law and the scheme of the Act. Whether the amendment is substantial or otherwise, is also to be examined by the Revenue authorities and it is not for the assessee to unilaterally declare that the amendments are not drastic or substantive. If the assessee does not intimate the Revenue of the amendments on the ground that there is no

statutory requirement, in our opinion, the assessee, as a consequence, cannot claim the benefit that flows under [section 12A](#), for these changed objects; otherwise it would amount to a situation where the assessee shifts the goalpost midway and continues to claim benefit. There might be no statutory requirement for intimating the DIT of the changes in the memorandum and rules and regulations but if the assessee does not fulfill its 13 The Board of Control for Cricket in India undertaking to furnish the changes, then he cannot claim automatic benefits under [sections 11 to 13](#) of the Act, for those altered objects, rules and regulations. Benefits under the Act cannot be claimed unless the changes are vetted by the authorities.

23. Learned Counsel for the assessee drew our attention to the provisions of [section 11\(4\)\(a\)](#) of the Act, and submitted that even if the assessee derives profit and gains of business, it does not automatically lose the benefits conferred under [sections 11 to 13](#). This does not mean that the Act allows the assessee society, to alter its objects and not intimate the same and seek approval from the Revenue, but can still claim benefit under the Act. Definitely, the examination of these issues is in the domain of the Assessing Officer while examining the claim of the assessee for exemption. It is well settled that the burden of proof, when exemption is claimed, is on the assessee. Learned Counsel argues that changes in the rules and regulations are not the grounds on which benefit under [section 11 to 13](#) can be denied. We are of the opinion that when the rules and regulations can be amended so as to permit commercial interest to the administrators, it means, the memorandum and objects permit such activities. If the rules and regulations framed are not in violation of the objects, then any drastic change in the rules would determine the manner in which the objects of the association are to be understood. Hence, in our view, changes in the rules and regulations are also material and have to be intimated to the Revenue authorities for examination. Thus, we do not find any fault in the view taken by the DIT that the assessee should take steps by intimating the changes it has made to its

memorandum and rules and regulations to the Revenue authorities and to get the same examined and approved so as to claim benefit under [section 12A](#) of the Act, for these objects also. The issue whether the changes in these objects vitiate the entire claim for exemption under [sections 11 to 13](#), has to be examined by the Assessing Officer and it is the duty of the assessee to discharge the burden of proof that lies on it for claiming exemption.

24. Learned Id. Advocate submitted that the examination of such matters is in the domain of the Assessing Officer and when DIT has not been granted specific power, he cannot withdraw or cancel the registration.

25. Learned Sr. Special Counsel, on the other hand, argues that the Revenue has not withdrawn or cancelled the registration granted under [section 12A](#) and that the DIT has only availed of an opportunity to inform the legal position to the BCCI and has for its benefit enclosed a copy of the extracts from the book "Charitable and Religious Trusts and Institutions" authored by the learned author Mr. S. Rajaratnam, so that the assessee takes suitable action.

26. When it is the stand of the Revenue that the registration granted under [section 12A](#), is not withdrawn or cancelled, the assessee society should not have any grievance. If the Assessing Officer has not understood the letter of the DIT dated 28th December 2009, as not withdrawing or canceling of the registration granted under [section 12A](#), then the assessee can rely on the stand of the Revenue before the Tribunal which is that the registration granted on 12th February 1996, is not cancelled or withdrawn. No party can take contradictory stands in different proceedings on the same issue.

27. Be that as it may, as already stated that the registration under [section 12A](#) dated 12th June 1996, has not been extended to the amended clauses of the memorandum and rules and regulations of the society. If the amended memorandum and rules and regulations of the society or the activities of the assessee are such that they are in violation of the provisions of the Act, then the

Assessing Officer is free to make assessments in accordance with law. In other words, the Assessing Officer is not bound by the registration granted under [section 12A](#), to the extent the memorandum and rules and regulations have been amended.

*28. Coming to the case laws relied upon by the parties, the same are not applicable for the reason that the decision of a co-ordinate bench of the Tribunal in *Shri Shanmukhananda Fine Arts & Sangeetha Sabha (supra)* 15 *The Board of Control for Cricket in India* relied upon by the Revenue is distinguishable as on facts it was set aside to the DIT on the ground of natural justice. When it is the stand of the Revenue that the registration under [section 12A](#), is not cancelled or withdrawn, the issue of examining the issue as to whether the DIT has power to withdraw or cancel the registration under [section 12AA\(3\)](#), or under [section 12A](#), prior to amendment, does not arise.*

29. To sum up, we are of the opinion that the registration granted under [section 12A](#), on 12th February 1996, and the benefits flowing therefrom, cannot be extended to the amended objects of the society unless the DIT examines the same and comes to a conclusion that the registration under [section 12A](#), can be extended to the revised objects, memorandum and by-laws. It would be illogical to hold that once an institution is registered under [section 12A](#), no matter whatever may be the changes in the objects, rules and regulations, for any number of times, the institution should be given the benefit of [section 11](#) to [13](#) of the Act, in view of the original registration granted under [section 12A](#). In our opinion, the assessee society should approach the registering authority with the changes and amendments so that the authorities could examine as to whether the amendments in question meet the requirement of law. Since the stand of the Revenue, as already stated, is that the letter dated 18th November 2009, is only advisory in nature and is not an exercise of a statutory power and that it is not a withdrawal or cancellation of registration under [section 12A](#), we hold that the appeal is not maintainable under [section 253](#) of the Act.”

58. In view of above, we clearly observe that the issue arose before the revenue authorities where the AO noticed that the assessee society amended its memorandum in the rules and regulations and same was not indicated or informed to the Income Tax Department. After evaluation of entire facts and circumstances, the Tribunal held that the benefit flowing from registration u/s 12A of the Act cannot be extended to the amended object of the society unless DIT examine the same and comes to conclusion registration u/s 12A can also be extended to the amended object, memorandum and bylaws.

59. The issue arose when the BCCI proceeded to conduct DLF Indian Premier League (IPL) matches by adopt franchises mandatory in sports and conducting auction to ensure that each team in the league was competitive. The ratio of the order of ITAT, Mumbai in the case of BCCI,(supra) in our humble understanding, explains that conduct of IPL matches continuously a new format of cricket which cannot be included in the activities of an association which is continuously organizing test matches other cricket tournament without any profit motive for charitable purposes with an object of general public utility. Therefore, the order of ITAT, Mumbai in the case of BCCI vs. ITO (supra) strongly supports the conclusion drawn by the authorities below.

60. In the case of Amritsar Improvement Trust vs. ACIT,(supra) the ITAT, Amritsar held that its object engaged in the activity for profit, it ceased to be charitable purpose and therefore income shall not exempt u/s 11(1)(a) of the Act. In the extant case as we have already held that the conduct of

IPL and one-day cricket matches was not activity of general public utility without any profit motive and the same was commercial in nature with profit motive under the cover and garb of charitable activities, therefore, AO was right and justified in denying u/s 11(1)(a) & 11(2) of the Act to the assessee. The Ld. AR has also placed heavy reliance on the order of ITAT, Kolkata in the case of ITO vs. Indian Leather Products Association (supra) wherein it was held that the assessee does not driven primarily by desire or motive to earn profits but to do charity through advancement of an object of general public utility, hence assessee is entitled to benefits of u/s 11 of the Act. Since in the proceeding paragraphs of this order, we clearly held that assessee was conducting IPL and One-day cricket matches on dictate and supervision of best of BCCI in the nature of commercial activity with profit motive and there was no element of charitable purpose and the advancement of “object of general public utility”, therefore, benefit of ratio of this decision is not available for the assessee in the present case.

61. The reliance has also been placed by the Ld. AR on the order of ITAT, Delhi in the case of DDIT vs. PHD Chamber of Commerce and Industry (supra) towards para 16,17 & 24 (which was authored by one of us, C.M. Garg J.M.) in that case the Ld. CIT(A) allowed the claim of exemption u/s 11 of the Act to the assessee. In the appeal filed by the Revenue, after considering the ratio of the decision of Hon'ble High Court of Delhi in the case of DIT(E) Indraprastha Cancer Society reported as 53 taxmann.com 463(Del.) and decision in

the case of India Trade Promotion Organization vs. DGIT(E) (supra) it was held that the Ld. CIT(A) was right directed the AO to allow u/s 11 of the Act for the assessee as the assessee successfully established that the activity carried out by it were conducted and derived without any profit motive. In the present case, as we have already held that the activity in conducting IPL & one-day cricket matches was commercial in the nature, under the guidance of BCCI, whose activities have been held out of ambit of its charitable objects, therefore, benefit of ratio of this decision is not available in favour of the assessee in the present case.

62. Before we part with the order we may point out that the Ld. CIT(A) has taken cognizance of decision of Hon'ble Bombay High Court in the case of BCCI v. ACIT-Central Cir. wherein the writ petition filed by the BCCI was dismissed with following observations and conclusions:

9. The assessment proceedings for Assessment Year 2004-2005 were completed on 22 December 2006. The assessee had filed an FIR with Marine Drive Police Station on 16 March 2006. The FIR covers the period from December 1995 to 4 February 2006. The letter which was addressed by the Honorary Secretary of the assessee to the Officer in Charge of the Marine Drive Police Station (Exh. B) makes it abundantly clear that the allegations of misappropriation relate to the period from the opening of the account and thereafter untill the account was closed on 4 February 2006. That period also includes the period of Assessment Year 2004-2005. In fact a close reading of the letter dated 16 March 2006 (Exh. B) indicates that specific transactions are alleged to have taken place even during the period covered by the financial year relevant to Assessment Year 2004-2005. Therefore, on a plain reading of the FIR as it stands, we are unable to accept the contention of the learned counsel for the petitioner that the filing of the FIR

was irrelevant and it was not required to be disclosed to the Assessing Officer. The allegations made by the Assessee would indicate that the income of the assessee was misappropriated and was not applied to that extent for charitable purposes. The submission of the counsel for the assessee was based on the foundation that the period covered by the FIR relates to a time span after the conclusion of the financial year relevant to Assessment Year 2004-2005. As we have noted earlier, that is factually incorrect. Be that as it may, the issue before the Court is whether there was material before the Assessing Officer on the basis of which he could have formed reason to believe that income has escaped assessment. As the record would indicate the Assessing Officer has formed that belief on the basis of the material revealed in the investigation which was carried out by the EOW, which eventually resulted in the filing of a chargesheet on 26 March 2008. The chargesheet which has been filed by the EOW would in our view constitute tangible material on the basis of which the Assessing Officer could have reopened the assessment. The Assessing Officer has stated that there was a failure on the part of the assessee to fully and truly disclose material facts necessary for the assessment for the Assessment Year 2004-2005. This conclusion of the Assessing Officer would have to be upheld, on the basis of the record as it stands. The fact that the FIR had been lodged on 16 March 2006 was a circumstance which was not disclosed to the assessing officer when the assessment proceedings for the Assessment Year 2004-2005 were pending and which concluded by the order of assessment dated 22 December 2006. The fact that the lodging of the FIR was not disclosed before the Assessing Officer is not disputed by counsel. Consequently the jurisdictional requirement in the proviso to section 147 has been duly fulfilled.

The conclusion which we have arrived at is supported by the law laid down by the Supreme Court in this respect. In Income Tax Officer Vs. Selected Dalurband Coal Co. (P) Ltd.² notices were issued under section 148 for reopening assessments for the Assessment Years 1962-63, 1963-64 and 1965-66. The notices were issued by the Assessing Officer on the basis of a letter addressed by the Chief

Mining Officer to him. The letter of the Chief Mining Officer reported that on a joint inspection made in the colliery of the assessee, upon taking underground measurements it was revealed that the assessee had under-reported the raising figures to a certain extent. A Single Judge of the Calcutta High Court allowed the petition filed by the Assessee and the Division Bench dismissed the Letters Patent Appeal. The period for which the reopening related was prior to the amendment brought about by Parliament to section 147. The judgment of the Supreme Court is significant, in that it held that the report made by a government department, after a joint inspection provided a specific estimate of excessive coal mining said to have been done by the assessee over and above the figure disclosed by it in its returns and this could provide the foundation for reopening the assessment. The Supreme Court held as follows :

"Whether the facts stated in the letter are true or not is not the concern at this stage. It may well be that the assessee may be able to establish that the facts stated in the said letter are not true but that conclusion can be arrived at only after making the necessary enquiry. At the stage of the issuance of the notice, the only question is whether there was relevant material, as stated above, on which a reasonable person could have formed the requisite belief. Since we are unable to say that the said letter could not have constituted the basis for forming such a belief, it cannot be said that the issuance of notice was invalid."

10. On behalf of the petitioners reliance was placed on the judgment of the Division Bench of this Court in S.P. Divekar and A.P. Divekar Vs. Commissioner of Income Tax (Central)³ . The judgment is clearly distinguishable for the reason that as the Division Bench held in that case the memorandum recording reasons for the reopening of the assessment was not produced either before the Appellate Assistant Commissioner or the Tribunal. There was therefore, not even a statement of the Assessing Officer indicating the reasons on the basis of which he had formed the belief that income had escaped assessment. Moreover, the Division Bench noted that there was nothing on record to indicate that the report made by another Income Tax Officer to the Inspecting Assistant

Commissioner was before the Assessing Officer when he issued a notice for reopening the assessment under section 34 of the Income Tax Act, 1922. That judgment therefore, is clearly on a situation which was different in law and in fact.

11. In its decision in Indian Hume Pipe Co. Ltd. Vs. The Assistant Commissioner of Income Tax, Central Circle 22 and Ors. 4 this court after adverting to the requirements of section 147 has observed as follows :

"Full and true disclosures must mean what the statute says. These disclosures cannot be garbled or hidden in the crevices of the documentary material which has been filed by the assessee with the Assessing Officer. The assessee must act with candor and the disclosure must be full and true. A full disclosure is a disclosure of all material facts which does not contain any hidden material or suppression of fact. A true disclosure is a disclosure which is truthful in all respects. Just as the power of the Revenue to reopen an assessment beyond a period of four years is restricted by the conditions precedent spelt out in the proviso to Section 147, equally an assessee who seeks the benefit of the proviso to Section 147 must make a full and true disclosure of all primary facts."

12. In Hindustan Lever Ltd. Vs. R.B. Wadkar, Assistant Commissioner of Income Tax and Others⁵ , a Division Bench of this Court has laid down that the reasons recorded by the Assessing Officer contain a manifestation of his mind and provide the link between the conclusion and the evidence. In the present case, the reasons indicated by the Assessing Officer meet the requirements as spelt out in that judgment.

13. For the reasons that we have indicated, we have come to the conclusion that

(i) The Assessing Officer had sufficient material on the basis of which he has formed a reason to believe that the income of the assessee for Assessment Year 2004-2005 has escaped assessment;

(ii) The jurisdictional requirement contained in the proviso to section 147 has been duly fulfilled. We however, clarify that this would not preclude the assessee, in the course of assessment proceedings, to urge all appropriate

submissions on the merits on the issues which would be determined by the Assessing Officer.

14. Hence, we do not find any reason to entertain the petition. The Petition shall accordingly stand dismissed. There shall be no order as to costs.

63. In view of above conclusion drawn by the Hon'ble Bombay High Court, it is clearly discernable that their lordship observed that the fact with the lodging of FIR by the assessee was not disclosed before the AO and the income of the BCCI was misappropriated and was not applied to that extent for charitable purposes. This fact again supports the conclusion drawn by the revenue authorities. After considering the totality of facts and circumstances along with rival argument advanced before us by the respective representative of both the parties and after considering the ratio of the decisions/orders relied by them are kept in juxtaposition and analysed, then we find that in fact, the appellant association conducted IPL and One-day cricket matches under dictate and supervision of BCCI, which was gathered by BCCI by sharing its income with the assessee which was earned from IPL and other similar activities in the nature of commercial venture with profit motive. Otherwise, what was the cause which prompted the appellant association to allow use of its entire infrastructure to BCCI for conduct of IPL matches and to earn huge amounts by way of sale of tickets, sale of media and telecasting of event and other rights? This fact could not be negated or controverted by the Ld. DR that the appellant association received huge amounts from BCCI and the object or purchase which could be gathered or under stood from the documents

under which such payments were made by the BCCI to the assessee have not been placed on record by the assessee association. The appellant association has not come forward to claim exemption u/s 11 of the Act with clean hands. Therefore, we are unable to understand what charity or object of general public utility has been done by the appellant in conducting or organizing IPL & one-day cricket matches. We sincerely, cautiously and judiciously tried our best to pursue ourselves to consider the submissions of the assessee but ultimately and finally found that the objects on paper in conduct of other cricket tournaments including test matches may be good but we find negative answer to the question as to wherever these so called charitable objects were really achieved by conduct of IPL & one-day cricket matches and the reply is "NO".

64. On the basis of forgoing discussion and after considering totality of factual matrix of the case in the light of the ratio of the decision and orders cited at the Bar by both the parties, we reach to a logical conclusion that the conduct of IPL and one-day cricket matches by the assessee association were the activity in commercial nature with profit motive and hence, the same was hit by the proviso inserted w.e.f. 01.04.2009 to section 2(15) of the Act and therefore, the AO was quite correct and justified in denying the benefit exemption u/s 11(1)(a) and 11(2) of the Act to the appellant association. It is also relevant to mention that by conducting one (01) One-day cricket match & 2 IPL matches, against receipts of fees, which were in the nature of commercial venture with profit motive and gross

receipts were above 25 lakhs. Consequently, the case of appellant comes within the ambit of first proviso to section 2(15) of the Act. Accordingly, Ground Nos. 1 to 3 (e) of the assessee being devoid of merits are dismissed.

65. In the result, the appeal filed by the Assessee is dismissed and consequently the order of the Ld. CIT(A), upholding the order of the Assessing Officer u/s 11(1)(a) & 11(2) of the Act is confirmed.

Order was pronounced in the open court on 14.06.2017.

Sd/-
(O.P. MEENA)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

Indore; दिनांक Dated :14/ 06/2017

Patel. P.S./नि.स.