

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.8860/Del/2019
Assessment Year: 2010-11

DCIT (E)-1,
Ghaziabad.

Vs Uttar Pradesh Cricket Association,
E-23, Kamla Nagar Township,
Kanpur.

PAN: AAACU7822R

(Appellant)

(Respondent)

Assessee by : None
Revenue by : Ms. Sapna Bhatia, CIT-DR
Date of Hearing : 15.07.2024
Date of Pronouncement : 23.07.2024

ORDER

PER ANUBHAV SHARMA, JM:

This is appeal preferred by the Revenue against the order dated 08.08.2019 of the Commissioner of Income Tax (Appeals)-II, Kanpur (hereinafter referred to as the Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.CIT(A)-II/DCIT-6/10700/2016-17 arising out of the appeal before it against the order passed u/s 143(3) of the Income Tax Act, 1961

(hereinafter referred to as 'the Act') by the ACIT-1, Kanpur (hereinafter referred to as the Ld. AO).

2. The facts of the case, in brief, are that the assessee company is a section 25 company registered with Registrar of Companies and is a sports organization working for the advancement and promotion of games and sports, particularly, cricket in the State of Uttar Pradesh. The assessee was affiliated with BCCI. The registration u/s 12A was granted to the assessee by the Id. CIT, Kanpur w.e.f. 27.12.2005. The assessee was also granted exemption u/s 12AA of the Act. The return declaring nil income was filed on 21.09.2010 after claiming exemption u/s 11/12 of the Act. The return was accompanied by audited copies of accounts in Form No.10B audited as per the provisions of section 12A(b) of the Act. The return was processed u/s 143(1) of the Act at the returned income on 20.04.2011. Later on, the case was taken up for compulsory scrutiny as per the norms laid down in Board's guidelines contained in the Action Plan for F.Y. 2011-12 and notice u/s 143(2) dated 01.09.2011 was issued fixing the date of compliance as 14.09.2011. Further notices u/s 143(2) and 142(1) along with questionnaire dated 31.08.2012 were issued requesting to make compliance of the queries given on the date fixed which was 20.09.2012. As per the Income and Expenditure Account, the total receipts has been shown at Rs.29,52,56,009/- including interest income of Rs.3,99,29,592/- and excess of income over expenditure has been shown at Rs.4,23,17,761/-. During the year

under consideration, the assessee has set apart Rs.21,50,00,000/- u/s 11(2) and Rs.3,79,38,248/- applied for charitable purposes including Rs.15,97,277/- applied on account of capital expenditure for the purpose of cricket bowling machine, DG set, Gym Equipment, etc. In this regard, a show cause notice dated 11.03.2013 was issued to the assessee for cancellation of registration u/s 12AA of the Act due to change in the definition of charitable purpose u/s 2(15) of the Act for AY 2010-11. Being not satisfied with the various explanations given by the assessee, the AO computed the income of the assessee under the head 'Business & profession' at Rs.25,73,17,761/- and allowing the deduction of Rs.3,79,38,248/- towards Revenue expenditure, observing as under:-

“The replies filed by the assessee have been looked into carefully but have no leg to stand in view of the provisions of Section 13(8) which read as under:-

“Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.”

3. In appeal, the ld.CIT(A) allowed the grounds of the assessee and deleted the addition made by the AO.

4. Aggrieved by the order of the ld.CIT(A), The Revenue is in appeal before us raising the following grounds:-

“1. The ld.CIT(A) has erred in law and facts in deleting addition of Rs.25,73,17,761/- by the AO without appreciating the fact that the activities of the Association are not charitable in nature.

2. *The ld.CIT(A) has erred in law and facts in allowing the appeal of the assessee without appreciating the fact that the action of the AO denying exemption u/s 11 & 12 of the IT Act was rightly taken in light of the facts that the Association was found to be involved in business activities.*

3. *The order of the ld.CIT(A) be cancelled and the order of the AO be restored.”*

5. We have given thoughtful consideration to the matter on record and have gone through the judgement of the Hon’ble Supreme Court in the case of **ACIT vs. Ahmedabad Urban Development Authority Civil appeal no. 21762 of 2017 dated 19 October 2022.** We consider it appropriate to reproduce the relevant part of the said order, as applicable to the assessee like the present:-

“225. At the outset, the contention that sports promotion is ‘education’ and hence, per se exempt, has to be dealt with. In Lok Shikshana Trust (supra) this court has comprehensively addressed the scope of the term, and conclude that it would entail “scholastic” education:

“5. The sense in which the word “education” has been used in Section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word “education” has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in

which the word “education” is used in clause (15) of Section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling.”

Therefore, there is no doubt that the claim of the present sport associations will not fall within ‘education’ and will have to be examined under the fourth limb of Section 2(15) – i.e., GPU category, if it is to make a case for tax exemption. 226. BCCI is the body which regulates cricket and represents the country. Within the country it organizes and conducts the Ranji Trophy, the Irani Trophy, the Duleep Singh Trophy, the Deodar Trophy and the NKP Salve Challenge Trophy. These are domestic events, yet only those who are members of the Board and/or recognized by it can take part in these events. The members of the Board (entitled to vote in its election) are the state cricket associations.¹⁵⁴ The BCCI is the country-level cricket regulator both off and on the fields, and its functions include selection of players and umpires. The International Cricket Council (of which BCCI, as the representative body of the country, is a member) possesses and exercises all the powers to regulate international competitive cricket. It also exercises disciplinary power – in case of violation of the rules, a country member or the player may be derecognized. The ICC exercises a monopoly over the sports at the international level whereas BCCI does so at the country level. BCCI recognizes bodies which are entitled to participate in the nominated tournaments. Players and umpires also are to be registered with it.

227. The game of competitive cricket, at the organizational level is structured in such a manner that BCCI has umbilical ties with the state associations. Not only are the latter, the members who constitute BCCI and elect its governing bodies, they also own vital infrastructure necessary to play cricket: such as stadia, and all related facilities. BCCI does not own those facilities or infrastructure and depends on them. Furthermore, the state associations are the channels through which players are mostly selected, and get opportunities to participate in state, national and international level cricket.

228. As things stand, therefore, the state associations and BCCI are linked closely. The management of the game of cricket is structured in such a way that this link is apparent at every match or fixture of significance. In the course of conducting matches (which are scheduled by the BCCI as the national coordinating body), apart from amounts received towards sale of entry tickets, the state associations also receive advertisement money, sponsorship fee, etc. from the BCCI. Aside from these, media rights - i.e., broadcasting rights to each national or international event conducted at various locales owned by the state associations, and digital rights (all of which are exclusive, in nature) -

are auctioned by BCCI. As noticed above, the BCCI, by its own admission, negotiates the terms on which media rights are sold, on behalf of the state associations:

“For a Test series or ODI series conducted in multiple centers and organised by BCCI and multiple state associations, it was found that if each state association were to negotiate the sale of rights to events in its centre, its negotiating strength would be low. It was, therefore, agreed that BCCI would negotiate the sale of media rights for the entire country to optimize the income under this head. It was further decided that out of the receipts from the sale of media rights 70% of the gross revenue less production cost would belong to the state associations. Every year, BCCI has paid out exactly 70% of its receipts from media rights (less- production cost) to the state associations. This amount has been utilized by the respective associations to build infrastructure and promote cricket, making the game more popular, nurturing and encouraging cricket talent, and leading to higher revenues from media rights.”

229. These media, or broadcasting rights, are in the nature of intellectual property rights: under Section 37 to 40 of the Copyrights Act, 1957. These rights- especially television and digital rights enable the licensee or the successful bidder to exploit the telecast or broadcast commercially, by carrying advertisements of various products and services, in the media. Given that (i) BCCI does not own the stadia, and uses the entire physical infrastructure of the state associations (ii) expressly negotiates on their behalf for the sale of such rights (which appear to be purely commercial contracts), the associations’ assertions that they only received subsidy from BCCI, needed closer examination.

230. The income and expenditure account for the year ending on 31.03.2009 shows that the total income of the GCA was ₹4,03,98,736.81. Of these sponsorship money was ₹20,00,000/-; bank interest was ₹2,21,88,527.05 and as against the head ‘India v. South Africa test match’, the sum of ₹1,51,97,741/- has been shown. Of the total of ₹2,21,02,441.45 shown as income, ₹32,24,591.25 is shown as expenditure, only a fraction appears to have been expended towards promotion of cricket. This is apparent from the following:

S. No.	Details of expenditure	Amounts
1.	Ground equipment of District Cricket Association	₹ 29,34,394/-
2.	Prize money to all teams	₹ 27,86,796/-
3.	Ground expenditure	₹ 20,06,228/-

4.	<i>Cricket academy expenses</i>	₹ 9,51,067/-
5.	<i>Coach Fee</i>	₹ 10,06,040/-
6.	<i>Senior and Junior tournament subsidy to District Cricket Association</i>	₹ 7,00,000/-
	<i>Total</i>	₹ 1,03,84,525/-

231. *The details of the subsidy amounts received from BCCI for every match has been shown. This aggregates to over ₹41 lakhs. Furthermore, the details received towards the India-South Africa test fixture paid between 03.04.2008-04.04.2008 has been shown. GCA received ₹1,57,00,000/- towards sale of space; ticket sales yielded ₹27,57,700 and towards the head screen income, a sum of ₹3 lakhs was received. After deducting the expenditure, the excess income received for the year was ₹1,51,97,741/-.*

232. *In the case of Saurashtra Cricket Association, for the year ended on 31.03.2012, various heads of income have been disclosed. These include entry fees which is ₹5200 onwards. Interest of income received from Fixed Deposits was to the tune of ₹8,85,67,418/-; total amount of subsidy received from BCCI is ₹17,56,72,490/-. Of these, the overwhelming share is towards the IPL money collected by the BCCI – wherein Saurashtra Cricket Association’s share worked out to a total of ₹17,16,32,490/-.*

233. *Apart from this, the BCCI also reimbursed to Saurashtra Cricket Association the sum of ₹73,73,911/-. The income and expenditure account shows a head titled “subvention income from BCCI” to the extent of ₹8,14,53,834/-. After deducting the heads of expenditure, excess of income over expenditure for the AY was ₹69,96,537/-. The Cricket Association showed in the expenditure column that the sum of ₹24,00,00,000/- was transferred to the Cricket infrastructure fund. For the previous year, a sum of ₹21,21,00,000/- was transferred to the stadium fund.*

234. *It is quite evident that the activities of the cricket associations are run on business lines. The associations own physical and other infrastructure, maintain them, have arrangements for permanent manpower and have well-organised supply chains to cater to the several matches they host. Many such matches are not at national level and are under-16 or under-18 matches at the regional level. However, these activities are not to be seen in isolation but are to be regarded as part of the overall scheme, and ecosystem in which the game of cricket is organized in India. Talent is spotted, at local levels and dependent on the promise shown, given appropriate exposure.*

235. *On a close scrutiny of the expenses borne, having regard to the nature of receipts, the expenditure incurred by Cricket Associations does not disclose that any significant proportion is expended towards sustained or organized coaching camps or academies. Therefore, in the opinion of this court, the ITAT fell into error in not considering the nature of receipts flowing from the BCCI into the corpus of GCA and SCA – as well as other associations that are before this court- to determine their true character. The ITAT appears to have been swayed by the submission that the amount given by the BCCI were towards capital subsidy.*

236. *To determine whether a given receipt is to be characterized as falling in the revenue or capital stream, the objective for which it is given as well as the manner in which it is utilized has to be scrutinized. This aspect has been highlighted in Sahney Steel & Press Works Ltd v. Commissioner of Income Tax¹⁵⁵ in the following terms:*

“It is not the source from which the amount is paid to the assessee which is determinative of the question whether the subsidy payments are of revenue or capital nature. The first proposition stated by Viscount Simon in Ostime case [28 TC 261 : (1946) 1 All ER 668] is that if payments in the nature of subsidy from public funds are made to the assessee to assist him in carrying on his trade or business, they are trade receipts.”

This has later been followed in Commissioner of Income Tax v. Ponni Sugars

237. *Recent trends have shown that media rights, especially broadcasting and digital media rights have yielded colossal revenues to the BCCI. The model adopted in the last 10 years or so has been to auction media rights in respect of events over a 3 or 5-year period. As discussed previously, these media rights are not per se owned by BCCI, which is but an association of persons or agglomerate of all the State Cricket Association. The stadia which form the venue for these cricket matches (in relation to which media rights are transferred or licensed) are owned by the State Cricket Associations. According to the BCCI itself, the State Associations can well bargain and enter into arrangements for the sale of such media rights. However, to obtain better terms, and gain bargaining leverage a centralized form of sale of such rights has been agreed and adopted by which the BCCI auctions these rights on behalf of the State Associations. All State Associations put together are entitled to 70% of the revenue – i.e., the proceeds of sale of the media rights. This may or may not be in proportion to the events hosted by each or some of the cricket associations. Yet, this forms part of the arrangement by which the consideration flowing from such commercial rights has been agreed to be*

shared amongst all members of the BCCI. These rights are apparently commercial.

238. In the light of these, the Court is of the opinion that the ITAT – as well as the High Court fell into error in accepting at face value the submission that the amounts made over by BCCI to the cricket associations were in the nature of infrastructure subsidy. In each case, and for every year, the tax authorities are under an obligation to carefully examine and see the pattern of receipts and expenditure. Whilst doing so, the nature of rights conveyed by the BCCI to the successful bidders, in other words, the content of broadcast rights as well as the arrangement with respect to state associations (either in the form of master documents, resolutions or individual agreements with state associations) have to be examined. It goes without saying that there need not be an exact correlation or a proportionate division between the receipt and the actual expenditure. This is in line with the principle that what is an adequate consideration for something which is agreed upon by parties is a matter best left to them. These observations are not however, to be treated as final; the parties' contentions in this regard are to be considered on their merit."

6. In the light of the aforesaid determination of the issue in favour of Revenue, by the Hon'ble Supreme Court, the order of the Id.CIT(A) which was based on the following judgements cannot be sustained:-

- (i) DCIT (Exem) vs. Maharashtra Cricket Association (2018) 407 ITR 9 (Bom); and
- (ii) Chattisgarh State Cricket Sangh vs. DCIT (Exem) (2019) 178 DTR (Raipur) 369

7. Therefore, the issue is restored to the files of Id.CIT(A) to decide afresh in the light of the Judgment of the Hon'ble Supreme Court in the case of **ACIT vs. Ahmedabad Urban Development Authority (supra)**.

8. In the result, the appeal of the Revenue is allowed for statistical purposes only.

Order pronounced in the open court on 23.07.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 23rd July, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi