

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 388/JP/2012 & 944/JP/2013
निर्धारण वर्ष/Assessment Years : 2008-09 & 2009-10.

M/s Rajasthan Cricket Association, North Block, SMS Stadium, Ambedkar Circle, New Vidhan Sabha, Jaipur.	बनाम Vs.	The Additional Commissioner of Income Tax, Range-2(3) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAATR 0798 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 921/JP/2013
निर्धारण वर्ष/Assessment Years : 2009-10.

The Additional Commissioner of Income Tax, Range-2(3), Jaipur.	बनाम Vs.	M/s Rajasthan Cricket Association, North Block, SMS Stadium, Ambedkar Circle, New Vidhan Sabha, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAATR 0798 J		
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निर्धारिती की ओर से / Assessee by : Shri O.P. Aggarwal, Shri Manish Aggarwal & Shri Vijay Garg (CA)

राजस्व की ओर से / Revenue by: Shri D.S.Kothari CIT (DR)

सुनवाई की तारीख / Date of Hearing : 22.02.2017.

घोषणा की तारीख / Date of Pronouncement : 23/03/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This Bunch of three appeals, two by the assessee i.e. **388/JP/2012** pertaining to assessment year 2008-09 and **944/JP/2013**, pertaining to assessment year 2009-10 and one by the Revenue i.e **921/JP/2013** pertaining to the assessment year 2009-10 directed against the different orders of the Ld. CIT (A) Jaipur, dated 15/2/2012 and 30/9/2013 respectively. Since the common issues are

involved in these appeals. All these appeals were taken up together and are being disposed of by way of consolidated order for the sake of convenience.

First we take up the assessee's appeal in ITA No. **388/JP/2012**, pertaining to the assessment year 2008-09. The assessee has raised following grounds of appeal.

1. "The impugned additions and disallowances made in the order u/s 143(3) dated 29/12/2010 are bad in law and on facts of the case, or want of jurisdiction and various other reasons and hence the same kindly be deleted.
2. The Id. CIT(A) erred in law as well as on the facts of the case in confirming the denial of exemption u/s 11 of the Act by the AO. Such denial and confirmation being totally contrary to the provisions of law and facts, the exemption so withdrawn be restored back.
3. The Id. AO erred in law as well as on the facts of the case in recording findings of fact which are contrary & perverse to the record by wrongly holding that there was substantive changes made in the main objects and also erred in wrongly holding that it was mandatory on the part of the appellant to have intimated the same to the registering authority and further erred thereby, in withdrawing the exemption u/s 11 of the Act. Such findings and conclusion deserves to be quashed and the exemption so withdrawn be restored back.
4. The Id. CIT(A) further erred in law as well as on the facts of the case in confirming the taxation of the appellant in the status of AOP without allowing exemptions u/s 11(1) and 11(2) of the Act and computing the income under normal provisions of the Act. Such action being contrary to the provisions of law and facts on record, the income be assessed at Nil.
5. The AO & Id. CIT(A) further erred in law as well as on the facts of the case in charging tax at the maximum marginal rate which also being contrary to the provisions of law hence being without jurisdiction and contrary to the facts, such taxation be quashed.
6. **'6,15,32,225/-**: The Id. CIT(A) further erred in law as well as on the facts of the case in confirming the disallowance of the expenses incurred on the acquisition of the capital asset, claimed as application of income u/s 11 of the Act. The disallowance so made and confirmed being contrary to the provision of law and facts on record, be deleted on full.
7. The Id. CIT(A) further erred in law as well as on the facts of the case in also confirming the denial of exemption u/s 11 of the Act on the other grounds being the activities of the trust being run on commercial basis and there being no element of charity. The conclusion so drawn and the denial of the exemption u/s 11 of the Act being contrary to the provision of law and facts, such conclusion be reversed and the exemption be restored.

8. **‘4,07,58,505/-**: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the assessment of income at ‘4,07,58,505/- as business income in the hands of the appellant which being completely contrary to the provisions of law and facts be deleted in full and the income of the appellant be assessed at nil.
9. The Id. CIT(A) further erred in law as well as on the facts of the case in confirming the charging interest u/s 234D of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full.
10. The appellant prays your honour indulgences to add, amend or alter to or any of the grounds of the appeal on or before the date of hearing.”

2. Briefly, stated the facts are that a return declaring total income of Rs. Nil for the assessment year 2008-09 was filed by the assessee on 29/9/2008. Thereafter, the case was selected for scrutiny and while framing the assessment under section 143(3) of the Income Tax Act 1961,(hereinafter referred to as the Act) the assessing officer denied exemption claimed under section 11 for want of fresh registration , thereby the assessing officer computed net income of Rs. 4,07,58,505/-. The assessing Officer treated the gross receipts as income from business. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submission partly allowed the appeal. However, he sustained the income computed by the Assessing Officer at Rs. 4,07,58,505/-.

2. Aggrieved by this the assessee is in further appeal before this Tribunal. At the time, the Id. Counsel for the assessee stated that he does not wish to press ground no. 1. The Id. CIT(DR) has no objection. The ground no. 1 of the assessee’s appeal is dismissed as not pressed.

3. Ground nos. 2 to 8 are against denial of exemptions and computation of income as business income since the ground nos. 2 to 8 inter-related are taken up together for the disposal.

The Id. Counsel for the assessee reiterated the submissions as made in the written submissions. The submissions of the Id. Counsel for the assessee are reproduced as under:

"Brief facts of the case are that assessee is an association registered under Rajasthan Sports (Registration, Recognition and regulation of Association) Act, 2005 and formed with the objective of promoting the sport of Cricket within the State of Rajasthan. RCA, under a Memorandum of Understanding with Rajasthan State Council has exclusive use and possession of Sawai Mansingh Stadium for the purposes of organizing national and international cricket matches. The main object of the association is to control, supervise, regulate or encourage, promote and develop the game of cricket in the areas under the jurisdiction of Association on no profit no loss basis. Assessee was holding registration u/s 12A w.e.f. 25.11.1988 and thus was claiming exemption u/s 11. For the year relevant to appeal, assessee filed return of income on 29.09.2008 declaring total income at NIL. Case got selected for scrutiny and Ld. AO completed the assessment u/s 143(3) withdrawing exemption u/s11 for the reason that he observed certain amendments were carried out in memorandum of association and rules of assessee association in F.Y.1998-99 & later in 2004-05, which were not intimated to Ld. CIT, thus, registration granted on the basis of memorandum and rules as they stood prior to amendment, deserved to be cancelled. On the basis of information of Ld. AO, Ld. CIT withdrew registration u/s 12A of the Income Tax Act, 1961 to the assessee from A.Y. 2005-06 and onwards. Also, Ld. AO observed that assessee had earned substantial income in the shape of subsidy from BCCI, Advertisement income, membership fees etc. and concluded that since assessee was earning huge surplus, the same was not in the nature of charitable purpose and rather in the nature of business.

Accordingly, assessment was completed by Ld. AO by withdrawing exemption u/s 11 and thereby computing the total income of association at Rs. 4,07,58,510/- considering the same as AOP.

An appeal was filed before Ld. CIT(A) against assessment order, which was decided vide order dated 15.02.2012, upholding the order of AO with respect of denial of exemption u/s 11, however issue

with respect to registration u/s 12A was not adjudicated by Ld. CIT(A) as the matter of withdrawal of exemption was pending before ITAT.

Appeal filed before Hon'ble ITAT against order of Ld. CIT cancelling registration, was decided vide order dated 13.07.2012 in ITA No. 69/JP/2011, setting aside the order withdrawing registration and directing CIT to decide matter afresh.

Ld. CIT, vide order 28.03.2013 again withdrew registration u/s 12A primarily relying upon observations of AO. Assessee filed appeal against order of CIT, which was decided by Hon'ble ITAT vide order dated 09.06.2016. Vide said order, Hon'ble ITAT at page 16 para 5, decided the appeal in favour of assessee by observing as under:

*"We have heard the rival contentions of both the parties and perused the material available on the record. It is undisputed fact that the assessee was granted registration u/s 12A on 25.11.1988, which has been withdrawn twice by the Ld. CIT. The issue has been set aside by the Coordinate Bench to reconsider the withdrawn of registration, which was also challenged by the revenue before the Hon'ble Rajasthan High Court, who has allowed the assessee's prayer and directed to consider the application afresh without influencing any of the observation made by the appellate authority. The assessee has been provided reasonable opportunity of being heard by the Ld. CIT. The assessee trust made it clear that this amendment in object of memorandum in 2005 was due to change made in the Rajasthan Sports (registration, Recognition and Regulation of Association) Act, 2005. The amended objects were not voluntary change. The assessee has to follow the said laws related to sports activities. The **comparison given by the Ld. CIT in his order dated 28.03.2013 does not show any fundamental deviation from the original charitable activities to non-charitable activities. The assessee's object to promote the cricket in State by providing / involving various activities at the district level to state level through coaching provided by coaches, ground and facilities etc. Therefore, the assessee's activities are charitable. The other activities are incidental or conducive of the main activity.** The case laws referred by the assessee particularly the Hon'ble Delhi High Court decision in the case of Mool Chand Khairati Trust (supra) is squarely applicable as the assessee amended the provisions, does not change the character of the assessee from charitable to non-charitable or commercial. **At the time of registration, the Ld. CIT has to consider Section 12AA(3) and he has to consider two conditions for rejection of registration granted (i) the activities of the trust are not genuine, (ii) are not being carried out in accordance with the object of the trust as the case may be. The Ld. CIT has not found any infirmity in the activities carried out by the RCA as non-genuine or not being carried out as per object of the trust. It is also a fact that the game of cricket become very potential with reference to revenue compared to other games, therefore, the revenue generated by the RCA are substantial but this ground cannot be used to cancel the registration granted by the Ld. CIT as predominant object of the trust is charitable and substantial revenue generated is incidental to the main object.** If, the Ld. Assessing Officer found any violation in application of fund, he can make disallowance u/s 11 of the Act. Thus, we*

are of the considered view that the Ld. CIT was not right in withdrawing the registration granted u/s 12A of the Act. Accordingly, the assessee's appeal is allowed."

In view of above, it is submitted that now since the registration granted u/s 12A has been restored pursuant to order dated 09.07.2016 passed by Hon'ble ITAT in ITA No. 544/JP82013 (**APB 13-30**), assessee is eligible to claim exemption u/s 11 subject to the fulfillment of conditions prescribed therein and further if there is no violation to section 13.

Assessee's Ground of Appeal No. 1:

Not pressed.

Assessee's ground of Appeal No. 2 to 5 & 7:

In grounds of appeal no.2 to 5, assessee has challenged the action of Ld. CIT(A) in confirming the action of Ld. AO in denying exemption u/s 11 and assessing the assessee in the status of AOP by applying maximum marginal rate whereas in ground of appeal no.7 assessee has challenged the action of AO in denying exemption on the allegation that activities of assessee are being run on commercial basis. All the grounds being related are being dealt herewith together for the sake of convenience:

In this regard, at the outset it is submitted that all the grounds of appeal relate to denial of exemption u/s 11. Further, for claiming exemption u/s 11, pre conditions are that:

- (i) assessee holds a valid registration u/s 12A
- (ii) income is applied in accordance with the provisions of section 11 and
- (iii) there is no violation in terms with section 13.

In the instant case, so far as registration u/s 12A is concerned, the same is restored by Hon'ble ITAT, thus assessee can claim exemption u/s 11 subject to the fulfillment of conditions prescribed u/s 11 r.w.s.13.

Section 11 of the Income Tax Act provides exemption in respect of income of charitable or religious trusts if the same is applied towards the objects of the trusts. A summary of provisions of section 11 is as under:

- (i) **If income is “applied” to charitable/ religious purposes in India 11(1)(a) & 11(1)(b):** to the extent it is actually applied to such purposes during the financial year. Even courts have held that if the expenditure is on capital account on object(s) contained in the object clause, the expenditure will amount to application of income. Further, to be eligible to claim exemption, at least 85 % of income has to be applied towards charitable/ religious purposes, however certain relaxations are provided in the Act.
- (ii) **Income applied outside India 11(1)(c):** is exempt provided such application of income promotes international welfare in which India is interested subject to prior approval of board.
- (iii) **Corpus Donation 11(1)(d):** i.e. voluntary contributions received with specific direction from the donor that they shall form part of corpus.
- (iv) **Capital Gains 11(1A):** will be deemed to have been applied to charitable purposes and will be exempt to the extent they are reinvested in a new capital asset.
- (v) **Income “accumulated or set apart for application”:** to the extent of 15% of income derived during the year.

Section 11(2): permits accumulation of income in addition to 15% as stated above, for specific purpose (s). Such accumulation or setting apart has to be for definite and concrete purposes and should not be vague.

Section 11(3) provides circumstances under which income set apart to be applied in future, i.e. set apart u/s 11(2) shall be deemed to be income of assessee, which are primarily:

- (i) sums applied for purposes other than charitable or religious purposes
- (ii) ceases to remain invested in the modes specified u/s 11(5)
- (iii) not utilized for the purpose for which it was accumulated or set apart
- (iv) is credited or paid to any trust or institution registered u/s 12AA or to any fund or institution or trust or any university or other education institution or hospital; or other medical institution referred to in sub clause (iv) or sub clause (v) or sub clause (vi) or sub clause (via) of clause (23C) of section 10.

Further, **section 13** provides certain **circumstances under which section 11 is not applicable**. These are:

- (i) any part of income from property held under trust for private religious purposes, which does not result into benefit of the public.
- (ii) any income of trust or institution created or established for the benefit of any particular religious community or caste.

- (iii) if any part of income directly/ indirectly benefits author/ founder/ trustee/ manager or such other person specified u/s 13(3)
- (iv) funds remain invested in modes other than 11(5)
- (v) Income of charitable institution engaged in the advancement of “any other object of general public utility” if it involves carrying on of any trade, commerce or business activity.

Apart from above, the most relevant provision is section 2(15), wherein the word “charitable purpose” is defined as to include:

- (a) relief of the poor,
- (b) education,
- (c) medical relief, and
- (d) advancement of any other object of general public utility.

However, with effect from 01.04.2009 (i.e., from assessment year 2009-10 onwards), section 2(15) has been amended to the extent that, the “advancement of any other object of general public utility” shall not qualify as a “charitable purpose” if the same involves the carrying on of any activity in the nature of trade, commerce or business, or rendering of any service in relation to any trade, commerce or business, for a consideration.

Now coming to the merits of the case, at the outset, brief background of assessee association is submitted as under:

Rajasthan Cricket Association (RCA) is duly registered under the provision of Rajasthan Sports (Registration, Recognition and Regulation of Association) Act, 2005. The Association was **formed solely with the objective of promoting the sport of cricket within the State of Rajasthan**. The State Government through this law regulates, recognizes and facilitates sport activities in the State. Rajasthan Sports (Registration, Recognition and Regulation of Association) Rules, 2004, vide rule 6(1) necessarily required the existing sport associations to amend their constitution to bring the same in conformity with the ordinance (Act). A registration under the act was also made mandatory and accordingly, RCA was also granted registration vide Registrar Co-Operative Societies dated 27.04.2005 at Kri. San. / Rajya / 020/2005 (**APB 75-75A**). Stringent provisions for enquiry and withdrawal of registration are available in the act. Thus, the sport associations including the RCA **are under direct control and supervision of the Registrar under this Act**.

Thus, being engaged in the promotion of sport of cricket, assessee is carrying on charitable activity in the nature of "advancement of any other object of general public utility" and was claiming and being allowed exemption under said category. However, for the year under consideration, Ld. AO has denied exemption holding that activities are being carried on commercial basis.

In this regard, at the outset, it is humbly submitted that the amendment in section 2(15), pursuant to which AO has withdrawn status of assessee as "charitable" was carried out vide Finance Act,2010, w.r.e.f.1.04.2009, thus said provisions would not apply in the year under consideration. In other words, prior to amendment, exemption under section 11 was eligible in respect of charitable institutions engaged in "advancement of any other object of general public utility" even if activities result into profits incidentally provided that such income is applied in accordance with the provisions of section 11. Further, there no allegation regarding violation as per section 13, thus withdrawal of exemption on the grounds of commerciality for the year under consideration is bad in law. It is thus prayed that exemption claimed by assessee may please be allowed. However, without prejudice to this, our submission on merits is as under:

Ld. AO by observing huge surplus concluded that activities of the assessee were profit oriented and assessee was carrying its activities on commercial basis. It is noteworthy here that the term "any other activity in the nature of trade, commerce or business" is not defined and thus the same has to be understood in common parlance, and accordingly expression trade, commerce or business has to be understood as a regular and systematic activity with the primary motive to earn profit, whereas the Association **never acted as a professional advertiser**, TV producer etc. No matches of any game other than cricket or no other events are organized to attract audience rather only cricket matches are being organized whether the **same result into profit or loss. Further**, all the cricket matches do not attract audience, e.g. matches between India v/s South Africa and India v/s New-Zealand could not even reach upto 70-80% of the collection. However, during the year under consideration, assessee organized ODI match between India vs Pakistan from which substantial surplus was earned. Your honours would appreciate the popularity of India Pakistan matches. Hon'ble Madras High Court in the case of **TamilNadu Cricket Association** has held that volume should not be the sole consideration to decide the activity of the society rather the nature of activity vis a vis the predominant object is to be seen which in our case is charitable in nature.

Further, being registered under Rajasthan Sports (Registration, Recognition and Regulation of Association) Act, 2005, assessee is authorized as well as well equipped for organizing all the cricket matches taking place in the state of Rajasthan.

At this juncture, it would be pertinent to state that all the payments in the shape of sponsorship, advertisement, T.V. rights etc. are received directly by BCCI. Further, BCCI delegates the organization of matches to state association and in turn state association gets some funds for promotion and expansion of their charitable activities.

Apart from this, major benefit by organizing these matches is that local teams, being trained by RCA, get opportunity to learn from experience of coaches of international level by assisting them during practice matches and by witnessing the matches played by international players, by spending time with them etc. Your honours would appreciate that it is not possible to take the entire team to locations where matches are being played. So, ultimately, organising such matches results into promotion of sport of cricket and surplus if any generated, is purely incidental in nature and assessee cannot be deemed to carry out "activity in the nature of trade, commerce or business."

Also, association has been organizing matches even in the remote areas in Rajasthan e.g. Barmer, Dungarpur, Hanumangarh, Rajsamand etc., where there is dirth of audience and Association has to essentially incur losses.

Further, the allegation of the AO for holding the activities of association as commercial was solely based on the consideration that the appellant society had accumulation of surplus, increase in the investments, control over the players however **he totally failed to appreciate that normally the surplus was the result of subsidies only and not from the conducting of tournaments on commercial basis.** It is pertinent to note here that subsidies are a form of financial aid granted for promoting a specific cause, which is ultimately for the benefit of overall or a section of public but **never for the benefit of an individual organization.** The subsidy received was utilized in the promotion and development of sport of cricket in state at each level, i.e. from mufasils areas to big cities like Jaipur.

Also, renting out premises by RCA has been viewed adversely for which it is respectfully submitted that RCA has been formed with a sole objective of promoting cricket and with the view to achieve the desired objective the resting of premises as done is wholly and exclusively for the purpose of cricket and no other activity of whatsoever nature has been carried out and neither it is engaged in the systematic activity as hotelier, thus the said act of association is fully in the direction of achieving its basic object of promoting Cricket and cannot be viewed adversely.

It is also to be noted that RCA is run by a Committee, which consists of members from different walks of the Society and such members are not professional managers or businessmen. Agreement with the players is only to control and monitor their activities to bring the same in accordance with the objects.

RCA is **providing technical and financial support** to the all DCAs (District Cricket Association) i.e. providing Equipments, nets, balls, etc. without any consideration on other side RCA is getting only affiliation fee from them which is very nominal (Rs. 200/- only). It is pertinent to note that the RCA has provided Grants to Districts of a substantial amount Rs. 39,20,763/- (**APB 5**) i.e. Rs. 5,69,763/- on cricket equipment to DCA, Infrastructure Development in districts and Rs. 32,00,000/- on subsidy to Districts (**APB 14**).

Also, RCA is **organizing various matches of national level tournaments** like Ranji Trophy, Irani Trophy, Dilip Trophy, Maharana Bhagwat Singh Trophy, Salim Durrani Trophy, Laxman Singh Dungarpur Trophy, Suryaveer Singh Trophy, u-14, u-15, u-19, u-22, etc. without having any surplus rather these were organized for the development of game of cricket at national level and to identify the players who can represent the country at international level. (in the year 2007-08 RCA has made expenditure over Rs. 1.12 crores). **RCA is utilizing a large amount in training and coaching camp for which no fee is charged from the participants.** For the year under consideration a sum of Rs. 1,92,41,152/- was incurred towards RCA Cricket Academy Expenses. Besides this, the assessee had organised **various championship at various interior places** of Rajasthan i.e. Banswara, Dungarpur, Barmer, Sirohi, Rajsamand, Dausa, Bundi, Kota etc. in order to provide opportunity to create competitive environment for the talented youth, on which it spent more than Rs. 5.00 crores in the last five years without any profit motive with the sole intention to promote the game of cricket. In the match held on 21.12.2010 between India v/s SA, RCA **suffered deficit over Rs. 1.6 Crore** (Receipts from In stadia Right Rs. 1.70 crores + Sale of Ticket Rs. 1.2 crores but Expenditures Rs. 4.15 crores). The RCA has also incurred various other expenses with a view to promote the game of cricket viz. on coaching camps of Rs. 21,45,550/-, state cricket activities of Rs. 1,11,90,375/-, Ground expenses of Rs. 28,89,930/- and international tournament expenses of Rs. 9,02,441/-.(**APB- 4 & 5**)

Above, data clearly reveals that surplus, if any generated by assessee was merely incidental to the main object, i.e. promotion of sport of cricket and in no way by running "business of cricket" as has been alleged by AO.

At this juncture, it would be relevant to resort to the decision of **Delhi High Court** in the case of **The Institute Of Chartered ... vs The Director General Of Income Tax ... on 4 July, 2013** defining the term "business" in relation to charitable institutions, post the amendment carried out in section 2(15) relevant extracts of which are as under:

57. *After discussing various decisions with regard to the scope of the words trade, commerce & business, this court in The Institute of Chartered Accountant of India v. Director General of Income-tax (Exemption) (supra) held that while construing the term business for the purpose of Section 2(15) of the Act the object and purpose of the Section must be kept in mind and a broad and extended definition of business would not be applicable for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act. The relevant extract of the said judgment is as under:-*

*"Section 2(15) defines the term "charitable purpose". Therefore, while construing the term "business" for the said section, the object and purpose of the section has to be kept in mind. We do not think that a very broad and extended definition of the term "business" is intended for the purpose of interpreting and applying the first proviso to section 2(15) of the Act to include any transaction for a fee or money. 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 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. The test as prescribed in Raipur Manufacturing Company [1967] 19 STC 1 (SC) and Sai Publication Fund [2002] 258 ITR 70 (SC) ; [2002] 126 STC 288 (SC) can be applied. The six indicia stipulated in Lord Fisher [1981] STC 238 are also relevant. Each case, therefore, has to be examined on its own facts."***

58. *In the case of Commissioner of Sales Tax v. Sai Publication Fund:[2002] 258 ITR 70 (SC), the Supreme Court while interpreting the word "business" in the context of Section 2(5A) of the Bombay*

*Sales Tax Act, 1959 held that the **inclusion of incidental or ancillary activity in the definition of business pre-supposes the existence of trade, commerce and business. 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. In that case, the Supreme Court was examining the issue whether the activity of the trust in bringing out and selling a publication to spread the message of Sai Baba would make the assessee trust a dealer. The Supreme Court also referred to various other decisions wherein it was held that if the principal object or purpose of an assessee was not business then an incidental activity would also not be exigible to sales tax and constitute the assessee as a dealer. In the case of State of Gujarat v. Raipur Manufacturing Co. Ltd.: (1967) 19 STC 1 (SC), the Supreme Court held that in order for any activity to be considered as business, there must be a course of dealings either actually continued or contemplated to be continued with the motive to earn profit and not for sport or pleasure.***

67. *The expressions "trade", "commerce" and "business" as occurring in the first proviso to section (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".

*77. After going through the provisions of the ICAI Act and the Regulations framed therein as well as various activities carried on by the petitioner, we are of the view that the petitioner institute does not carry on any business, trade or commerce. **The activity of imparting education in the field of accountancy and conducting courses both at pre-qualification as well as post-qualification level are activities in furtherance of the objects for which the petitioner has been constituted. Activities of providing coaching classes or undertaking campus placement interviews for a fee are in relation to the main object of the petitioner which as stated earlier cannot be held to be trade, business or commerce. Accordingly, even though fees are charged by the petitioner institute for providing coaching classes and for holding interviews with respect to campus placement, the said activities cannot be stated to be rendering service in relation to any trade, commerce or business as such activities are undertaken by the petitioner institute in furtherance of its main object which as held earlier are not trade, commerce or business.***

A perusal of above clarifies that so far as pre dominant object of institution is "charitable", any incidental activity thereto resulting into profits would not ipso facto result into denial of exemption u/s 11.

Further **Hon'ble Madras High Court** in the case of **Tamil Nadu Cricket Association vs The Director of Income Tax**, wherein reference has been made to Circular No.11 of 2008 of CBDT dated 19.12.2008, held that question of rejection of registration under section 12AA(3) would arise only in those cases where an entity uses this status of charitable with a charitable object of general public utility as a **mask or a device to hide the true purpose and that object is nothing other than trade, commerce or business. Thus revenue has to substantiate absence of genuineness. Mere conducting matches or earning income from incidental activities would not entail cancellation of registration.**

Hon'ble Delhi Bench of ITAT in the case of **Delhi & District Cricket Association vs DIT(E)** has observed as under: (relevant extracts)

10.7. *Even otherwise the main and predominant object and activity of the assessee is to promote, regulate and control the game of cricket in and around Delhi. **The undisputed fact is that over the years this activity has been recognized by the Income Tax Dept. as a charitable activity and registration u/s 12A was granted to the assessee.** A number of assessment orders u/s 143(3) were passed, wherein the assessee was held as eligible for exemption u/s 11/12 of the Act. Hence this fact of the assessee being a charitable institution is not in dispute.*

10.8. *The core activity of the assessee is undisputedly, charitable in nature. Hence it is not the case of the Revenue that the assessee is carrying on "trade, commerce or business" under the garb of the activity being "general public utility. As regards the various receipts of the assessee, we find that in the case of Tamil Nadu Cricket Association, the receipts were from:*

1. Subscription
2. Renting for hiring cricket ground rooms and premises
3. Fee for providing services for IPL
4. Income from advertisement
5. Subsidy from BCCI
6. Sale of tickets for conducting the matches and

7. Restaurant and catering income. Such receipts of money by the Tamil Nadu Cricket Association were not considered by the Hon'ble Madras High Court, as activities in the nature of "trade, commerce or business". There is no contrary decision cited by the Revenue. Thus none of the above streams of income, when received by the assessee would constitute business activity for the assessee.

10.9. *Thus respectfully following the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association (supra), we have to hold that the amounts received by the assessee from a) ground booking charges, b) health club charges, c) income from corporate boxes, d) lawn booking income, e) sponsorship money and sale of tickets, advertisement, souvenirs and other such receipts do not result in the assessee being held as undertaking activities in the nature of "trade, commerce or business." These receipts are intrinsically related, interconnected and interwoven with the charitable activity and cannot be viewed separately. The activities resulting in the said receipts are also charitable activities and not "trade, commerce or business" activities.*

11. We now take up each of the issues raised by the Ld.DIT(E) in his order.

11.1. On the issue of **sponsorship income** from M/s. Twenty First Century Media (P) Ltd. (TFCM), it was explained that, despite the receipt of sponsorship money during the year of Rs.31,01,038/- and

receiving a sum of Rs.14,20,000/- from BCCI as subsidy, there was a short fall of Rs.29,84,835/-, which was met by the assessee. It was specifically argued by the Ld.D.R. that the agreement with "M/s Twenty First Century Media Pvt.Ltd." is commercial in nature. The reply of the assessee is that it should be appreciated that, **for any organization to run and survive it is essential that it should augment some funds to meet the cost/expenditure, as required to be incurred, to carry out the activities meant to achieve its object. We agree with the submissions of the assessee.**

11.2. **The assessee has to perform many activities and for this purpose it has to enter into transactions with various types of persons. These persons can be commercial or non-commercial organizations, professionals, vendors of goods, vendor of services and so forth and so on. Merely entering into such agreement does not tantamount to the assessee being a business entity. The question is whether the activity done by assessee, would tantamount to business activity or not. This has to be viewed, from view point of the assessee. The other person with whom the assessee has an agreement, may have its own object and reason for doing transaction and accordingly, the nature of transaction and the resultant activity would be determined in the other persons hands. However, that by itself, should not have any bearing at all on the nature of the transaction, as well as resultant activity in the hands of assessee. To carry out a transaction in an organized manner and to ensure that the transaction would help the assessee in achieving its charitable object, it is imperative that the terms and conditions of the transactions are clearly defined, to avoid any confusion or chaos. It will be further good, if these terms and conditions are reproduced in writing, in the form of an agreement. Merely because an activity is performed in an organized manner, that alone will not make these activities as business/commercial activity. Profit motive is one essential ingredient, which is apparently missing in this case. In carrying out an activity, one may earn profit, or one may incur loss. But for making it as business activity, the presence of profit motive is a *sin qua non* i.e. condition precedent at the time of entering into transaction. In this case the facts demonstrate that despite the receipt of amount from sponsorship and subsidy from BCCI, there was deficit, which was met by the assessee. Thus this adjustment resulted in subsidizing the cost of the assessee and hence there is no profit motto. This cannot be termed as business activity. Similar is the view of the Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association (supra).**

11. 3. **On the issue of sale of liquor, it was submitted that initially DDCA was formed as a Club to take over the assets and liabilities of the Association called, "Delhi Cricket Association". He referred to the objects and submitted as follows. "One of the objects as given in the MOA of DDCA is to lay ground for playing game of cricket and to provide pavilion, refreshment rooms and other facilities in connection therewith. Therefore, an eatery was established which was eventually shaped as a canteen for the benefit of the members as well as few other persons associated with DDA e.g. players, coaches, staff, other guests etc."**

11.4. **In our view, for the purpose of making this Canteen self sustainable, it has to follow global standards and international protocols, since cricket is played at international level. Canteen keeps various items as per menu. Liquor is just part of this menu. It is not sold independently as trading item. The eatery is available for the use only of members, players, staff, other guests of DDCA. It is not open for public. A walk in customer/guest, cannot enjoy the facility of this eatery. The basic fact is that this canteen has direct and inextricable link with one of the core activities of DDCA i.e.**

maintaining such a huge cricket stadium and promoting the game of cricket. The Revenue, in this case is trying to project that the assessee as a liquor dealer. This is not correct. Internationally, when facilities are provided to players, liquor is part of the menu. This is just incidental to providing food and beverages. When the Ld.DIT(E) does not find anything wrong in the assessee supplying food and beverages in the canteen to the members, we cannot find fault with liquor being part of the menu card and being served as per international customs and requirements. 11.5. Hence to meet global standards these facilities are required and these are not independent of the activity of providing food and refreshments ITA No. 3095/Del/2012 Delhi & District Cricket Association, New Delhi to Members and Associated Persons. Running of a canteen is an incidental and necessary activity as is in every organization. This cannot be termed as business activity. It is part and parcel of the charitable activity and the receipt in question cannot be termed as exempt from activity which is in the nature of "trade, commerce or business".

*11.6. On **advertising and contractual receipts** the same explanation as was given by the assessee, as in the case of sponsorship money. Consistent with the view expressed by us, when we were dealing with sponsorship money, we hold that these **contractual receipts go to reduce part of the cost incurred by the assessee for its charitable activity and hence cannot be termed as business or that the assessee has undertaken activity in the nature of "trade, commerce or business".***

*11.7. On **receipts from IPCL** an elaborate explanation was given, the pith and substance is that **expenditure has to be incurred by the DDCA on various items, as coordination has to be done and the aggregate of expenditure incurred for the same is Rs.238 lakhs. It was submitted that the DDCA, initially meets this expenditure out of its own sources and there after the BCCI and legal franchisee, contribute and compensate part of this expenses.** The same arguments as were advanced by the assessee in the cases where sponsorship money received, were made here also. The summary of the submissions are as follows. "Our respectful submission is that, as we have given detailed submission in earlier part of our submissions wherein we have made analyses of receipts as well as of the expenses incurred by the assessee. The analysis of expenses have revealed that the expenses have been incurred on the promotion of the game of cricket. **These expenses have been incurred either for the development of game of cricket or the development of players.** There is no other cause or item for which any amount has been spent by the assessee. Similarly, **when we analyse the receipt side, we would find that the receipts are directly or inextricably linked with the organizing of matches and tournaments or for promotion of game of cricket in any other manner or for maintenance or building up the infrastructure meant for the promotion of the game of cricket. Thus, it can be safely said that the DDA exists for cricket and cricket only.** The CBDT has already clarified that sports is a matter of general public utility. Therefore DDCA satisfies the condition of having a charitable object as mentioned in s.2(15) of the Income Tax Act, 1961. It does not violate any condition as mentioned in proviso to s.2(15). **The apprehension that certain income received by the assessee, during the year, partake the character of business income, is ill founded.** In this regard we have submitted in detail that this apprehension is misplaced on account of various submissions as per details given below. 1. The entire receipts have been received for the promotion of game of cricket. 2. The assessee is not free to use it as per its convenience for any purpose other than for promotion of cricket. Thus, the amounts received in this manner cannot be characterized as business receipts. **The amount has been received as the voluntary contribution on discretion of the***

contributor (for e.g. BCCI). These have been received for raising the funds for meeting its costs and expenses. 4. In none of the cases there is any quid pro quo. The **ultimate beneficiary is either the cricketer or the game of the cricket.** 5. The **assessee is not charging any fees or revenue from the cricketer who is ultimate beneficiary.** Thus, there is no quid pro quo relationship with the cricketer. The assessee is promoting cricket on charitable basis as far as real beneficiary is concerned. 6. Whenever the revenue is earned these are not earned on commercial lines and these are earned without any commercial attributes. The revenue is generated for recovering the cost, at least partly if not fully. 7. The assessee has not entered any transaction with any person on profit motive. The **other person may be an entrepreneur or may be doing business but the assessee has entered the transaction only for the sole and dedicated purpose i.e. for the promotion of cricket.** 8. These facts are worth noting that (a) the assessee has not diverted its funds for any purpose other than promotion of cricket; (b) the assessee has not done any activity or transaction with profit motive, (c) the assess has not done any activity beyond and outside its objects and (d) there is no change in facts so as to deviate from the stand taken by Ld. AO in all the past years accepting the claim of the assessee all along on facts as well as on law.

11.8. In view of our decision of sponsorship and such other receipts, we agree with the arguments made by the assessee. Regarding sale of tickets the assessee explained that no tickets are sold for Ranji Trophy and only in case of international matches, Rs.200/- per ticket are levied, with a sole intention to control the crowds and that the cost incurred per ticket is much more than the amount which is charged for ticket. Under these circumstances, the sale of tickets cannot be considered as an activity of "trade, commerce or business". We agree with the submissions of the assessee.

11.9. Regarding playing cards, it is an incidental recreation activity undertaken in most Clubs and what is charged by the assessee, goes to recover the costs for providing such recreational facility to its member. The receipts are miniscule and hence negligible. 11.10. Similarly as far as receipts from health club is concerned, we find that, only a part of the expenditure incurred on health club is recovered by way of charges from Members, who are using the health club facility. These are all, at best be called user charges. In our view these receipts cannot be termed as an activity in the nature of "trade, commerce or business". In fact Health Club facility is recognized to promote the game of cricket. All the receipts of the assessee are intrinsically linked with the activity of organizing matches and tournaments for the promotion of cricket. User charges are required for maintaining the facilities that are provided as part of the infrastructure, for conducting the activities of the assessee.

11.12. On consideration of all the facts and circumstances of the case and when viewed in totality, we have to come to a conclusion that the assessee is not carrying of the activities with any profit motive or with any self interest. The contribution received by way of sponsorship, advertisement, sale of tickets etc. and user charges on the facts of this case, do not convert the charitable activity into "trade, commerce or business" activity

11.13. In view of the above discussion and in view of the binding judgements cited above, we have to necessarily quash the impugned order passed by the DIT(E) u/s 12AA(3) r.w.s. 12 of the Act, as it is bad in law.

DDIT vs. All India Football Federation [2015] 62 taxmann.com 362 (Delhi-Trib.).

S. 2(15) Activity of Society to promote football The main objective of the assessee was to promote the game of football in India which certainly amounts to charitable purpose, being covered under the limb "the advancement of any other object of general public utility" as contained in section 2(15). The receipt of fees from the sponsorship rights and telecasting rights do not amount to carrying out of any activity in the nature of trade, commerce or business but is incidental to carrying on of the main objective of the Respondent assessee. It was further observed that no part of its surplus could be distributed to the board of its members in the form of dividend or profit. The mere fact that the appellant society had generated sponsorship funds, during the course of carrying on the ancillary objects, shall not alter the character of the main objects so long as the predominant object continues to be charitable and not to earn the profit. Further the proviso to section 2(15) of the Act cannot be applied to the appellant society as it is not engaged in any activity which is in the nature of trade, commerce and business. Therefore, the society has to be necessarily considered a genuine charitable organization eligible to claim exemption u/ss. 11 & 12 of the Act and the provisions of the first proviso to section 2(15) do not apply to the case of the appellant.

Coming to the facts of the case, as submitted earlier RCA was set up under statute only for the promotion of the sports and in particular cricket and had it been not carrying out activities in accordance with its objects, registration could have been withdrawn. Chapter V of Rajasthan Sports (Registration, Recognition and Regulation of Association) Act, 2005 contains provisions regarding Accounts, Audit and Inspection of books of accounts of Sports Association registered under said Act, whereas Chapter VI thereof contains specific provisions regarding "Disaffiliation, Inquiry and Disqualification". In other words, RCA is not an independent private organization, which can carry out activities as per convenience of its officials, rather it works under strict regulations and thus any deviation from primary objective of promotion of sport of cricket may cost disaffiliation/disqualification to the association. Thus, in the absence of any adverse finding by the concerned authority, conclusion drawn that RCA was being run on commercial basis does not have basis.

In view of above, it is prayed that activities of assessee are completely for the purpose of attainment of its objective of promoting Cricket and in no way being run on commercial lines. It is therefore prayed that exemption u/s 11 may be allowed to assessee.

.Ground of Appeal No. 6:

In this ground of appeal, assessee has challenged the action of Id. CIT(A) in confirming disallowance of expenses of Rs. 6,15,32,225/- incurred on acquisition of capital asset, being in the nature of application of income u/s 11.

In this regard, it is submitted that it is a well settled law that where income is applied for purchase of a capital asset, it would still be application of income to the charitable purpose. If the assessee

invests in construction of a building, which is a permissible investment under section 11(5) of the Income-tax Act, so as to augment its resources for fulfilling the objectives of the institution, there is no doubt that such capital outlay would qualify as income applied for charitable purposes.

Further, no doubt has been raised by AO that investment is not applied for the purposes of business. Thus, in view of our above submission regarding eligibility of exemption u/s 11, this ground is completely consequential in nature. It is thus prayed that sum of Rs. 6,15,32,225/-be allowed as Application of income in consonance of provisions of section 11.

Ground of Appeal No. 8 & 9:

In ground of appeal no.8 , assessee has challenged the action of Ld. CIT(A) in confirming the assessment of income of Rs.4,07,58,505/- as “business income” in the hands of assessee, whereas in ground of appeal no.9 charging of interest u/s 234B & 234D have been challenged.

In this regard, it is submitted that both the grounds of appeal are consequential in nature and thus in view of above submission it is prayed that the same may please be allowed.”

The Ld. DR also reiterated the submissions as made in the written submissions. The submissions of the Ld. DR are reproduced as under.

1. “Entire argument of assessee revolves around the theory that grant of registration u/s 12A would automatically entitle it for exemption u/s 11. Case laws cited by the assessee in the case of T.N. Cricket Association and DDCA etc., are in the context of s. 12A and are inapplicable.
2. Domain of registration u/s 12AA and eligibility for exemption u/s 11 are totally independent & different. At the time of registration, CIT is not empowered to look into provisions of s. 2(15). Provisions of s. 2(15) are required to be examined only by AO at the time of assessment. This has been held by Hon’ble ITAT Jaipur in the case of Raj. Hsg. Board v. CIT (2012) 21 tamann.com 77, relevant extract of which is as follows:
“After going through the provisions of section 12AA (3) and section 2(15), we found that before the CIT(A) to withdrawn the registration granted u/s 12AA has been provided in sub clause (3) of section 12AA of the Act. The provision of section 2(15) are totally different. Now by the amended provisions of section 2(15) it has been provided that if any year the gross receipts of an institution exceeds Rs. 10 lakhs, (now Rs. 25 lakhs w.e.f. 1.4.2012), then in that case, exemption u/s 11 may not be allowed to the Institution as the activities

of the institution will be treated as not charitable if the receipts exceeds the limit. The exemption u/s 11 is to be examined on yearly basis, therefore, the exemption u/s 11 have no effect for granting registration u/s 12AA of the Act.

9. The object of the institution has already been examined by the Tribunal who directed to grant Registration to the present institution. There is no doubt in this regard. Therefore, Id. CIT was not justified in Holding that in view of amended provisions of section 2(15), the Institution does Not remain a charitable institution and, therefore, the objectives of the institution also does not remain as Charitable and accordingly Withdrawal of registration, in our considered view, was not justified.

10. On similar facts, in the case of Gujarat Cricket Association, (supra), the Tribunal by passing a detailed order has held that registration cancelled by DIT(E) on the basis of amended provisions of section 2(15) of the Act was not justified as amended provisions does not fall within the permissible limit of section 12AA(3) of the Act and accordingly the order of DIT(E) was considered bad in law and the appeal of the Institution was allowed.

In the case of Cane Development Council (supra) similar view has been expressed does not fall under the provisions of section 2(15) and therefore, the assessee was entitled to registration u/s 12AA of the Act. In view of the discussion of ours and in view of the decision of Tribunal, we are of the view that Id. CIT was not correct in withdrawing registration already granted by the order of the Tribunal to the Institution. ***If in any year, the gross receipts of the institution exceeds Rs. 10 lakhs or Rs. 25 lakhs, as the case may be, then in that year, the Assessing Officer is empowered to examine the allowability of exemption u/s 11 but the same has no effect on granting the registration u/s 12AA of the Act.*** Accordingly, we set aside the order of Id. CIT and restore the registration already granted u/s 12AA of the Act. Thus, the appeal of the Institution is allowed.”

3. Even while restoring Registration u/s 12A, ITAT order in assessee’s case require AO to examine eligibility for exemption u/s 11 **even when registration u/s 12A has been restored.**

“At the time of registration, the Id. CIT has to consider Section 12AA(3) and he has to consider two conditions for rejection of registration granted (i) the activities of the trust are not genuine,” (ii) are not being carried out in accordance with-the object of the trust as the case may be. The Id. CIT has not found any infirmity in the activities carried out by the RCA as non-genuine or not being carried out as per object of the Trust. It is also a fact that the fame of cricket become very potential with reference to revenue compared to other games, therefore, the revenue generated

by the RCA are substantial but this ground cannot be used to cancel the registration granted by the Id. CIT as predominant object of the trust is charitable and substantial review generated is incidental to the main object. If, the Id Assessing Officer found any violation in application of fund, he can make disallowance U/s 11 of the Act. Thus, we are of the considered view that the Id CIT was not right in withdrawing the registration granted u/s 12A of the Act."

4. Thus AO needs to examine in assessment whether proviso to 2(15) is attracted.
5. For provisos to 2(15) to be attracted following conditions are required to be met:
 - (a) Assessee should fall under the limb "**any other object of general public utility**" to which category only the said proviso applies.
 - (b) If it is carrying on an activity in the nature of trade, commerce or business for a cess or fee or any other consideration.
 - (c) Aggregate value of such receipts exceeds Rs. 10 Lakh in the year.
6. If 1st proviso to 2(15) gets attracted, assessee loses benefit of exemption as per provisions of s. 13(8)
7. Therefore, only question to be decided is as to whether assessee was engaged in commercial activity for a fee or other consideration.
8. Nature of receipt in the hands of assessee is by way of sharing of sponsorship and media rights with BCCI as well as match revenue for conducting various cricket matches. It may be seen that in A.Y. 2008-09 (Table at Pg 14 of assessment order), the assessee has earned surplus of Rs. 5.88 crores out of receipts in the shape of advertisement, canteen & Tickets of Rs. 7.81 crores, which amounts to supernormal profit.
9. Therefore, income of assessee from "subsidy" is nothing but a percentage of fee gathered from public for matches and percentage of advertisement receipts while conducting matches.
10. Once provisos to 2(15) are attracted, assessee loses benefit of exemption u/s 11 as per s. 13(8) and entire income becomes taxable. Kindly see PB 16 of assessee's paper book of A.Y. 2008-09 where match receipts are shown. S.No. 11 & 12 show sale of tickets for as high as Rs. 30,000 & Rs. 1,00,000/-. According to Wikipedia, Trade/Commerce involves transfer of goods and/ or services from one person or entity to another, often in exchange for money. The nature of receipts in the hands of the assessee certainly would all under "Trade & Commerce" as understood in common parlance. **Once the receipts are commercial in nature and such receipts exceed the threshold of Rs. 10 lakhs (both conditions satisfied in assessee's case), the assessee would be hit by Proviso to s. 2(15). The said Proviso stipulated that "advancement of any other object of general public utility shall not be charitable purpose if it involves carrying on of any activity in the nature of trade and 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 applicable of retention of the income from such activity.”

Once Proviso to 2(15) is attracted, **the assessee shall not be a charitable organization irrespective of whether it is registered u/s 12A.** Thus, having registration u/s 12A does not automatically translate into eligibility for exemption u/s 11 & 12, which has to be examined by the AO from year to year in the light of s. 2(15). Had it been so, the Proviso to s. 2(15) would be rendered redundant, since CIT is also not empowered to examine the case of the assessee in the light of Proviso to s. 2(15) while granting registration u/s 12A. Thus, grant of Registration u/s 12A does not preclude the AO from examining the case of the assessee in the light of the said Proviso and if he finds that the assessee is hit by the Proviso **then the assessee will cease to be a charitable organization.**

In the case of **Entertainment Society of Goa v. CIT (2013) 34 tamann. Com 210 (Panji)**, the ITAT has held that amounts received by assessee by way of sponsorship and other events were hit by proviso to s.2(15). The head note is as follows:

“Section 2(15) of the Income-tax Act, 1961- Charitable purpose [Proviso]- Assessment year 2009-10- whether to attract proviso to section 2(15) inserted by Finance Act, 2008, institution need not actually be carrying on trade, commerce or business but activity carried on by it is to be similar to trade, commerce or business even without profit motive- Held, yes – whether for determining whether assessee is engaged in charitable purpose in view of amended section 2(15), use or applicable or retention of consideration received is not relevant at all- Held, yes – Whether section 2(15) does not provide any exception under proviso to a regulatory body or a body incorporated by State Government or Central Government – Held, yes [para15] [in favour of revenue] Section 2(15) of the Income-Tax Act, 1961 – Charitable purpose [Registration of] – Assessment year 2009-10 – Main activity of assessee-trust was to organize and host international film festivals and to build multiplexes, cinema halls, media centers, screening rooms, auditoriums, comprehensive infrastructure facilities ,etc., for holding such events – All services provided by it were for consideration – Whether amounts received by assessee by way of sponsorship, administrative charges, listing of hotels on their website, conducting film appreciation course clearing represented receipts from activity of rendering services in relation to trade, commerce or business and after insertion of proviso in section 2(15), assessee could not be regarded to have been established for charitable purpose- Held, yes”

Since the receipts of the assessee are similar in nature, these would fall under the category of commercial receipts. The case of the assessee is **distinguishable from the case of ICAI** cited by the assessee since receipts of ICAI are **basically from members (and not public as in case of assessee)** and do not exploit any commercial/advertisement /TV rights as in the case of assessee. One **test of commerciality of receipt is whether receipts are at market rates** and are open to subscription by **general public** as opposed to a select few members. Similarly in the case of **Ahemdabad Urban Development Authority v. CIT (2016) 69 taxmann. Com 381**, the ITAT, Ahemdabad has **recently** held in this context of **s. 2(15)**, as follows:

"Section 2(15) of the Income Tax Act, 1961 – Charitable purpose (object of general public utility) Assessment years 2009-10 to 2011-12- Assessee- authority was engaged in executing town planning scheme in terms of Town Planning Act – It filed its return declaring taxable income at NIL – In course of assessment, Assessing Officer called for details of purchases, sales and premium charged in respect of leasing out of land- On analysis of details so submitted , Assessing Officer noted that assessee had been charging high premium which indicated profit motive even at planning level- He thus held that assessee's activities did not qualify definition of 'charitable purpose' in terms of proviso to section 2(15)- It was found from record that in terms of town planning scheme, assessee used to hold 15 percent of total land earmarked for development which was later on sold in auction to highest bidder- It was undisputed that aforesaid activity was carried out with profit motive and as a result reserves and surplus of assessee were continuously swelling – Whether on facts, impugned order passed by Assessing Officer did not require any interference – Held, ye [para 26"

11. Once provisos to 2(15) are attracted, assessee loses benefit of exemption u/s 11 as per s. 13(8), and entire income becomes taxable.

12. Ground 4.4 of assessee is regarding addition of Rs. 1.5 crore donation to corpus fund. CIT (A) at para 7 has observed that no details were submitted in this regard by the assessee. For s. 11(1) (d) to operate so as to exclude corpus donations from income following conditions need to be satisfied, regardless of whether it is registered u/s 12A:

(a) Donations should be voluntary

(b) They should be made with specific direction that they shall form part of corpus.

The assessee has not adduced any evidence showing that both conditions are satisfied.

13. Ground 5 of assessee is regarding disallowance of Rs. 50 lakh. Here again there is total absence of details in both assessment as well as appellate stages.”

4. We have considered, the rival contentions, perused the material available records. The only issue to be examined under the facts of the present case is whether the Assessing Officer was justified in declining the claim of the deduction u/s 11 of the Act. The Assessing Officer however observed that a perusal of the financial figures reveals that the applicant has generally accumulated surplus u/s 11(2) of the Act in last 4 or 5 years, which indicate that the assessee is earning huge surplus from the activities carried out by it. The Assessing Officer further observed that the assessee's investment is increasing, this shows that the assessee is converting the surplus into investment which in turn has strengthened its capacity to earn more. Therefore, he concluded that the assessee exist for purpose of earning profit and the applicant is not promoting sports on non-profit basis. The assessing Officer further observed that that the assessee had built a premises in the name of Rajasthan Cricket Academy, which has been given on rent to a service provider on a monthly rent of Rs. 75,000/-. The agreement executed with the service provider states that booking for 28 rooms will be made through service provider. The Assessing Officer reproduced the clause 2.2.1 of the agreement and inferred that the said clauses leave no doubt for the commercial exploitation of the property by the service provider under the direct control of the RCA. He observed that in the present case the service provider is paying to the RCA for using the premises as hotel. It is clear for the same that the motive of RCA is to maximize the profit. He observed that RCA is generating huge profit year after year and its

expenditure on sports promotion coaching maintenance of premises and facilities etc. is very low. The Assessing Officer further observed that there is no denial that the object of the assessee's institution is promotion of sports which as per CBDT circular is charitable purpose. But the activities undertaken by the RCA clearly shows that the main activity is commercial exploitation of public craze over cricket. The assessing officer placed reliance on the judgment of the Hon'ble Calcutta High Court rendered in the case of Cricket Association of Bengal Vs. Commissioner of Income Tax 371 ITR 277.

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

“ Section 2(15) - Charitable purpose include relief of the poor, education, medical relief, [preservation of environment(including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest] and the advancement o any other object of general public utility.

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature o trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, or a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:]

[Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year:]”

The Revenue has heavily relied upon the aforementioned provision. It is stated that the activity of the assessee trust falls within the category of general public utility. Therefore, the proviso to section 2(15) would come into play. It is submitted that the looking to the quantum volume and nature of receipt goes to demonstrate that the assessee is engaged into commercial activity and for the purposes of making profit. Per contra it is contended that the assessee is an association registered under Rajasthan Sports (Registration, Recognition and Regulation of Association) Act, 2005 and formed with objective of promoting of sport of cricket within the state of Rajasthan. RCA, under a memorandum of understanding with Rajasthan State Council has exclusive use and possession of Swai Mansingh Stadium for the purpose of organizing national and international matches. The main object of the association is to control, supervise, regulate, or encourage, promote and develop the game of cricket in the areas under the jurisdiction of Association on no profit or no loss basis. It is contended that the assessee was holding registration under section 12A of the Act with effect from 25th Nov. 1988, and thus was claiming exemption u/s 11 on this basis. The Id. CIT, withdrew the registration under section 12A of the Income Tax Act, pertaining to the Assessment year 2005-06 onwards. However, on appeal to the Tribunal the issue of registration was set aside to the Id. CIT to decide it afresh. The Id. CIT again withdrew registration under section 12A. However, the registration was granted in ITA No. 544/JP/2013. Our attention was drawn to the Assessee's paper book page nos. 13 to 30. It is contended that section 11 of the Income Tax Act provides exemption in respect of income of charitable or religious trusts if the

same is applied towards the objects of the trusts. It is the contention of the assessee that the sole basis of declining exemption was that there was huge surplus earned by the assessee in respect of one-day international match held between India and Pakistan. It is the contentions of the assessee that a match between India and Pakistan always generates higher receipts as the number of audience is higher. It is also pointed out that the match between other countries could not even fetch 70 to 80% of the collection. It is also contended that all the payments in the shape of sponsorship, advertisement, TV rights etc. are received directly by BCCI. Further, BCCI delegates the organization of matches to state association and in turn state association gets some funds from promotion and expansion of their charitable activities. It is also submitted that major benefits by organizing these matches is that local team, being trained by the RCA, get opportunity to learn from experience of coaches of international level by assisting them during practice matches and by witnessing the matches played by the international players, by spending time with them etc. It is submitted that organizing such matches results into the promotion of sports of cricket surplus if any generated is purely incidental in nature and the assessee cannot be deemed to carry out activity in nature of trade, commerce or business. It is also contended that the association has been organizing matches in the remote areas in Rajasthan. It is submitted that the Assessing Officer observed that the association was involving into commercial activities and the society had accumulated of surplus increase in the investment, control over the players by observing this however, he failed to appreciate that normally the surplus was the result of subsidies only and not from the conducting of tournament on commercial

basis. The subsidies are a form of financial aid granted for promoting a specific cause, which is ultimately for the benefit of overall section of public but never or the benefit of an individual organization. It is contended that the subsidy received by the RCA is utilized in the promotion and development of sports of cricket in state at each level, i.e. from mufasils areas to big cities like Jaipur. It is also contended that renting out by premise by RCA has been viewed adversely in the context it was submitted that RCA is formed with a sole objective of promoting cricket and with the view to achieve the desired objective the renting of premises as done is wholly and exclusively for the purpose of cricket and no other activity of whatsoever nature has been carried out neither it is engaged in the systematic activity as hotelier. Thus, the main act of association is fully in the direction of achieving its basic object of promoting cricket. It is contended that RCA is provide technical and financial support to the all District Cricket Association i.e. providing equipments, nets, balls, etc. without any consideration on other side RCA is getting only affiliation fee from them which is very nominal (Rs. 200/- only). The RCA has providing grants to Districts of a substantial amount of Rs. 39,20,763/-. RCA is organizing various matches of national level tournaments like Ranji Trophy, Irani Trophy, Dilip Trophy, Maharana Bhagwat Singh Trophy, Salim Durrani Trophy etc., without having any surplus rather these were organized for the development of game of cricket at national level and to identify the players who can represent the country at international level and in the year 2007-08 RCA has made expenditure of over Rs. 1.12 crores. It is contended that the surplus if any generated by the assessee by the assessee was merely incidental to the main object that is promotion of sport of

cricket and in no way by running business of cricket as has been alleged by the Revenue.

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

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

The assessee is a member of Board of Control of Cricket in India (BCCI), which in turn is a member of ICC (International Cricket Council). BCCI allots test matches with visiting foreign team and one day international matches to various member cricket association which organize the matches in their stadia. The franchisees conduct matches in the Stadia belonging to the State Cricket Association. The State Association is entitled to all in-stadia sponsorship advertisement and beverage revenue and it incurs expenses for the conduct of the matches. BCCI earns revenue by way of sponsorship and media right as well as franchisee revenue for IPL and it distributes 70% of the revenue to the member cricket association. Thus the assessee is also the recipient of the revenue. Thus, for invoking Section 12AA read with section 2(15) of the Act, Revenue has to show that the activities are not fitting with the objects of the Association and that the dominant activities are in the nature of trade, commerce and business. We do not think that by the volume of receipt one can draw the inference that the activity is commercial. The Income Tax Appellate Tribunal's view that it is an entertainment and hence offended Section 2 (15) of the Act does not appear to be correct and the same is based on its own impression on free ticket, payment of entertainment tax and presence of cheer group and given the irrelevant consideration. These considerations are not germane in considering the question as to whether the activities are genuine or carried on in accordance with the objects of the Association. We can only say that the Income Tax Appellate Tribunal rested its decision on consideration which are not relevant or

considering the test specified under Section 12AA(3) to impose commercial character to the activity of the Association. In the circumstance, we agree with the assessee that the Revenue has not made out any ground to cancel the registration under Section 12AA(3) of the Act.”

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

6. The allegations of the Assessing Officer is that in the case of assessee the major income arise not from the game of Cricket but from the business of Cricket. It is alleged by the Assessing Officer that major source of income are from TV Subsidy, Sale of advertisement, surplus from one-day international between India and Pakistan income from RCA Cricket Academy and interest income. All these activities are more in the nature of business of cricket than the promotion of game of Cricket. As per AO, though, the word 'Business' is not defined in the Income Tax Act. It has been held to postulate the existence of certain elements in the activity of assessee, which would invest it with the character of business such motive must pervade the whole series of transaction effected by the person in course of his activity. The characteristic of volume, frequency to continuity and regularity of the activity

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

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

Now, coming to the allegation of the Assessing Officer that the major source of income are TV subsidy, sale of advertisement surplus from ODI between India and Pakistan income from RCA Cricket academy and interest income. It is not in dispute that TV subsidy, sale on advertisement surplus from ODI between India and Pakistan income from RCA Cricket Academy are all relating to the conduct of Cricket matches by the society. It is undisputed fact that without conduct of matches income cannot be derived. Therefore, it can be safely inferred that these incomes are related to the incidental activity of the association. These incomes would not accrue without the game of Cricket. The main thrust of revenue's argument is that for allowing exemption under section 11 of the Act, the Assessing Officer need to examine whether the proviso to section 2(15) of the Act is attracted or not. It is the contention of the revenue that assessee would fall under the limb of any other object of general public utility to which category only the proviso to section 2(15) applies. It is contended that if proviso 2(15) attracted, assessee loses benefit of exemption as per section 13(8). Therefore, it is submitted that only question to be decided is to whether assessee is engaged in commercial activity for fee or other consideration. It is also contended that nature of receipt about hands of the assessee by way of sharing of sponsorship of media rights with BCCI as well as match revenue for conducted various cricket matches. It is contended that in the assessment year 2008-09, the assessee has earned surplus of Rs. 5.88 crores out of receipts in the shape of advertisement, canteen, and tickets of Rs.7.81 crores which amounts to super normally profit. The other hand, contention of the assessee is that the argument of the revenue is misplaced as the authorities below failed to

appreciate the facts that expression trade, commerce or business is to be understood as a regular and systematic activity with the prime motive to earn profit. Whereas the association never acted as a professional advertiser, TV producer etc. No matches or any game other than Cricket or no other events are organized to attract audience rather only cricket matches are being organized whether the same result into profit or loss. It is contented that all Cricket Matches do not attract audience but due to historical background in the case of match between India and Pakistan audience for such match remains abnormally high. Therefore, under these peculiarity of fact it making inference that the assessee is engaged into commercial activities is not justified.

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

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

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

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

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

"Thus respectfully following the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association (supra), we have to hold that the amounts received by the assessee from a) ground booking charge, b) health club charges, c) income from corporate boxes, d) lawn booking income, e) sponsorship money and sale of ticket, advertisement, souvenirs and other such receipts do not result in the assessee being held a undertaking activities in the nature of "trade, commerce and business". These receipts are intrinsically related, interconnected and interwoven with the charitable activity and cannot

be viewed separately. The activities resulting in the said receipts are also charitable activities and not "trade, commerce or business" activities."

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

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

17. Section 2(15) of the Act of 1961 which defines 'charitable purposes' reads as under:

"(15) 'charitable purpose' includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility;

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year".

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

19. In Andhra Chamber as commerce's case (supra), while considering the expression 'object of general public utility' as used in Section 4 (3) of the Income Tax Act, 1922, the Hon'ble Supreme Court observed:

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

political domain for achieving that purpose e.g. promotion of or opposition to legislation concerning that purpose, I contemplated.” (emphasis added)

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

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

21. In the matter of “Additional CIT vs. Surat Art Silk Cloth Manufactures Association”, (1980) 121 ITR, 1, the Hon'ble Supreme Court held that if the primary or dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. The court further observed that true meaning of the words in section 2(15) viz. 'not involving carrying on any activity of profit' is that when the purpose of a trust or institution is advancement of an object of general public utility, it is that object of general public utility which must not involve carrying on of any activity for profit and not its advancement or attainment. The court observed that what is inhibited by these last ten words is the linking of activity or profit with the object of general public utility and not its linking with the accomplishment or carrying out other object. Thus, so long as purpose does not involve carrying on or any activity for profit, the requirement of definition would be met and it is immaterial how the money's for achieving or implementing such purpose are found whether by carrying on an activity for profit or not.
22. In Andhra Pradesh Road Transport Corporation's case (supra), the Hon'ble Supreme Court while relying upon the earlier decisions in the matter of “additional CIT vs. Surat Art Silk cloth Manufactures Association”, (1980) 121 ITR 1 and “CIT Vs. Bar Council of Maharashtra”, (1981) 130 ITR 28 (SC), held that if predominant object is to carry out a charitable purpose and not earn profit, the purpose would not lose its charitable character merely because some profit arises from the activity.
23. In Gujarat Maritime Board's case (supra), the Hon'ble Supreme Court after due consideration of various earlier decisions, observed:

“We have perused a number of decisions of this court which have interpreted the words, in section 2(15), namely, “any other object of general public utility”. From the said decisions it emerges that the said expression is of the wide connotation. The word “general” in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public or a section of the public as distinguished from benefit to an individual or a

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

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

24. In "Commissioner of Income Tax v. Krishi Upaj mandi Samiti, jaisalmer", (2011) 331 ITR 135 (Raj.), a Bench of this court while considering the entitlement of Krishi Upaj Mandi Samiti, a statutory body, constituted and established under the Rajasthan Agricultural Produce Market Act, 1961, observed that may be the income received by the Samiti by way of cess or mandi fees is not shown to be spent wholly for the purpose of relief of the poor, education, or medical relief, but under the scheme of the act, being the Rajasthan Agricultural Produce Markets Act, 1961, the entire amount received by the samiti is required to be spent for the purposes mentioned therein, which obviously include advancement of "any other object of general public utility'.
25. In Lukhnow Development Authority's case (supra), while examining the question regarding applicability o proviso to Section 2(15), Allahabad High Court observed:

"29. For the applicability of proviso to Section 2(15), the activities of the trust should be carried out on commercial lines with intention to make profit. Where the trust is carrying out its activates on non-commercial lines with no motive to earn profits, or fulfillment of its aims an objectives, which are charitable in nature and in the process earn some profit, the same would not be hit by proviso to section 2(15). The aims and objects of the Mere selling some product at a profit will not ipso facto hit

assessee by applying proviso to Section 2(15) and deny exemption available under section 11. The intention of the trustees and the manner in which the activities of the charitable trust institution are undertaking are highly relevant to decided the issue of applicability of proviso to section 2 (15)."

26. Coming to the decision of Jammu & Kashmir High Court in Jammu Development Authority's case (supra), relied upon by learned counsel for the Revenue, reveal that the appeal preferred by the Jammu Development Authority was dismissed by the court observing that there are findings of facts that the assessee-appellant has not been acting to advance any of the object concerning general public utility. Further while referring to first proviso to Section 2(15), the court has observed that "we find that no substantial question of law much less a substantial question of law would emerge from the impugned order of Income Tax Appellate Tribunal warranting admission of the appeal." A bare perusal of the order reveal that the catena of decisions of the Hon'ble Supreme Court referred to hereinabove, interpreting the effect of first proviso in context of the main provision of Section 2(15), which defines 'charitable purpose', were not brought to the notice of the court and therefore, the said order passed by the court by merely recording its ipse dixit does not help the Revenue in any manner.
27. From various decisions of the Hon'ble Supreme Court discussed hereinabove, the settled position of law emerges is that if the primary or predominant object of an institution is charitable, any other which might not be charitable but which is ancillary or incidental to the dominant purpose, may be involving element of profit, would be prevent the institution from being a valid charitable trust."

In the light of the above binding precedents, we are unable to affirm the view of the revenue. In the present case, material as placed before us suggests that the Assessing Officer is swayed by the figures and volume of receipts. Admittedly, such receipts are intermittent and not regular and also is dependent on the conduct of cricket match. It is not other way round that the cricket matches are dependent upon such activities. The undisputed facts are that the assessee is registered under the Rajasthan Sports (registration, recognition and regulation) Act 2005 and formed with the objective of promoting the sports of cricket within the state of Rajasthan so main objective or activity of the assessee is promotion of the cricket. The

association is organizing tournament like Ranji Trophy, Irani Trophy, Dilip Trophy, Maharaj Bhagwat Singh Trophy, Salim Durrani Trophy etc. the Assessing Officer has not doubted about these activities of the association. It is also brought to our notice that in the international one day match between south Africa and India, the association suffered deficits of Rs. 1.6 crores. It is also brought to our notice that the RCA has also incurred in various other expenses with a view to promote the game of Cricket viz. on coaching camps of Rs. 20,40,360/-, state cricket activities of Rs. 1,08,60,566/-, Ground expense of Rs. 33,97,435/- and international tournament expenses of Rs. 2,09,16,911/-. These facts go to demonstrate that the assessee has been predominantly engaged into the activity of promoting cricket match. The counsel for the assessee has placed reliance on the judgment of the Hon'ble Delhi High Court rendered in the case of Institute of Chartered Accountant vs Director General of Income Tax, wherein the Hon'ble High Court held that even though fee are charged by the petitioner Institute for providing coaching classes and holding interviews with respect of campus placement, the said activity cannot be stated to be rendering of service in relation to any trade, commerce or business as such activities are undertaken by the petitioner institute in furtherance of its main object which has held earlier are not trade, commerce or business. In the present case also the main activity of the assessee is conducting of the cricket match which falls under the category of general public utility. This fact is not disputed by the Revenue. All these activities are ancillary to the main activity. Therefore, we are of the considered view that the Assessing Officer was not justified in declining the exemption.

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

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

8. Ground no. 9 is against charging of interest, which is consequential in nature held accordingly. This ground of the Assessee is dismissed.

9. Ground no. 10 in general in nature and needs no separate adjudication.

10. In the result, the appeal of the assessee is allowed in ITA No. 388/JP/2012, is partly allowed.

11. Now, coming to the cross appeal in assessment year 2009-10, in **ITA No. 944/JP/2013 and ITA No. 921/JP/2013.**

First we take up the Revenue appeal in **ITA No. 921/JP/2013** pertaining to the assessment year 2009-10. The revenue has raised following grounds of appeal.

1. "Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in allowing depreciation of Rs. 2,16,62,215/- in absence of details of assets acquired and used by assessee.
2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in allowing the TDS of Rs. 3,10,312/- and interest thereon of Rs. 8,412/- claimed by the assessee under the head administrative expenses in "Income & Expenditure A/c."

12. Briefly, stated the facts are that the case of the assessee was selected for scrutiny assessment and assessment u/s 144 of the Act, was framed by the order dated 13/12/2011. Thereby, the Assessing Officer rejected the claim of deduction u/s 11 & 12 of the Act and also disallows the depreciation lump-sum disallowance of out of expenditure and disallowance of income tax and interest on TDS. Aggrieved by this, the assessee preferred an appeal before Id. CIT(A). The Id. CIT(A) has confirmed the disallowance of exemption u/s 11 and 12, however deleted the addition made on account of disallowance of depreciation and also deleted the disallowance made on account of non-payment of TDS and lump-sum disallowance the assessee and revenue both have challenged this decision, by filing separate appeals.

12.1 First ground of Revenue's appeal is against deletion of depreciation at the time of hearing the Id. Departmental Representatives fairly conceded that this issue is covered against the Revenue by the Judgment of Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax vs. Krishi Upaz Mandi Samiti 388 ITR 605(Raj) and also that this issue is decided against the revenue by the judgment of Hon'ble Supreme Court in the judgment of R.K. synthetic vs. Union of India.

Therefore, we do not see any reason to interfere into the order of the Id. CIT(A) same is hereby confirmed. Ground no. 1 of the Revenue's appeal is dismissed.

12.2 Ground no. 2 in the revenue's appeal in the deletion of addition made on account of non-deduction of deduction of tax at source. The Id. Departmental Representatives supported the orders of the Assessing Officer.

12.3 On the contrary, the Id. Counsel for the assessee supported the orders of the Id. CIT(A).

12.4 We have heard the rival contentions, we find that Id. CIT(A) has given a finding on facts by observing as under:

"I have considered facts of the case. It is noticed that the AO has disallowed this amount without bringing out any fact on record and without giving an opportunity of being heard to the appellant. The appellant's submission is that the TDS has been deposited before due date of filing the return. Since the amount has been deposited by due date, the disallowance appears to be uncalled for and is, accordingly, deleted."

This finding of fact is not controverted by the Revenue. Therefore, we do not see any reason to interfere into the order of the Id. CIT(A).

13. The grounds raised in the Revenue's appeal in ITA No.921/JP/2013, are dismissed.

14. Now, we take up, the assessee's appeal in ITA No. **944/JP/2013** pertaining to assessment year 2009-10. The assessee has raised following grounds of appeal.

1. "The very action taken u/s 147 r/w 148 of the Act is bad in law, without jurisdiction and being void ab-initio, hence the impugned notice issued u/s 148 of the Act kindly be quashed. Consequently the impugned assessment framed u/s 144/148 of the Act dated 13.12.2010 also kindly be quashed.

2. The Id. AO erred in law as well as on the facts of the case in framing the assessment u/s 144 without affording adequate and reasonable opportunity and even without complying with the mandatory statutory requirement of law. The impugned order having been framed in gross breach of natural justice, kindly be quashed.
3. The impugned additions and disallowances made in the order u/s 144 dated 13.12.2011 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence, the same kindly be deleted.
- 4.1 The Id. CIT(A) erred in law as well as on the facts of the case in confirming the denial of exemption u/s 11 & 12 of the Act by the AO while assessing the income of the appellant. Such denial and confirmation being totally contrary to the provisions of law and facts, the appellant be allowed the benefits of exemption.
- 4.2 The Id. CIT(A) erred in law as well as on the facts of the case in confirming the denial of exemption u/s 11 of the Act on merits also by confirming the adverse findings of the AO that the activities of the appellant are not charitable in nature but tinted with commerciality. Such findings running contrary to the facts and circumstances of the present case, be quashed in totality.
- 4.3 The Id. CIT(A) erred in law as well as on the facts of the case in confirming the action of the AO while invoking proviso to Sec. 2(15) of the Act which being contrary to the provisions of the law and facts, it has to be held that the said proviso to sec. 2(15) of the Act is not applicable to the facts and circumstances of the present case hence, it may kindly be held so.
- 4.4 Rs. 1,50,00,000/-: The Ld. CIT(A) erred in law as well as on the facts of the case in confirming the addition of the donation to corpus fund of Rs.1,50,00,000/-. The addition so made, being completely contrary to the provisions of law and facts on record and hence, the same be deleted in full.
- 4.5 The Id. CIT(A) also erred in law as well as on the facts of the case in confirming the action of the AO in charging the tax at the maximum marginal rate (MMR) which action is also being completely contrary to the provisions of law and facts on record and hence, kindly be quashed.
5. Rs. 50,00,000/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the disallowance of Rs. 50,00,000/- relying on the allegation of the non-production/absence of the books of account.

The disallowance so made, being completely contrary to the provisions of law and facts on record and hence, the same be deleted in full.

5. The Id. CIT(A) further erred in law as well as on the facts of the case in confirming the charging interest of Rs. 12,29,368/- u/s 234A & 2,02,84,572/- u/s 234B of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full.
6. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

15. Ground no. 1 at the time to hearing, the Id. Counsel for the assessee submitted that he does not wish to challenge press. The ground no. 1, therefore same is dismissed as not pressed.

15.1 Ground nos. 2 to 3 are against non-affording opportunity to the assessee. We find that Id. CIT(A) has given sufficient opportunity at the appellate stage to the assessee. Therefore, ground no. 2 and 3 are dismissed.

15.2 Ground no. 4.1 to 4.3 are against the rejecting the claim of exemption u/s 11 of the Act. Apropos to ground no. 4.1 to 4.3 , the respective representatives of the parties have adopted the same argument as were in the ITA No. 388/JP/2016, pertaining to the assessment year 2008-09. The ground raised in that appeal has been decided by us, by observing as under:

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

"There is no dispute that the primary and dominant activity of the trust is to spread the message of Saibaba. This main activity does not amount to "business". The activity of publishing and selling literature, books and other literature is obviously incidental or ancillary to the main activity of spreading the message of Saibaba and not to any business as such even without a profit motive and it is in a way a means to achieve the object of the trust though which the message of Saibaba is

spread. It is clear from the trust deed and objects contained therein that it was not established with an intention of carrying on the business/occupation of selling or supplying goods. This being the position, it cannot be said that the trust carries on the business of selling and supplying goods so as to fall within the meaning of "dealer" under section 2(11) of the Act.

No doubts, the definition of "business" given in section 2(5A) of the Act even without profit motive is wide enough to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any transaction in connection with or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern. If the main activity is not business, then any transaction incidental or ancillary would not normally amount to "business" unless an independent intention to carry on "business" in the incidental or ancillary activity is established. In such cases, the onus of proof of an independent intention to carry on "business" connected with or incidental or ancillary sales will rest on the department. Thus, if the main activity of a person is not trade, commerce, etc., ordinarily incidental or ancillary activity may not come within the meaning of "business". To put it differently, the inclusion of incidental or ancillary activity in the definition of "business" pre-supposes the existence of trade, commerce, etc."

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

"Thus respectfully following the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association (supra), we have to hold that the amounts received by the assessee from a) ground booking charge, b) health club charges, c) income from corporate boxes, d) lawn booking income, e) sponsorship money and sale of ticket, advertisement, souvenirs and other such receipts do not result in the assessee being held a undertaking activities in the nature of "trade, commerce and business". These receipts are intrinsically related, interconnected and interwoven with the charitable activity and cannot be viewed separately. The activities resulting in the said receipts are also charitable activities and not "trade, commerce or business" activities."

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

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

17. Section 2(15) of the Act of 1961 which defines 'charitable purposes' reads as under:

"(15) 'charitable purpose' includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility;

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year".

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

19. In Andhra Chamber as commerce's case (supra), while considering the expression 'object of general public utility' as used in Section 4 (3) of the Income Tax Act, 1922, the Hon'ble Supreme Court observed:

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

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

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

21. In the matter of “Additional CIT vs. Surat Art Silk Cloth Manufactures Association”, (1980) 121 ITR, 1, the Hon’ble Supreme Court held that if the primary or dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. The court further observed that true meaning of the words in section 2(15) viz. ‘not involving carrying on any activity of profit’ is that when the purpose of a trust or institution is advancement of an object of general public utility, it is that object of general public utility which must not involve carrying on of any activity for profit and not its advancement or attainment. The court observed that what is inhibited by these last ten words is the linking of activity or profit with the object of general public utility and not its linking with the accomplishment or carrying out other object. Thus, so long as purpose does not involve carrying on or any activity for profit, the requirement of definition would be met and it is immaterial how the money’s for achieving or implementing such purpose are found whether by carrying on an activity for profit or not.
22. In Andhra Pradesh Road Transport Corporation’s case (supra), the Hon’ble Supreme Court while relying upon the earlier decisions in the matter of “additional CIT vs. Surat Art Silk cloth Manufactures Association”, (1980) 121 ITR 1 and “CIT Vs. Bar Council of Maharashtra”, (1981) 130 ITR 28 (SC), held that if predominant object is to carry out a charitable purpose and not earn profit, the purpose would not lose its charitable character merely because some profit arises from the activity.
23. In Gujarat Maritime Board’s case (supra), the Hon’ble Supreme Court after due consideration of various earlier decisions, observed:

“We have perused a number of decisions of this court which have interpreted the words, in section 2(15), namely, “any other object of general public utility”. From the said decisions it emerges that the said expression is of the wide connotation. The word “general” in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose (CIT v. Ahmedabad Rana Caste Association [(1983) 140 ITR 1 (SC)]. The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the

said trade or industry (CIT v. Andhra Chamber of Commerce[1965] 55 ITR 722 (SC)]. If the primary or predominant object of any institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity (Addl. CIT v. Surat Art silk Cloth manufacturers Association [1980] 121 ITR 1 (SC). The present case in our view is squarely covered by the judgment of this court in the case of CIT v. Andhra Pradesh State Road Transport Corporation [1986] 159 ITR1 (SC) in which it has been held that since the corporation was established for purpose of providing efficient transport system, having no profit motive, though it earns income in the process, it is not liable to income-tax.

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

24. In "Commissioner of Income Tax v. Krishi Upaj mandi Samiti, jaisalmer", (2011) 331 ITR 135 (Raj.), a Bench of this court while considering the entitlement of Krishi Upaj Mandi Samiti, a statutory body, constituted and established under the Rajasthan Agricultural Produce Market Act, 1961, observed that may be the income received by the Samiti by way of cess or mandi fees is not shown to be spent wholly for the purpose of relief of the poor, education, or medical relief, but under the scheme of the act, being the Rajasthan Agricultural Produce Markets Act, 1961, the entire amount received by the samiti is required to be spent for the purposes mentioned therein, which obviously include advancement of "any other object of general public utility'.
25. In Lukhnow Development Authority's case (supra), while examining the question regarding applicability o proviso to Section 2(15), Allahabad High Court observed:

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

26. Coming to the decision of Jammu & Kashmir High Court in Jammu Development Authority's case (supra), relied upon by learned counsel for the Revenue, reveal that the appeal preferred by the Jammu Development Authority was dismissed by the court observing that there are findings of facts that the assessee-appellant has not been acting to advance any of the object concerning general public utility. Further while referring to first proviso to Section 2(15), the court has observed that "we find that no substantial question of law much less a substantial question of law would emerge from the impugned order of Income Tax Appellate Tribunal warranting admission of the appeal." A bare perusal of the order reveal that the catena of decisions of the Hon'ble Supreme Court referred to hereinabove, interpreting the effect of first proviso in context of the main provision of Section 2(15), which defines 'charitable purpose', were not brought to the notice of the court and therefore, the said order passed by the court by merely recording its ipse dixit does not help the Revenue in any manner.
27. From various decisions of the Hon'ble Supreme Court discussed hereinabove, the settled position of law emerges is that if the primary or predominant object of an institution is charitable, any other which might not be charitable but which is ancillary or incidental to the dominant purpose, may be involving element of profit, would be prevent the institution from being a valid charitable trust."

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

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

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

Taking consistent view, we hereby direct AO to grant exemption as claimed by the Assessee. Thus, the grounds raised are allowed.

15.3 Apropos to ground no. 4.4 and 4.5 the Id. Counsel for the assessee reiterated the submissions as made in the written brief. It is submitted that the assessee could not claim benefit u/s 11 & 12 on account of the registration has been cancelled. Therefore, all types of voluntary contribution were treated as income under section 2(24). It is contended that once the registration is restored the authorities below ought to have allowed the claim.

15.4 On the contrary, the Id. Departmental Representatives supported the orders of the authorities below.

15.5 We have heard the rival contentions, perused the material available on records and gone through the order of the authorities below. We find that the Assessing Officer made addition to income on the basis that assessee is no longer

eligible for benefit u/s 11 & 12 of the Act. Since, the registration has been restored we are of the view that this issue requires fresh consideration by the Assessing Officer. Therefore, the issue is restored to the file of AO for decision afresh.

15.6 Ground no. 5 is against confirmation of disallowance of Rs. 50 lakhs. Ld. Counsel for the assessee reiterated the submissions as made in the written brief and submitted that the addition was made by AO are bitterly without pointing out any specific expense to be claim excessively it was submitted before Assessing Officer with books on accounts of the assessee were duly audited by Chartered Accountant, wherein no adverse noting is made.

15.7 On the contrary, Id. Departmental Representatives supported the orders of the authorities below.

15.8 We have heard the rival contentions, perused the material available on records and gone through the orders of the authorities below. The Id. CIT(A) has decided the issue in para 13.1 by observing as under:

“Even at the appellate stage the only submission of the appellate I that since the books of account were audited by a Chartered Accountant, the AO should have accepted the authenticity of the accounts. This, however, does not appear to be a valid argument. If the AO were bound to accept all the accounts which are audited by an Accountant, there was no need for any provision in the IT Act to enable the AO to call for details u/s 142(1)/143(2) and pass an assessment order u/s 143(3)/144. Since the appellant has failed to bring any fact on record in support of this ground, I do not find any reason to interfere with the order of the AO on this issue. The appeal on this ground, therefore, fails.”

In our considered view neither the Assessing Officer nor the Id.CIT(A) has given this specific instances with regard to expenses. Once the assessee is able to prove the veracity all the expenditure same should not be disallowed merely on the basis of

the conjecture. Therefore, we deemed it proper to restore this issue to the file of the assessee for decision afresh.

15.9 Next ground is against charging of interest which is consequential in nature, therefore same is decided accordingly.

15.10 Ground no. 6 is general in nature needs no separate adjudication. In the result appeal of the assessee is partly allowed for statistical purposes.

16. In the result, appeal of the Assessee in ITA NO. 388/JP/2012 (A.Y.2008-09) is partly allowed, whereas appeal of the Revenue in ITA No. 921/JP/2013 (A.Y.2009-10) is dismissed and appeal of the Assessee in ITA No.944/JP/2013 (A.Y.2009-10) is partly allowed for statistical purposes.

17. Order pronounced in the open court on 23/3/2017.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member
Jaipur

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य/Judicial Member

Dated:- 23 /03/2017.

Pooja/

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

1. The Appellant- M/s Rajasthan Cricket Association, Jaipur.
2. The Respondent- The Additional Commissioner of Income Tax, Range-2,Jaipur
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 388/JP/2012, 944/JP/2013 & 921/JP/2013)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar