

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्रीविजय पालरॉव, न्यायिकसदस्य एवंश्रीविक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकरअपील सं./ITA No. 1355 & 1356/JP/2018
निर्धारणवर्ष / Assessment Years : 2010-11 & 2011-12.

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

आयकरअपील सं./ITA No. 284/JP/2020
निर्धारणवर्ष / Assessment Year: 2011-12.

Rajasthan Cricket Association, North Block, SMS Stadium, Ambedkar Circle, New Vidhan Sabha, Jaipur.	बनाम Vs.	Addl. C.I.T., Range-2, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No. AAATR 0798 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Rooni Paul (Addl.CIT) &
Shri B.K. Gupta (CIT-DR)

निर्धारिती की ओरसे / Assesseeby : Shri Shyam Lal Agarwal (CA) &
Shri Tarun Agarwal (CA)

सुनवाई की तारीख / Date of Hearing : 08/10/2020
घोषणा की तारीख / Date of Pronouncement: 25/11/2020.

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the Revenue against two separate orders of
the Id. CIT (A)-1, Jodhpur (camp at Jaipur) dated 20.09.2018 for the assessment

years 2010-11 and 2011-12 respectively and the appeal filed by the assessee being ITA No. 284/JP/2020 against the said order dated 20/09/2018 for the A.Y. 2011-12.

2. Since all these appeals involved common issues and are connected, therefore, the same were heard together and are being disposed off by this consolidated order.

3. At the outset, it is noted that the appeals of the Revenue in ITA No. 1355 & 1356/JP/2018 were disposed off by the Tribunal vide its order dated 09/12/2019. Subsequently, the assessee moved a misc application seeking recall of the said order and the Tribunal vide its order dated 03/03/2020 in MA No. 13 & 14/JP/2020 has recalled its earlier order dated 09/12/2019. The relevant findings of the Tribunal while recalling the earlier order are contained in para 3 of its order, which read as under:

"3. We have considered the rival submissions as well as the relevant material on record. There is no dispute that these two appeals were filed by the revenue on 3rd December, 2018 and were fixed for hearing on 21st February, 2019 for which notices were issued to the respondent assessee. Thereafter, the hearing was deferred to 30th April, 2019 and on that date nobody appeared on behalf of the respondent assessee. The Bench accordingly ordered for issue of notice to the respondent assessee through RPAD for 30th May, 2019. Even on 30th May, 2019 none appeared on behalf of the assessee respondent and the hearing was adjourned to 26.07.2019. On 26.07.2019 again nobody appeared on behalf of the respondent assessee and the hearing was adjourned to 11.09.2019 with the direction that notice be issued and served through Id. DR/AO. In between the matter was again adjourned due to non-functioning of the Bench and the notices were issued to the assessee as directed by the Bench through the AO. Finally the matter was listed for hearing on 2nd December, 2019 and the Id. D/R has filed the report of service of notice duly acknowledged by the assessee respondent.

Despite the service of notice of hearing, nobody appeared on behalf of the assessee, however, to grant one more opportunity to the respondent assessee, the hearing was again deferred to 4th December, 2019. Despite all these opportunities given to the assessee, nobody appeared even on 4th December, 2019 and the matter was accordingly heard and disposed off ex parte. Thus as far as the opportunity of hearing to the assessee respondent is concerned, it is manifest from the record that the assessee respondent was given more than sufficient opportunities but nobody has appeared on the date of hearing. Even no authority/power of attorney was filed on record on behalf of the assessee respondent. Therefore, in those circumstances taking up the matter for ex parte hearing was in accordance with the rules and this itself would not constitute an apparent error on the face of the record. However, now the assessee respondent in its Miscellaneous Application has explained the cause of non appearance as due to the disputes and litigation regarding the Management of the assessee Association, the day to day functioning of the Association was disturbed until the order dated 10.07.2017 passed by the Hon'ble Sole Arbitrator. It is pertinent to note that once the said order dated 10.07.2017 was passed, there was no interruption or distraction in the day to day functioning of the assessee association and thereafter the new Office bearers assumed the Office on 4th October, 2019 i.e. two months prior to the date on which the appeals of the revenue were heard ex parte. Therefore, the reasons as explained by the assessee respondent in the Miscellaneous Application do not make out a reasonable cause for non appearance. Though the assessee has filed an Affidavit of Shri Rajendra Kumar who is working as Receptionist of the assessee Association stating that the notice was received on 28th October, 2019 relating to the hearing on 2nd December, 2019 before this Tribunal but the same was inadvertently forwarded to the Internal Auditor instead of Office Bearers of the Association. We fail to understand who is more familiar and competent to understand the tax matters than the auditors of the Association. Therefore, we do not find any substance in the explanation of the assessee. However, since the order was passed ex parte and the Tribunal was not having the privilege of hearing the

assessee who would have presented its case along with the supporting decisions in its favour including the decision of this Tribunal in assessee's own case for the preceding assessment years. We are conscious and aware that the principle of res judicata is not applicable in the matter of taxation, however, a decision in the assessee's own case is certainly relevant material to be considered while deciding the issue in matter. Therefore, non consideration of the earlier decision of this Tribunal in assessee's own case as well as the decisions as would have been relied upon by the assessee referred during the course of hearing of the Miscellaneous application would constitute an apparent mistake on the face of record as those decisions would certainly have some bearing on the adjudication of the matter. Therefore, without expressing any view on the merits and applicability of those decisions on the facts of the case for the assessment years under consideration, we are of the considered opinion that in the interest of justice the assessee be granted one more opportunity of hearing to present its case. Accordingly, in the facts and circumstances of the case, we recall the impugned order dated 9th December, 2019 and direct the Registry to fix the appeals of the revenue for fresh hearing and adjudication on 14th April, 2020. Notice of hearing be issued to the parties."

4. We thus note that the earlier order so passed by the Tribunal was recalled to hear the assessee as the earlier order was passed *ex-parte qua* the assessee and to also consider on merits, while hearing the matter a fresh, the applicability of the earlier decision of the Tribunal in the assessee's own case for the preceding assessment years as well as the decision of the Hon'ble Rajasthan High Court confirming the decision of the Tribunal as well as the decision of the Hon'ble Gujarat High Court in case of DIT (Exemptions) vs Gujarat Cricket Association 419 ITR 561(Guj), as referred during the course of hearing of the misc. application, which

were held to be relevant material to be considered while deciding the issue under consideration.

ITA No. 1355/JP/2018

5. With the consent of both the parties, the appeal of the Revenue in ITA No. 1355/JP/2018 for the A.Y. 2010-11 is taken as a lead case for the purposes of present discussions wherein the ground of appeal so taken by the Revenue reads as under:-

" 1. On the facts and the circumstances of the case and in law, the Id. CIT (Appeals) has erred in allowing exemption u/s 11 of the I.T. Act 1961 to the assessee despite the fact that the proviso to section 2(15) is invoked in the case of the assessee as the activities of the assessee are being run on commercial basis, there being no element of charity."

6. The brief facts of the case are that the assessee is a society trust registered under Rajasthan Society Trust Registration Act, 1958 and also registered under Sport Association's Registration Accreditation Act, 2005. The assessee society filed its return of income declaring total income at NIL after claiming the exemption U/s 11/12 of the Income Tax Act, 1961. The matter was taken up for scrutiny and thereafter after issuing notices U/s 143(2) and 142(1) of the Act calling for the necessary information/documents/explanation from the assessee, the Assessing officer denied the claim of exemption U/s 11 and 12 of the Act. As per the Assessing officer, the registration granted to the assessee society has been withdrawn by the Id CIT-I Jaipur vide order dated 28.03.2013 under section 12AA(3)

of the Act from assessment year 2005-06 onwards and therefore, on this account, the assessee society is not entitled to exemption u/s 11 and 12 of the Act. Further, the Assessing officer held that the assessee society is involved in carrying on the activities in the nature of trade, commerce or business and having receipts in excess of Rs. 25,00,000/-, therefore, the first proviso to Section 2(15) of the Act is applicable in the case of the assessee. It was held by the A.O. that receipts from one day international matches are to the tune of Rs. 2,90,11,113/- which is far in excess of the quantum mentioned in the proviso to Section 2(15) of the Act. These receipts are mostly attributable to sale of tickets of cricket matches which is squarely covered under the first proviso to Section 2(15) of the Act. It was further held by the A.O. that the assessee has been found to be regularly indulging in commercial activities just like any other commercial enterprise as it is organizing matches, selling tickets, selling advertisement contracts etc. which have resulted in huge profits year after year. The surplus of the assessee has increased exponentially and without fail for the past several years. Therefore, even if the assessee's activities are viewed independently of its objects, the taint of commerciality is all over. There is nothing charitable about assessee's activities and even if it were registered u/s 12A, which although it is not, the benefit of Section 11 would still not be allowed to it. The AO accordingly held that all receipts are liable to be taxed as per normal provisions and surplus of income and expenditure account amounting to Rs 6,57,43,511/- was brought to tax at maximum marginal rate.

7. Being aggrieved, the assessee challenged the action of the AO before the Id. CIT (A) and relied upon various decisions of this Tribunal including the decision in its

own case for the previous assessment years. The Id. CIT (A) held that the registration of the assessee society u/s 12A has been restored by the Tribunal vide its order dated 09.06.2016 and it is thus entitled to claim exemption under section 11 and 12 of the Act. Further, the Id CIT(A) held that the activities of the assessee are charitable in nature though the same are the objects of general public utility but the primary or dominant purpose is to carrying out the general public utility and not earning the profit. The relevant findings of the Id CIT(A) are contained at para 7.2 of his order which read as under:

"7.2 I have considered the assessment order, appellant's submissions and documents on record. I find that appellant's main object in the year 1988 was "advancement of Cricket". Further the amendments made to the object of the appellant in the year 1999 and 2005 are within the purview of its main object. The AO made the question on nature of the activity of the appellant trust whether such promotion of sports and games carried out was a profit making activity or not and why the activities should not be treated as business activity and the exemption claimed should not be disallowed. This issue has been squarely covered within the decision of Hon'ble Supreme Court in the case of ACIT vs. Surat Art Silk Cloth Manufacturers Association reported in 121 TR 1 (SC) wherein it was held that the primary or dominant purpose of the trust or institution has to be examined to determine whether the said trust /institution is involved in carrying out any activity for the profit and (ii) if the "object" of the trust or institution is to carry out object of general public utility and this is the primary or dominant purpose and not carrying on any activity for profit,

the same would satisfy the requirements of section 2(15) of the Act. Here, the main object of the appellant was providing financial help to all the clubs and there was no commercial angle in organizing matches. It organizes various programmes to encourage cricket and appellant has produced a number of excellent cricketers of international repute and this was achieved by nurturing talent irrespective of cast, creed, status, religion etc.

Further, the Hon'ble High Court, Delhi in the case of M/s GSI India vs. DIT, Delhi reported in 360 ITR 138 elaborately differentiate the business, trade activity from charitable activity under the residuary category i.e. "advancement of any other object of general public utility".

Apart from this, the Hon'ble ITAT, Delhi in the case of Delhi and District Cricket Association vs. CIT(E), ITA No.3095/Del/2012 held as under:-

" 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."

Therefore, respectfully following the ratio laid down by abovementioned decisions of various higher formation, I am of view that the appellant's main object was "advancement of general public utility" and advancement of sports. Hence, question made on the activities of the appellant in terms of section 2(15) of the act is held to be invalid. The appellant succeeds on this ground and the same is treated as allowed."

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

8. The Id. D/R has submitted that the AO has narrated the activity of the assessee as organizing the cricket matches including the international one day cricket matches and IPL matches, revenue from sale of tickets, advertisement contracts etc. which have resulted in huge profits year after year. The surplus of the assessee has increased exponentially and without fail for the past several years. Further, the assessee is earning income from these activities which has nothing to do with the activity of promotion of sports but these are pure commercial activities being IPL Subvention fees, TV subsidy, IPL income and income from One day International Matches. It was submitted that the true nature of revenue receipts of the assessee is nothing but the assessee's shares in the total advertisement revenues of BCCI related to commercial ventures of organizing One day & twenty-twenty cricket matches specially IPL matches. Thus the assessee is earning the

revenue from advertisement receipts from BCCI being its share in the advertisement receipts. When these IPL teams of various business houses, film stars and the entire activities are conducted in a commercial manner, then the income earned by the assessee from the said activities of conducting the IPL matches is only from activity of trade, commerce or business. Therefore, the first leg of proviso to section 2(15) is attracted in the case of the assessee. The Id. D/R has relied upon the decision of the Chandigarh Benches of the Tribunal in case of Punjab Cricket Association vs. ACIT in ITA No. 427/Chd/2017 dated 12.09.2019 and submitted that the Tribunal while deciding an identical issue in case of Punjab Cricket Association has discussed all the relevant facts and nature of activities of BCCI and State Cricket Association and found that the activities of organizing the cricket matches particularly IPL and other matches are in the nature of trade, commerce or business. Further even if these activities are considered as incidental business activities to the main objects and activities of the assessee, when the revenue earned from these activities is more than the threshold limit then the first proviso to section 2(15) is attracted. Thus the Id. CIT D/R has relied on the decision of Chandigarh Benches of the Tribunal. It was further submitted that the principle of res judicata doesn't apply in case of income tax proceedings and facts of each year needs to be examined separately. It was further submitted that the department has not accepted the decision of the Coordinate Bench and that of Hon'ble Rajasthan High Court for the earlier years and an SLP has been filed before the Hon'ble Supreme Court. He accordingly supported the order and the findings of the Assessing officer.

9. In his submissions, the Id A/R submitted that from the order of the Assessing officer, it is apparent that the AO has passed the order on the basis that the registration u/s 12A of the Income Tax Act, 1961 granted to RCA was withdrawn u/s 12AA(3) on 28.12.2010 by the Id CIT-I, Jaipur and held that the benefits of section 11 and 12 could not be allowed to the assessee. In this regard, it was submitted that it is true that the registration u/s 12AA was withdrawn by the Id. CIT, however, the same was challenged and an appeal was filed before the Jaipur Bench of ITAT with a request to set aside the order of the Ld. CIT and issue direction for restoring the registration. The said appeal has since been decided in favor of the RCA by the order of Jaipur Bench of ITAT dated 09.06.2016. The department went before the Hon'ble Rajasthan High Court against the said order which was also decided in favor of the RCA vide their order dated 21.11.2017. It was accordingly submitted that RCA is a registered entity under section 12A of the IT Act & that it is eligible for the benefit of section 11 & 12 of the Act.

10. It was further submitted that the AO in the assessment order observed that the assessee has 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 in the nature of business, accordingly the assessment was completed by computing the total income of the association at Rs. 18,00,76,170/-. In this regard, it was submitted that RCA is not a business entity, it's governing body is also elected by the members and is being run as per the constitution of RCA and its aims and objects are to promote the sport of cricket in the state of Rajasthan and not to earn profit or conducting any business activity.

The RCA had a history of its operations in the field of promotion of cricket and there had been no activities beyond the constitution and it is a charitable institution duly covered under section 2(15) in the limb of advancement of General Public Utility without any intent of earning profit and distribution of any surplus directly or indirectly to its members. The members of the Association holding different post are providing honorary services and are not eligible for any salary or remuneration. The association has various cricket teams for men under 14 Years, under 16 Years, under 19 Years, under 23 Years and senior Team i.e for Ranji Trophy Team, Dilip Trophy etc. There are cricket teams for women also. Further the association looks after the cricket activities in 32 districts in the State of Rajasthan including Jaipur, Udaipur, Jodhpur, Alwar, Rajsamand and Sikar. The association employ former national level cricketer as coaches for the teams with the other cricket experts for training. The RCA provide coaching for skill development, physical development, mental development to build personality of the cricketers. The RCA had been able to organise various international Matches, One day matches & T20 Matches and the predominant object of these matches to promote the game of Cricket. The RCA has been able to produce various renowned players such as Salim Durrani, G.R. Sunderum, C.G. Joshi, Raj Singh Dungarpur, Hanumant Singh, Suryaveer Singh, Laxman Singh, Kailash Gattani, Parthsarthy Sharma, Gagan Khoda, Pankaj Singh and Ashok Maneria. Further, there are players like Khaleel Ahmed, Deepak Chahar, Rahul Chahar who are currently playing for Indian cricket team. The above renowned past and current cricketers provide their expert training/ guidance to the other players of the Rajasthan and thus, help promote the talent pool of cricketers in the state of Rajasthan.

11. It was further submitted that RCA organizes various National level tournaments like Ranji Trophy, Irani Trophy, Dilip Trophy, Maharana Bhagat Singh Trophy, Laxman Singh Dungar Trophy, Suryaveer Singh Trophy etc. Further RCA is utilizing a large sum of money in training and Coaching camp for which no fees is charged from the participants. The promotion is therefore directly of the players/cricketers. The international and IPL matches entrusted by BCCI are played for very few days in a year and help augment the resources in the hands of the RCA.

12. It was further submitted that Cricket is an immensely popular game in the country and anything to do with the cricket result in mass involvement of public at large. The sheer strength of these numbers results in higher visibility of cricketing activities and the scale of operations on which the work for development of cricket is to be carried out. When a cricket stadium is itself built, it has to accommodate a very number of persons, but the size of the stadium could not mean that the activity is for anything other than promotion of cricket. When the numbers are large the scale of operation is large and when scale of operation is large even the surplus or deficit could be large, but such figures never turn a fundamental object of general public utility into commercial activity as the surplus so generated is ploughed back for the promotion of sport of cricket and is never distributed directly/indirectly to any of its members/office bearers who are holding honorary positions.

13. It was further submitted that BCCI giving subsidy to RCA, the teams, the suppliers, the contractors and all other persons dealing with RCA may have their own objects even of business/commerce/to earn money; which however doesn't mean under any law/facts that RCA is also covered as business entity. The fact has

been considered by the Delhi Benches of Tribunal in case of Delhi & District association (ITA No. 3095/Del/2012) and the relevant findings are contained at para 11.2 of its order which read as under:

"the assessee has to perform many activities and for this purpose he has to enter into transactions with various types of persons. Those persons can be commercial or non commercial, professionals, venders of goods and services and so forth and so on, merely entering into such agreements does not tantamount to the assessee being a business entity. To carry out a transaction in an organizational 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."

14. It was further submitted that the BCCI allot the international matches & ODI/T 20 matches to RCA & the AO erroneously concluded that huge money is collected & distributed by them and that the recipients of the subsidy/income from BCCI becomes business entity. He has completely failed to consider that the object of RCA is to educate, update, and inspire the state cricketers and the promotion of the game of cricket in Rajasthan. One of the main objects is also to hold matches as mentioned in its Memorandum which is part of the education & training having variety of benefits. The major benefit of organizing these matches are that the local team is being trained by RCA, it get opportunities to learn from the experiences of coaches of international level by assisting them during practice matches, by witnessing the matches played by international players, by spending time with them

during the practice matches and after match hours. The RCA had been able to produce the national & international level cricketers who are part of the Indian Cricket Team & also part of other ODI/T 20 series. In view of the above, it is clearly justified that the receipts/surplus from the said matches never had any element at any stage of any business but the same is incidental to promote the game of Cricket. In support, reliance was placed on the Hon'ble Supreme Court decision in case of Commissioner of Sales Tax v. Sai Publication Fund (2002) 258 ITR 70 where while interpreting the word "Business" in the context of section 2(5A) of the Bombay Sales tax Act 1959, it was held that "the inclusion of the incidental or ancillary activity in the definition of business pre-supposes the existence of trade, commerce and business. Thus the dominant activity of the assessee was not business than any incidental or ancillary activity of the assessee would not fall within the definition of the business." These facts are apparently very clear to justify that the association is a charitable institution entitled to claim the available benefits under section 11 & 12 of the Act, where the question of applicability of the proviso to section 2(15) does not arise.

15. It was further submitted that the matter is squarely covered by the earlier decision of the Tribunal in ITA No. 944/JP/2013 dated 23.03.2017 for Assessment Year 2009-10, wherein it was held that the proviso to section 2(15) is not applicable to RCA & that the benefits of section 11 & 12 cannot be denied. It was submitted that the said decision of the Tribunal has since been affirmed by the Hon'ble Rajasthan High Court in Appeal No. 257/2017 dated 21.11.2017. It was submitted that though the Revenue has filed an SLP before the Hon'ble Supreme Court,

however, mere filing an SLP or its admittance is no bar against the binding nature of the decision of the Hon'ble jurisdictional High Court. It was submitted that the Department has failed to distinguish the activities of RCA from the earlier year i.e. A.Y 2009-10, where the matter was discussed in detail and decided on merits by the Jaipur Bench of Tribunal and which has since been affirmed by the Hon'ble Rajasthan High Court and the said decision therefore clearly applies in the instant case. In this regard, a comparative analysis of receipts and payments for AY 2009-10, 2010-11 and 2011-12 was submitted stating that there are no material changes in the revenue heads & nature of activities of the RCA in the Assessment year 2010-11 and 2011-12 as compared to Assessment year 2009-10:

S.No	Group Heads of Income	(Figure in Lakhs)		
		2008-09	2009-10	2010-11
	Assessment year	2009-10	2010-11	2011-12
1.	IPL Subvention by BCCI and IPL Income	1000.00	810.43	960.43
2.	TV Subsidy from BCCI	1497.23	1053.56	1555.74
3.	Ranji Trophy Subsidy	11.42	8.40	22.90
4.	ODI and other subsidy / income from tournaments / trophies	27.29	313.41	253.45
5.	Interest Income	69.52	190.26	234.36
6.	Other Miscellaneous Income	16.06	(1.91)	31.16
	Total Income	2621.52	2374.21	3058.04

S.No	Group Heads of Expenditure	(Figure in Lakhs)		
1.	National Cricket Activity-(Ranji Trophy, VinodMarkand Trophy, Women Tnmt etc.)	106.65	185.21	452.68
2.	State Cricket Activity(Durani Trophy, championships and women tournaments)	108.60	185.66	287.13
3.	Coaching Camps	20.40	24.81	24.64
4.	Cricket Activities Misc	63.44	94.90	223.08
5.	International Tournament Expenses	221.45	507.71	522.89
6.	Grant to Districts associations	99.46	120.99	188.53
7.	Ground Expenses	33.97	42.37	53.50
8.	RCA Cricket Academy Expense	113.12	15.22	14.93
9.	Other Adm. Establishment and	428.58	334.53	585.85

	Misc. expenses			
	Total Expenditure	1195.67	1511.40	2353.23

16. It was submitted that a perusal of the above comparative figures makes it clear that the IPL matches and the subsidy from BCCI were even more in AY 2009-10 as compared to AY 2010-11 & was similar in AY 2011-12. The expenses clearly indicates that the RCA has been dedicating its activities on the cricket promotion expenses for Coaching, Ground, experts, state & national cricket activities etc. It was accordingly submitted that following the Rule of consistency, the earlier decision of the Tribunal as affirmed by the Hon'ble Rajasthan High Court should be followed for the impugned assessment year where there are no changes in the facts and circumstances of the case.

17. It was further submitted that besides the decision of the Hon'ble Rajasthan High Court in assessee's own case, there is another decision of the Hon'ble Gujarat High Court in the case of Gujarat Cricket Association and Others reported in [2019] 419 ITR 561 (Guj) wherein under identical facts and circumstances of the case, the matter has been examined at length and decided in favour of the assessee and thus, the said decision also supports the case of the assessee.

18. It was further submitted that the view taken by the Chandigarh Bench of Tribunal in the case of Punjab Cricket Association vs. ACIT (*in ITA no. 427/Chd/2017 dated 12.09.2019*) are not based on correct facts as well as the appreciation of facts in right perspective & hence are distinguishable and not applicable in the instant case. It was submitted that at para 18 of the said order, it was mentioned that "The representatives of the State Associations are at the helm of the affairs of the BCCI.

The status of the BCCI under the circumstances is nothing but of an Association of Persons (in short 'AOP') of which State Associations including the assessee are the members." Further, it was also mentioned in the same para that "There is a complete federal structure starting from lower level i.e. District Cricket Associations to the International Cricket Council. District Cricket Associations collectively form State Cricket Associations. State Cricket Associations collectively form the National Body named as BCCI. The similarly existing National Cricket Boards/associations of different countries including BCCI collectively constitute International Cricket Council (in short 'ICC'). There is no rebuttal to the submissions of the Ld. DR that ICC commercially exploits the International Cricket matches." In this regard, it was submitted that in the instant case, the RCA is an independent association managed by the elected representatives. The only similarity in the BCCI and RCA is that the common goal of both of the bodies is promotion of the game of cricket. For the limited purpose of the proper coordination and management of matches, these bodies coordinate their efforts and in this regard, reference can be drawn to the decision of the Hon'ble Gujarat High Court in the case of Gujarat Cricket Association wherein it was held as under:

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

the sale of tickets etc., in such circumstances, would not portray the character of commercial nature.

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

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

19. Further, it was submitted that the decision in the case of Tamil Naidu Cricket Association [2014] 360 ITR 633 (Mad) also supports the case of the assessee where the Hon'ble Madras High Court held as under:

“56. The assessee is a member of Board of Control for 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 organise 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 rights 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 Tribunals 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 for considering the test specified under section 12AA(3) to impose commercial character to the activity of the Association. In the circumstances, 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.”

20. It was accordingly submitted that the decision of the Chandigarh Bench of the Tribunal in the case of Punjab Cricket Association was based on the wrong facts and presumptions and in the instant case, the objectives of the RCA are charitable and independent of the BCCI and it does not take color of BCCI in any manner and thus, the said decision stand distinguishable and doesn't apply in the facts of the instant

case. He accordingly supported the findings of the Id CIT(A) where he held that the dominant and primary purpose of the assessee society is advancement of sport of cricket and there is no commercial angle in organizing the matches.

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

22. Now, coming to the main issue as to the applicability of proviso to section 2(15) for the impugned assessment year 2010-11 to the assessee society by virtue of which, can it be denied the exemption claimed u/s 11 and 12 of the Act. In this regard, the contention of the Id A/R is that the matter relating to applicability of proviso to section 2(15) was exhaustively examined by the Coordinate Bench in assessee's own case for A.Y 2009-10 and it has been held that the said proviso is not applicable to the assessee society and the exemption claimed u/s 11 and 12 cannot be denied. It has been submitted that the said decision of the Coordinate Bench has since been affirmed by the Hon'ble Rajasthan High Court in Appeal no. 252/2017 dated 21.11.2017. It has been further contended that there are no changes in the facts and circumstances of the case and the similar activities and

operations have been conducted in A.Y 2009-10 and A.Y 2010-11 and there is no finding by the Assessing officer that the activities and operations so conducted by the assessee society during the financial year relevant to impugned assessment year i.e, A.Y 2010-11 are different or at variance to the activities and operations of the assessee society during the financial year relevant to A.Y 2009-10. It was accordingly submitted that following the rule of consistency, the decision of the Coordinate Bench in assessee's own case for A.Y 2009-10 may be followed for the impugned assessment year 2010-11 and further, the said decision has been affirmed by the Hon'ble Rajasthan High Court and is thus binding on this Tribunal and other authorities under its jurisdiction.

23. To appreciate the contention so advanced by the Id A/R, we refer to the findings of the Assessing officer denying the claim of the exemption u/s 11 and 12 for the A.Y 2009-10 vide order passed u/s 144 dated 13.12.2011 and the relevant findings read as under:

"I have considered the submissions of the assessee. The legal issues raised by the assessee as to whether the. CIT has the power to withdraw the registration already granted and whether the order withdrawing the benefit of sections 11 & 12 can be given effect respectively are beyond my domain to sit in judgment. The appeal of the assessee against the order of the CIT withdrawing the registration passed u/s 12AA is the subject matter of appeal before the Hon'ble ITAT, Jaipur Bench and its verdict is yet to come in. Since the assessee failed to comply with the terms of the statutory notices issued, I am under obligation to make an assessment of its income or loss to the

best of my judgment and determine the tax payable by it on the basis of material available on record, as provided u/s 144 of the IT Act, 1961.

The facts of the case leading to the rejection of exemption u/s 11 and 12 of the Act have been discussed threadbare in the assessment order for AY 2008-09, which have been completed u/s 143(3) vide order dated 29-12-2010. On the basis of facts and figures, it was established that the activities of the assessee are tainted with commerciality and are not in conformity with the object of the trust. The case laws cited by the assessee are not applicable to the facts of the case in view of the above settled history of the case. Facts of the assessee's case remaining the same for the year under consideration and in the absence of any fresh material brought on record warranting a divergent view on the issue, I proceed to complete the assessment on the same lines. Since the exemption u/s 11 and 12A stands withdrawn vide CIT, Jaipur-1's order dated 27-12-2010 w.e.f. A.Y. 2005-06, all the receipts including contribution to corpus fund are liable to be taxed as assessee's income in a normal course and charged to tax, in the status of AOP at maximum marginal rate.(Delhi High Court decision in the case of Kanhiyalal Punj Charitable Trust vs. DIT (2008) 171 Taxman 134 (Del.) relied upon)

Notwithstanding the above, in view of the modification/amendment made to section 2(15) of the I.T. Act, 1961, 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, 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. Though the object of the trust "promotion of

sports" is charitable in nature but its activities are tainted with commerciality. The conduct of certain activities and receipt of income from these activities clearly shows that these activities are totally commercial and there is no element of charity in the conduct of assessee. From the facts and figures available on record, it is clear that the activities of the assessee even in connection with undertaking or organizing matches are clearly business activities within the meaning of section 2(13) of the I.T. Act, 1961, as all the elements of business are present in the said activities. On perusal of Income and expenditure A/c, it is noticed that the major sources of income are from TV subsidy, IPL subvention, bank interest etc. It is judicially accepted proposition that where profit making is the predominant object of the activity, the trust or body would lose exemption as a charitable institution. Notwithstanding the fact that the exemption granted to the assessee u/s 11 & 12 stands withdrawn, with the amendment made to section 2(15) w.e.f. A.Y. 2009-10, the activities of the assessee cannot be held to be charitable in nature for the reasons mentioned afore. Hence, it is held that the assessee is no longer eligible for the benefits of section 11 & 12 of the Act."

24. We also refer to the findings of the Assessing officer denying the claim of the exemption u/s 11 and 12 for the impugned assessment year i.e, A.Y 2010-11 vide order passed u/s 143(3) dated 29.03.2013 and the relevant findings read as under:

"...it is clear that any trust involved on carrying on any activity in the nature of trade commerce or business and having receipts in excess Rupees twenty five lacs shall not be considered to be carrying out "the advancement of any other object of general public utility." In this case the receipts from one day international match are Rs. 2,90,11,113/- which is far in excess of the quantum mentioned in the proviso above.

These receipts are mostly attributable to sale of tickets of cricket matches which is squarely covered under the first proviso to section 2(15).

6. The assessee has been found to be regularly indulging in commercial activities just like any other commercial enterprise. It is organizing matches, selling tickets, selling advertisement contracts etc. which have resulted in huge profits year after year. The surplus of the assessee has increased exponentially and without fail for the past several years. Therefore, even if the assessee's activities are viewed independently of its objects, the taint of commerciality is all over. There is nothing charitable about assessee's activities and even if it were registered u/s 12, which although it is not, the benefit of section 11 would still not be allowable to it."

25. We therefore find that for A.Y 2009-10, the Assessing officer has returned a finding that though the objects of the assessee society being promotion of sport is charitable in nature but the conduct of its activities and receipt of income shows that these activities and receipts are totally commercial and there is no element of charity in the conduct of these activities. And to support his said assertion, the Assessing officer has referred to the assessee's income and expenditure account and held that major sources of income are from TV subsidy, IPL subvention, bank interest etc and held that profit making is the predominant object of the activities so conducted by the assessee society and therefore, as per proviso to section 2(15), the activities of the assessee cannot be held as charitable and exemption claimed u/s 11 and 12 was denied. Similarly, for A.Y 2010-11, the Assessing officer has returned a finding that the assessee society is regularly indulging in commercial activities as it is organizing matches, selling tickets, selling advertisement contracts, etc which has resulted in

huge profits and surplus has increased exponentially for past several years. The AO has also given a specific reference to receipts from sale of tickets from one day international match amounting to Rs 2,90,11,113/- and held that these receipts exceeds the quantum of Rs 25 lacs as so specified in proviso to section 2(15) and the benefit of section 11 and 12 were again denied to the assessee society. We therefore find that as far as nature of the activities being undertaken in these two years are concerned, the Assessing officer has returned a similar finding that the nature and extent of the activities being conducted by the assessee society are in nature of organizing matches, selling tickets and advertisement space etc and the receipts from such activities are reflected in the income and expenditure account in form of TV subsidy, IPL subvention, ticket sales, bank interest etc and these activities have resulted in huge profits and surplus year after year. Similarly, the conclusion so drawn and the findings so given by the Assessing officer on review of such activities is also consistent where he held that these activities and receipts are totally commercial in nature resulting in huge profits and surplus and there is no element of charity in the conduct of these activities and thus, the proviso to section 2(15) is applicable in the instant case.

26. The Id A/R has also submitted the comparative position of income and expenditure account for A.Y 2009-10, 2010-11 and 2011-12, as we have noted in para 15 supra and find that the revenues have been received consistently under the similar heads and transactions in form of IPL subvention from BCCI and IPL income, TV Subsidy from BCCI, Ranji Trophy Subsidy, ODI and other misc. income from tournaments and interest income. Similarly, the expenditure has been incurred

consistently under the similar heads and transactions in form of national cricket activities in terms of organizing Ranji trophy, Vinod Markand trophy, women tournaments; state cricket activity in terms of organizing Durani Trophy etc, organizing coaching camps, international tournament expenses, grant to district cricket associations, RCA cricket academy expenses and other misc. administrative and establishment activities. With particular reference to income/revenues in form of IPL subvention from BCCI and other IPL related income, we find that the assessee society has disclosed such revenues to the tune of Rs. 1000 lakhs in A.Y 2009-10 and Rs. 810.43 lakhs in A.Y 2010-11 and therefore, these IPL revenues are being received and reflected on a consistent and regular basis in both the years.

27. Therefore, taking into considerations the aforesaid findings of the Assessing officer for A.Y 2009-10 and A.Y 2010-11 regarding the nature of the activities and the operations so undertaken by the assessee society as also reflected through the income and expenditure account for the respective years as so submitted by the Id A/R, we agree with the contention of the Id A/R that the activities and operations so conducted by the assessee society during the financial year relevant to impugned assessment year i.e, A.Y 2010-11 are consistent and not at variance to the activities and operations of the assessee society during the financial year relevant to A.Y 2009-10.

28. Having discussed the fact that there are no changes in the facts and circumstances of the case for the year under consideration as compared to the previous assessment year 2009-10, we now refer to the decision of the Coordinate

Bench in ITA No. 944/JP/2013 for A.Y. 2009-10 and the decision of the Hon'ble Rajasthan High Court approving the decision so taken by the Coordinate Bench.

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

"4. We have considered, the rival contentions, perused the material available records. The only issue to be examined under the facts of the present case is whether the Assessing Officer was justified in declining the claim of the deduction u/s 11 of the Act. The Assessing Officer however observed that a perusal of the financial figures reveals that the applicant has generally accumulated surplus u/s 11(2) of the Act in last 4 or 5 years, which indicate that the assessee is earning huge surplus from the activities carried out by it. The Assessing Officer further observed that the assessee's investment is increasing, this shows that the assessee is converting the surplus into investment which in turn has strengthened its capacity to earn more. Therefore, he concluded that the assessee exist for purpose of earning profit and the applicant is not promoting sports on non-profit basis. The assessing Officer further observed that that the assessee had built a premises in the name of Rajasthan Cricket Academy, which has been given on rent to a service provider on a monthly rent of Rs. 75,000/-. The agreement executed with the service provider states that booking for 28 rooms will be made through service provider. The Assessing Officer reproduced the clause 2.2.1 of the agreement and inferred that the said

clauses leave no doubt for the commercial exploitation of the property by the service provider under the direct control of the RCA. He observed that in the present case the service provider is paying to the RCA for using the premises as hotel. It is clear for the same that the motive of RCA is to maximize the profit. He observed that RCA is generating huge profit year after year and its expenditure on sports promotion coaching maintenance of premises and facilities etc. is very low. The Assessing Officer further observed that there is no denial that the object of the assessee's institution is promotion of sports which as per CBDT circular is charitable purpose. But the activities undertaken by the RCA clearly shows that the main activity is commercial exploitation of public craze over cricket. The assessing officer placed reliance on the judgment of the Hon'ble Calcutta High Court rendered in the case of Cricket Association of Bengal Vs. Commissioner of Income Tax 371 ITR 277.

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

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

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

the nature of use or application, or retention, of the income from such activity:]

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

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

between India and Pakistan. It is the contentions of the assessee that a match between India and Pakistan always generates higher receipts as the number of audience is higher. It is also pointed out that the match between other countries could not even fetch 70 to 80% of the collection. It is also contended that all the payments in the shape of sponsorship, advertisement, TV rights etc. are received directly by BCCI. Further, BCCI delegates the organization of matches to state association and in turn state association gets some funds from promotion and expansion of their charitable activities. It is also submitted that major benefits by organizing these matches is that local team, being trained by the RCA, get opportunity to learn from experience of coaches of international level by assisting them during practice matches and by witnessing the matches played by the international players, by spending time with them etc. It is submitted that organizing such matches results into the promotion of sports of cricket surplus if any generated is purely incidental in nature and the assessee cannot be deemed to carry out activity in nature of trade, commerce or business. It is also contended that the association has been organizing matches in the remote areas in Rajasthan. It is submitted that the Assessing Officer observed that the association was involving into commercial activities and the society had accumulated of surplus increase in the investment, control over the players by observing this however, he failed to appreciate that normally the surplus was the result of subsidies only and not from the conducting of tournament on commercial basis. The subsidies are a form of financial aid granted for promoting a specific cause, which is ultimately for the benefit of overall section of public but never or the benefit of an individual organization. It is contended that the subsidy received by the RCA is utilized in the promotion and development of sports of cricket in state at each level, i.e. from mufasils areas to big cities like Jaipur. It is also contended that renting out by premise by RCA has been viewed adversely in the context it was submitted that RCA is formed with a sole objective of promoting cricket and with the view to achieve the desired objective the renting of premises as done is wholly and exclusively for the purpose of cricket and no other activity of whatsoever nature has been carried out

neither it is engaged in the systematic activity as hotelier. Thus, the main act of association is fully in the direction of achieving its basic object of promoting cricket. It is contended that RCA is provide technical and financial support to the all District Cricket Association i.e. providing equipments, nets, balls, etc. without any consideration on other side RCA is getting only affiliation fee from them which is very nominal (Rs. 200/- only). The RCA has providing grants to Districts of a substantial amount of Rs. 39,20,763/-. RCA is organizing various matches of national level tournaments like Ranji Trophy, Irani Trophy, Dilip Trophy, Maharana Bhagwat Singh Trophy, Salim Durrani Trophy etc., without having any surplus rather these were organized for the development of game of cricket at national level and to identify the players who can represent the country at international level and in the year 2007-08 RCA has made expenditure of over Rs. 1.12 crores. It is contended that the surplus if any generated by the assessee by the assessee was merely incidental to the main object that is promotion of sport of cricket and in no way by running business of cricket as has been alleged by the Revenue.

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

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

indicate that the grant of registration was not based on material indicating object of general public utility.

The assessee is a member of Board of Control of Cricket in India (BCCI), which in turn is a member of ICC (International Cricket Council). BCCI allots test matches with visiting foreign team and one day international matches to various member cricket association which organize the matches in their stadia. The franchisees conduct matches in the Stadia belonging to the State Cricket Association. The State Association is entitled to all in-stadia sponsorship advertisement and beverage revenue and it incurs expenses for the conduct o the matches. BCCI earns revenue by way of sponsorship and media right as well as franchisee revenue for IPL and it distributes 70% of the revenue to the member cricket association. Thus the assessee is also the recipient of the revenue. Thus, for invoking Section 12AA read with section 2(15) of the Act, Revenue has to show that the activities are not fitting with the objects of the Association and that the dominant activities are in the nature of trade, commerce and business. We do not think that by the volume of receipt one can draw the inference that the activity is commercial. The Income Tax Appellate Tribunal's view that it is an entertainment and hence offended Section 2 (15) of the Act does not appear to be correct and the same is based on its own impression on free ticket, payment of entertainment tax and presence of cheer group and given the irrelevant consideration. These considerations are not germane in considering the question as to whether the activities are genuine or carried on in accordance with the objects of the Association. We can only say that the Income Tax Appellate Tribunal rested its decision on consideration which are not relevant or considering the test specified under Section 12AA(3) to impose commercial character to the activity of the Association. In the circumstance, we agree with the assessee that the Revenue has not made out any ground to cancel the registration under Section 12AA(3) of the Act."

The Id. DR has strongly relied on the decision of the coordinate bench in the case of Rajasthan Housing Board Vs. CIT 21 [taxmann.com](#) 77 and also decision in the case of Ahemdabad Urban Development Authority vs. CIT(2016) 69 [taxmann.com](#) 381 and also the decision of coordinate bench in the case of Entertainment Society of Goa Vs. CIT 34 [taxmann.com](#) (210) (Panji) so far as the decision of the coordinate bench in the case of Rajasthan Housing Board and Ahemdabad Urban Development authority are concerned

are no more binding precedents in view of the subsequent judgment of Hon'ble Jurisdictional High Court in the Jodhpur Development Authority rendered in the case of CIT Vs. Jodhpur Development Authority 287 ITR 473(Raj.)

6. *The allegations of the Assessing Officer is that in the case of assessee the major income arise not from the game of Cricket but from the business of Cricket. It is alleged by the Assessing Officer that major source of income are from TV Subsidy, Sale of advertisement, surplus from one-day international between India and Pakistan income from RCA Cricket Academy and interest income. All these activities are more in the nature of business of cricket than the promotion of game of Cricket. As per AO, though, the word 'Business' is not defined in the Income Tax Act. It has been held to postulate the existence of certain elements in the activity of assessee, which would invest it with the character of business such motive must pervade the whole series of transaction effected by the person in course of his activity. The characteristic of volume, frequency to continuity and regularity of the activity accompanied by profit motive. On the part of the assessee have been held to indicate an intention to continue the activity as business. In this back-drop of allegation we need to examine whether the allegation of the Assessing Officer is in consonance with the statutory provision governing the issue and judicial pronouncement made in this respect. The revenue has not doubted that the assessee has conducted matches of the Cricket. The only suspicion with regard to the activity is that during the one-day international played between India and Pakistan, there was huge surplus and the assessee had rented out rooms to belonging to the society at a very higher rate. Therefore, it can be inferred that the Assessing Officer is swayed by the volume of receipts. These identical facts, were also before the Hon'ble Madras High Court in the case of Tamil Nadu Cricket V. The Director of Income Tax(E)(supra) wherein the Hon'ble Court opined that by the volume of receipt inference that activity is commercial cannot be drawn. It was observed by the Hon'ble High Court, that the basis of the decision of the Tribunal was on irrelevant consideration.*

It was held that these considerations are not germane in considering the question whether the activities are genuine or carried on with the object of the association.

It is also noteworthy that as per section 11(4A) substituted by the Finance Act, 1983 with effect from 1/4/1984 sub section 1 or sub section 2 or sub section 3 or sub section 3A shall not apply in relation to any income of a trust or an institution, being profit and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be institutions and separate Books of accounts are maintained by such trust or institution in respect of such business. Now, coming to the allegation of the Assessing Officer that the major source of income are TV subsidy, sale of advertisement surplus from ODI between India and Pakistan income from RCA Cricket academy and interest income. It is not in dispute that TV subsidy, sale on advertisement surplus from ODI between India and Pakistan income from RCA Cricket Academy are all relating to the conduct of Cricket matches by the society. It is undisputed fact that without conduct of matches income cannot be derived. Therefore, it can be safely inferred that these incomes are related to the incidental activity of the association. These incomes would not accrue without the game of Cricket. The main thrust of revenue's argument is that for allowing exemption under section 11 of the Act, the Assessing Officer need to examine whether the proviso to section 2(15) of the Act is attracted or not. It is the contention of the revenue that assessee would fall under the limb of any other object of general public utility to which category only the proviso to section 2(15) applies. It is contended that if proviso 2(15) attracted, assessee loses benefit of exemption as per section 13(8). Therefore, it is submitted that only question to be decided is to whether assessee is engaged in commercial activity for fee or other consideration. It is also contended that nature of receipt about hands of the assessee by way of sharing of sponsorship of media rights with BCCI as well as match revenue for conducted various cricket matches. It is contended that in the assessment year 2008-09, the assessee has earned surplus of Rs. 5.88 crores out of

receipts in the shape of advertisement, canteen, and tickets of Rs.7.81 crores which amounts to super normally profit. The other hand, contention of the assessee is that the argument of the revenue is misplaced as the authorities below failed to appreciate the facts that expression trade, commerce or business is to be understood as a regular and systematic activity with the prime motive to earn profit. Whereas the association never acted as a professional advertiser, TV producer etc. No matches or any game other than Cricket or no other events are organized to attract audience rather only cricket matches are being organized whether the same result into profit or loss. It is 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 o

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 I the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year”.

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

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

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

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

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

21. *In the matter of “Additional CIT vs. Surat Art Silk Cloth Manufactures Association”, (1980) 121 ITR, 1, the Hon’ble Supreme Court held that if the primary or dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental*

to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. The court further observed that true meaning of the words in section 2(15) viz. 'not involving carrying on any activity of profit' is that when the purpose of a trust or institution is advancement of an object of general public utility, it is that object of 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 t connotation. The word "general" in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose (CIT v. Ahmedabad Rana Caste Association [(183) 140 ITR 1 (SC)]. The said expression would prima facie include all objects which promote the welfare of the general public. If cannot be said that a purpose would cease to be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who

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

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

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

"29. For the applicability of proviso to Section 2(15), the activities of the trust should be carried out on commercial lines with intention to make profit. Where the trust is carrying out its 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 hitassessee by applying proviso to Section 2(15) and deny exemption available under section 11. The intention of the trustees and the manner in which the activities of the charitable trust institution are undertaking are highly relevant to decided the issue of applicability of proviso to section 2 (15)."

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

From various decisions of the Hon'ble Supreme Court discussed hereinabove, the settled position of law emerges is that if the primary or predominant object of an institution is charitable, any other which might not be charitable but which is ancillary or incidental to the dominant purpose, may be involving element of profit, would be prevent the institution from being a valid charitable trust."

In the light of the above binding precedents, we are unable to affirm the view of the revenue. In the present case, material as placed before us suggests that the Assessing Officer is swayed by the figures and volume of receipts. Admittedly, such receipts are intermittent and not regular and also is dependent on the conduct of cricket match. It is not other way round that the cricket matches are dependent upon such activities. The undisputed facts are that the assessee is registered under the Rajasthan Sports (registration,

recognition and regulation) Act 2005 and formed with the objective of promoting the sports of cricket within the state of Rajasthan so main objective or activity of the assessee is promotion of the cricket. The association is organizing tournament like Ranji Trophy, Irani Trophy, Dilip Trophy, Maharaj Bhagwat Singh Trophy, Salim Durrani Trophy etc. the Assessing Officer has not doubted about these activities of the association. It is also brought to our notice that in the international one day match between south Africa and India, the association suffered deficits of Rs. 1.6 crores. It is also brought to our notice that the RCA has also incurred in various other expenses with a view to promote the game of Cricket viz. on coaching camps of Rs. 20,40,360/-, state cricket activities of Rs. 1,08,60,566/-, Ground expense of Rs. 33,97,435/- and international tournament expenses of Rs. 2,09,16,911/-. These facts go to demonstrate that the assessee has been predominantly engaged into the activity of promoting cricket match. The counsel for the assessee has placed reliance on the judgment of the Hon'ble Delhi High Court rendered in the case of Institute of Chartered Accountant vs Director General of Income Tax, wherein the Hon'ble High Court held that even though fee are charged by the petitioner Institute for providing coaching classes and holding interviews with respect of campus placement, the said activity cannot be stated to be rendering of service in relation to any trade, commerce or business as such activities are undertaken by the petitioner institute in furtherance of its main object which has held earlier are not trade, commerce or business. In the present case also the main activity of the assessee is conducting of the cricket match which falls under the category of general public utility. This fact is not disputed by the Revenue. All these activities are ancillary to the main activity. Therefore, we are of the considered view that the Assessing Officer was not justified in declining the exemption.

Ld. CIT (DR) vehemently urge that first proviso to clause (15), Section 2 of the Act, therefore, as per section 13(8) of the Act nothing contained in section 11 or Section 12 shall operate, so as to exclude of income of total

income of previous year of the present. As we have held that in the light of the various judicial pronouncement proviso to clause (15) to Section 2 of the Act would not be applicable on the facts of the present case. Ld. DR has relied on the decision of the co-ordinate Bench in the case of Entertainment Society of Goa Vs. CIT (2013) 34 [Taxmann.com](#) 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."

30. In the aforesaid decision, the Coordinate Bench has held that the main objective of the assessee society is promotion of cricket and considering the various activities organized by the assessee society by way of organizing international one day cricket matches, domestic cricket tournaments, cricket coaching camps and taking into consideration the receipts and expenditure in relation to such activities, it was held that the assessee is predominantly been engaged in the activities of promotion of cricket. It has also been held that the Assessing officer is swayed by the figures and volume of receipts from one-day international cricket matches and subsidies received from BCCI in form of TV subsidy and other subsidy from cricket tournaments, however such receipts are intermittent and not regular and depend upon the conduct of the cricket matches itself and are therefore incidental and ancillary to the conduct of cricket matches and are not independent activities being carried on with an independent intention to carry on business and relying on the decisions of Hon'ble Supreme Court in case of Commissioner of sales tax vs Sai Publication Fund (supra), Hon'ble Rajasthan High Court decision in case of CIT vs

Jodhpur Development Authority (supra), Hon'ble Madras High Court in case of Tamil Naidu Cricket Association vs DIT(E) (supra), Hon'ble Delhi High Court in case of ICAI vs DGIT (supra) and Delhi Benches of the Tribunal in case of District Cricket Association vs DIT(supra) held that the proviso to section 2(15) would not be applicable and the exemption so claimed by the assessee was allowed u/s 11 and 12 of the Act. Given that there are no changes in the facts and circumstances of the present case in terms of nature of activities and operations being carried out by the assessee society in the financial year relevant to the impugned assessment year, we do not see a valid reason to deviate from the said decision taken by the Coordinate Bench which has been passed after elaborating discussing each of the contentions raised by the Revenue as well as judicial precedents laid down by various Courts.

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

- "i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in allowing exemption u/s. 11 of the IT Act, 1961 in spite of the fact that the proviso to Section 2(15) is invoked in the case of assessee as the activities of the assessee being run on commercial basis and there being no element of charity?"*
- ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in holding that the assessee is liable to claim depreciation of Rs.2,16,62,215/- on the assets which were claimed as application u/s. 11 at the time of purchase?"*

32. The Hon'ble High Court has taken into consideration the nature of activities undertaken by the assessee society and nature of receipts being accounted for in its

books of accounts in form of one day international cricket match, income from advertisement, sale of tickets, TV subsidy, etc, at para 6.2 of its order which read as under:

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

(4) Commercial Activity:-

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

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

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

India V/s Pakistan (One day international)

Income from Advertisement	2,92,50,000/-
Income from Canteen	3,15,000/-
Income from Tickets	4,66,32,500/-
T.V. Subsidy	6,83,46,048/-
Sale of Advertisement	10,00,000/-

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

"The RCA will receive fees of Rs.75,000/-(Rupees Seventy Five thousand Only) per month from the service provider as for grant of facilities to the service

provider. This sum shall be enhanced by @ 15% per year for each subsequent year."

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

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

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

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

"SECTION 2(15) CHARITABLE PURPOSE

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

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

2. The question whether promotion of sports and games can be considered as being a charitable purpose has been examined. The Board are advised that the advancement of any object beneficial to the public or section of the public as distinguished from an individual or group of individuals would be an object of general public utility. In view thereof, promotion of sports and games is considered to be a charitable purpose within the meaning of section 2(15). Therefore, an association or institution engaged in the promotion of sports and games can claim exemption under section 11 of the Act, even if it is not approved under section 10(23) relating to exemption from tax of sports associations and institutions having their objects as the promotion, control, regulation and, encouragement of specified sports and games."

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

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

follow provision of Section 11(5) and Section 13 to disallow the expenses of the income as the case may be, if the same is not income in expenses as per the approved bye-laws but nonetheless cancellation of registration is uncalled for.

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

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

in accordance with its objects and bye-laws. Therefore, the said decision of the Hon'ble Rajasthan High Court will apply with equal force for the impugned assessment year, being the decision of the Jurisdictional High Court in assessee's own case where the facts and circumstances of the case are identical. Further, it is a well settled legal proposition, as has been laid down by the Courts from time to time and which has been reiterated by the **Hon'ble Supreme Court** in case of **Godrej & Boyce Manufacturing Company Ltd.** (394 ITR 449) that:

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

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

there has to be compelling reasons for a departure from the past settled position wherein the assessee society has been held to be engaged in the field of sports and its predominant activity being the promotion of Cricket in the State of Rajasthan all

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

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

“35. It appears from the line of reasoning adopted by the Assessing Officer and the CIT(A) that both are absolutely mesmerized or rather hypnotized by the word "BCCI" The corpus with the BCCI may be huge and the BCCI may be indulging in commercial transactions like TV rights, IPL matches etc. However, we fail to understand what has the BCCI to do directly with the assessee. The assessee is a registered charitable trust. It has its own objects. It has its own activities for the purpose of promoting the game of cricket, or in other words, imparting education in the game of cricket. The BCCI may ask the Association to host a cricket match at the international level once in a year or two. However, that by itself, is not sufficient to draw an inference that the assessee-Association is indulging in commercial activity with an element of profit motive.

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

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

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

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

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

making or not. Similarly, while considering whether any activity is one of rendering any service in relation to any trade, commerce or business, the element of profit making is also very important.”

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

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

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

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

- (i) In carrying on the charitable activities, certain surplus may ensue. However, earning of surplus, itself, should not be construed as if the assessee existed for profit. The word "profit" means that the owners of the entity have a right to withdraw the surplus for any purpose including the personal purpose.*
- (ii) It is not in dispute that the three Associations have not distributed any profits outside the organization. The profits, if any, are ploughed back into the very activities of promotion and development of the sport of cricket and, therefore, the assesseees cannot be termed to be carrying out commercial activities in the nature of trade, commerce or business.*
- (iii) It is not correct to say that as the assesseees received share of income from the BCCI, their activities could be said to be the activities of the BCCI. Undoubtedly, the activities of the BCCI are commercial in nature. The activities of the BCCI is in the form of exhibition of sports and earn profit out of it. However, if the Associations host any international match once in a year or two at the behest of the BCCI, then the income of the Associations from the sale of tickets etc., in such circumstances, would not portray the character of commercial nature.*
- (iv) The State Cricket Associations and the BCCI are distinct taxable units and must be treated as such. It would not be correct to say that a member body can be held liable for taxation on account of the activities of the apex body.*
- (v) Irrespective of the nature of the activities of the BCCI (commercial or charitable), what is pertinent for the purpose of determining the nature of the activities of the assesseees, is the object and the activities of the assesseees*

and not that of the BCCI. The nature of the activities of the assessee cannot take its colour from the nature of the activities of the donor.”

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

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

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

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

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

(c) To provide for measures necessary for promotion and development of the game of Cricket in Rajasthan, welfare and interest of Cricketers and elimination of unethical and unfair practices in the Game of cricket in Rajasthan; and for that purpose, organize coaching schemes, establish coaching academies, hold tournaments, exhibition matches, Test Matches, ODIs, Twenty/20, T-10 and any other matches and take other required steps;

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

39. And therefore, the receipts from sale of tickets from one day international and IPL matches are incidental and ancillary to its predominant object of the promotion of sport of cricket and cannot be construed as commercial in character attracting the proviso to section 2(15). Further, other receipts in form of IPL subvention, TV subsidy from BCCI and other receipts etc are dependent upon the conduct of the cricket matches itself and are therefore incidental and ancillary to the conduct of cricket matches and are not independent activities being carried on with an

independent intent to carry on business and thus, doesn't attract the proviso to section 2(15) of the Act. Lastly, the assessee society generating surplus from these receipts after meeting its expenditure on year to year basis is not reflective of its intent and existence for profit. It is not the case of the Revenue that such surplus are distributed by the assessee society to its members rather the admitted facts are that such surplus is ploughed back by the assessee society for building the necessary infrastructure and conduct of other capacity building activities for the promotion of the sport of cricket in the state of Rajasthan. Similar issue has been examined at length by the Coordinate Bench in case of **Assistant Commissioner of Income-tax (Exemption), Jaipur Vs Mahima Shiksha Samiti** [2017] 79 taxmann.com 38 (Jaipur - Trib.) and the relevant findings read as under:

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

provisions of section 13(1), the assessee society is not held eligible for exemption under section 11 of the Act.

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

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

- (1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for education purposes and becomes an institution for the purpose of making profit.
- (2) The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.
- (3) A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.
- (4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes
- (5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating

persons.'

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

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

- (1) It is obligatory on the part of Chief Commissioner of Income-tax or the Director which are the prescribed authorities, to comply with proviso thirteen (un-numbered). Accordingly, it has to be ascertained whether the educational institution has been applying its profit wholly and exclusively to the object for which the institution is established. Merely because an institution has earned profit would not be deciding factor to conclude that the educational institution exists for profit.
- (2) The provisions of section 10(23C)(vi) of the Act are analogous to the erstwhile section 10(22) of the Act, as has been laid down by Hon'ble Supreme Court in the case of American Hotel and Lodging association (supra). To decide the entitlement of an institution for exemption u/s 10(23C)(vi) of the Act, the test of predominant object of the activity has to be applied by posing the question whether it exists solely for education and not to earn profit [see 5 Judges constitution Bench Judgment in the case of Surat Art Silk Cloth Manufactures association (supra)]. It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not result in change of character of the institution that it exists solely for educational purpose. A workable solution has been provided by Hon'ble Supreme Court in para 33 of its judgment in American Hotel and Lodging Association's case (supra). Thus on an application made by an institution, the prescribed authority can grant approval subject to such terms and conditions as it may deem fit provided that they are not in conflict with the provisions of the Act. The parameters of earning profit beyond 15% and its investment wholly for educational purposes may be expressly stipulated as per the statutory requirement. Thereafter the Assessing Authority may ensure compliance of those conditions. The cases where exemption has been granted earlier and the assessment are complete with the finding that there is no contravention of the statutory provisions, need not be reopened.

However, after grant of approval if it comes to the notice of the prescribed authority that the conditions on which approval was given, have been violated or the circumstances mentioned in 13th proviso exists, then by following the procedure envisaged in 13th proviso, the prescribed authority can withdraw the approval.

- (3) *The capital expenditure wholly and exclusively to the objects of education is entitled to exemption and would not constitute part of the total income.*
- (4) *The educational institutions which are registered as a society would continue to retain their character as such and would be eligible to apply for exemption under section 10(23C)(vi) of the Act.*
- (5) *Where more than 15% of income of an educational institution is accumulated on or after 1st April, 2002, the period of accumulation of the amount exceeding 15% is not permissible beyond five years, provided the excess income has been applied or accumulated for application wholly and exclusively for the purpose of education."*

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

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

.....The fact that the Petitioner has a surplus of income over expenditure for the three years in question, cannot by any stretch of logical reasoning lead to the conclusion that the Petitioner does not exist solely for educational purposes or, as that Chief Commissioner held that the Petitioner exists for profit. The test to be applied is as to whether the predominant nature of the activity is educational. In the present case, the sole and dominant nature of the activity is education and the Petitioner exists solely for the purposes of imparting education. An incidental surplus which is generated, and which has resulted in additions to the fixed assets is utilized as the balance sheet would indicate towards upgrading the facilities of the college including for the purchase of library books and the improvement of infrastructure. With the advancement of technology, no college or institution can afford to remain stagnant. The Income-tax Act, 1961 does not condition the grant of an exemption under Section 10(23C) on the requirement that a college must maintain the status-quo, as it were, in regard to its

knowledge based infrastructure. Nor for that matter is an educational institution prohibited from upgrading its infrastructure on educational facilities save on the pain of losing the benefit of the exemption under Section 10(23C). Imposing such a condition which is not contained in the statute would lead to a perversion of the basic purpose for which such exemptions have been granted to educational institutions. Knowledge in contemporary times is technology driven. Educational institutions have to modernise, upgrade and respond to the changing ethos of education. Education has to be responsive to a rapidly evolving society. The provisions of Section 10(23C) cannot be interpreted regressively to deny exemptions. So long as the institution exists solely for educational purposes and not for profit, the test is met." (Emphasis supplied)

18. *Though the above referred decision of the Hon'ble Supreme Court in case of Queen's educational society has been rendered in the context of section 10(23C)(iiiad) where the legislature has used the words "income received by any person on behalf of educational institution existing solely for education purposes and not for the purposes of profit", in our view, the proposition in law is equally relevant and applicable in context of section 11 of the Act where the legislature has used the words "income derived from property held under trust wholly for charitable purposes" and wherein similar provisions exist in terms of accumulation and plough back of surplus for educational purposes as the intent behind both the provisions is essentially the same. The said analogy also becomes clear from the fact that the Hon'ble Supreme Court in case of Queen Education Society has itself referred to and approved its earlier decision in case of S.R.M.M.C.T.M Tiruppani Trust v. CIT [\[1998\] 230 ITR 636/96 Taxman 635](#) which was rendered in context of section 11 while discussing the principle of accumulation and utilization of surplus for educational purposes in para 19 of its order as under:*

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

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

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

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

"The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall out of Section 10(23C) is to ignore the language of the section and to ignore the tests laid down in Surat Art Silk Cloth case (CIT v. Surat Art Silk Cloth Manufacturer's Association [1980] 2 SCC 31) Aditanar case (Aditanar Educational Institution v. CIT [1997] 3 SCC 346) and American Hotel & Lodging Association, Educational Institute v. CDBT [2008] 10 SCC 509). It is clear that when a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit."

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

In the above factual matrix, it was noted by the Hon'ble Supreme Court that there is no manner of doubt that the surplus accumulated over the years has been ploughed

back for educational purposes and it was held that the appellant University exists solely for educational purposes and not for the purposes of profit.

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

Assessment Year	Surplus as per Audited balance sheet (Rs.)	Application of Funds in Fixed Assets as per Audited balance sheet (Rs.)
1999-00	1,62,46,018.00	1,50,20,208.00
2000-01	2,36,72,347.34	1,30,51,311.00
2001-02	2,84,80,341.36	2,40,39,164.00
2002-03	2,53,17,807.95	5,14,73,987.00
2003-04	2,83,71,052.55	9,65,26,288.00
2004-05	2,80,82,530.20	7,27,88,255.00
2005-06	4,18,59,223.00	4,75,03,260.00
2006-07	5,96,81,354.00	5,12,75,041.00
2007-08	6,77,92,066.00	11,25,15,384.00
2008-09	12,44,29,983.15	9,87,57,585.00
2009-10	6,36,87,969.81	1,89,47,976.00
Sub Total	50,76,20,693.36	60,18,98,460.00
2010-11	8,37,24,064.55	27,48,064.00
2011-12	8,60,16,075.33	8,75,24,252.00
Total	67,73,60,833.24	69,21,70,776.00

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

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

"3. Generation of surplus out of gross receipts:

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

22. *A perusal of the above clarification issued by CBDT clearly shows that while examining that an educational institute exists solely for educational purpose or for the purpose of the profit, mere generation of surplus from year to year cannot be basis to hold that it exists for the purpose of the profit as sufficient safeguards have been provided whereby accumulation of income is permissible subject to the manner prescribed therein provided such accumulation is to be applied wholly and exclusively to the objects for which it is established. In our view, the view of the CBDT is in consonance with the express wordings provided and intended by the legislature in 10(23C)(vi) and in conformity with the law laid down by the Hon'ble Supreme Court in case of Queens Education Society where it is provided that where the surplus is ploughed back for education purposes, the educational institution exists solely for educational purposes and not for purposes of profit. The same will apply with equal force in context of section 11 as similar safeguards have been provided in terms of*

accumulation and utilisation of surplus so generated for the purposes of charitable purposes in terms of section 11(2) of the Act.

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

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

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

ITA No. 1356/JP/18

41. In ITA No. 1356/JP/18 for A.Y 2011-12, both the parties fairly submitted that the facts and circumstances of these cases are exactly identical as in ITA No. 1355/JP/18 and similar contentions raised therein may be considered. Therefore, considering the admitted position that there are no changes in the facts and circumstances, our findings and directions contained in ITA No. 1355/JP/18 shall

apply mutatis mutandis to this appeal matter and the matter is decided in favour of the assessee society and against the Revenue and the appeal of the Revenue is dismissed.

ITA No. 284/JP/2020

42. In the appeal for the A.Y. 2011-12, the assessee has raised following grounds of appeal:

" 1. The learned Assessing officer has erred in law as well as in facts in disallowing grants to district association amounting to Rs. 18770025/- allegedly on the ground that these expenses are not related to the income generating activities of the assessee while holding that the expenditure is in nature of application of income.

2. The learned Assistant Commissioner of Income Tax (Exemptions), Jaipur has erred in law as well as in facts not providing proper opportunity of being heard to the appellant before passing the order."

43. In this regard, the Id A/R submitted that the AO has erred in law as well as in facts in disallowing grants to district cricket association amounting to Rs. 1,87,70,025/- allegedly on the ground that these expenses are not related to the income generating activities of the assessee while holding that the expenditure is in nature of application of income.

44. It was submitted that the district associations are affiliated to the RCA and the survival of the District Associations depends upon the RCA only. The grants

provided to the District associations are for the sole purpose of promotion, organization, management and for controlling the game of cricket, which is the prime objective of the RCA also. The break-up of expenditure is provided as below:

Subsidy to District Associations	48,00,000/-
Infrastructure Development	41,27,634/-
Cricket equipments to DCA	98,42,391/-
Total	1,87,70,025/-

45. The issue was discussed in detail in the assessment order where it was mentioned by the AO that " During the course of assessment proceedings, it was found that the assessee has given grants to the district amounting to Rs. 1,88,53,747/- (including TA/DA of Rs 83722/-). The assessee was asked vide note sheet entry dated 29/01/2014 to show cause why the entire grants of Rs.1,88,53,747/- given to districts may not be disallowed as these expenses are not directly related to income generating activities of the assessee and these expenses are either capital in nature or are application of income." And it was finally concluded at the page 14 of the assessment order that, "The aforesaid payment are therefore, treated as either capital expenditure or application of income. As the assessee is not eligible for any exemption u/s 11/12, deduction is only allowed in respect of revenue expenditure incurred for earning the revenue showed in profit & loss account as income. Even if the assets are being created in case of district cricket association, the fact of the matter is that all the above expenses of Rs. 1,88,53,747/- except DA/TA to DCA observer amounting to Rs. 83,722/- is capital expenditure or

are in nature of application of income which is not admissible as revenue expenditure u/s 37(1) of the I.T. Act.”

46. It was submitted that the Id. AO has already accepted that the above expenditure is either a capital expenditure or an application of income. Thus, it is clearly held by the AO himself that the expenditure is disallowed because the benefit of section 11/12 are not available to the assessee, while the contention that the expenditure are capital in nature does not hold good in terms of the true meaning of capital expenditure.

47. It was further submitted that the Id CIT(A) in the order dated 20.09.2018 has held that “I am of the view that these expenses were not directly related to the income generating activities of the appellant. Even the assets were created in the name of district cricket association, all the above expenses of Rs. 1,88,53,747/- except DA/TA to DCA amounting to Rs. 83,722/ was either capital expenditure or was in the nature of application of income and same cannot be admissible as revenue expenditure u/s 37(1) of the Act. Therefore, the AO rightly added Rs. 1,87,70,025/- to the total income of the assessee.” It was submitted that Id CIT (A) has completely misunderstood the whole issue and largely contradicted his own order by disallowing the expenditure of Rs. 1,88,70,025/-, as the ground relating to the benefit of section 11/12 to the RCA was allowed in favor of the assessee in the same order, while the application of expense was disallowed.

48. Further in view of the CBDT instruction No 1132 dated 05/01/1978 inter-trust donations from one charitable trust to another for utilization by the donee trust for charitable purposes was proper application of income for charitable purposes in the hands of the donee trust and it would not affect the exemption claimed as application by the Donor trust. In case of Divya Yog Mandir Trust, the Delhi Bench of ITAT in its order dated 30.04.2019 has held that " we are of the considered opinion that donation by one charitable trust to another for utilization by Donee trust towards charitable objects is proper application of Income for charitable purposes in the hands of the donee trust and it would not affect the exemption claimed by the assessee under section 11 of the Act." From the facts as recorded by the AO are very clear & there was no dispute that the done trust has applied it for the charitable purpose & apparently all the expenses are for promotion of the game of Cricket. It is therefore, apparently clear from the facts that the disallowance of the grants to district cricket association was wrongfully disallowed as it should have been allowed as application of income by the assessee.

49. Per contra, the Id D/R relied on the findings of the lower authorities.

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

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

51. In the result, both the appeals of the Revenue are dismissed and the appeal of the assessee is allowed in light of aforesaid directions.

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिकसदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/11/2020.

*Ranjan

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-(i) The ITO (Exemptions) Ward-1, Jaipur.
(ii) The Addl.C.I.T., Range-2, Jaipur.
2. प्रत्यर्थी / The Respondent-Rajasthan Cricket Association, Jaipur.
3. आयकरआयुक्त / CIT
4. आयकरआयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File {ITA No. 1355 & 1356/JP/2018 & 284/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar