# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/TAX APPEAL NO. 268 of 2012**
**With**
**R/TAX APPEAL NO. 152 of 2019**
**With**
**R/TAX APPEAL NO. 317 of 2019**
**With**
**R/TAX APPEAL NO. 318 of 2019**
**With**
**R/TAX APPEAL NO. 319 of 2019**
**With**
**R/TAX APPEAL NO. 375 of 2019**
**With**
**R/TAX APPEAL NO. 358 of 2019**
**With**
**R/TAX APPEAL NO. 359 of 2019**
**With**
**R/TAX APPEAL NO. 360 of 2019**
**With**
**R/TAX APPEAL NO. 333 of 2019**
**With**
**R/TAX APPEAL NO. 334 of 2019**
**With**
**R/TAX APPEAL NO. 335 of 2019**
**With**
**R/TAX APPEAL NO. 336 of 2019**
**With**
**R/TAX APPEAL NO. 337 of 2019**
**With**
**R/TAX APPEAL NO. 338 of 2019**
**With**
**R/TAX APPEAL NO. 339 of 2019**
**With**
**R/TAX APPEAL NO. 340 of 2019**
**With**
**R/TAX APPEAL NO. 320 of 2019**
**With**
**R/TAX APPEAL NO. 321 of 2019**
**With**
**R/TAX APPEAL NO. 374 of 2019**
**With**
**R/TAX APPEAL NO. 675 of 2019**
**With**

**R/TAX APPEAL NO. 123 of 2014**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE J.B.PARDIWALA Sd/-**

**and**
**HONOURABLE MR.JUSTICE A.C. RAO Sd/-**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | Yes |
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |
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DIRECTOR OF INCOME TAX (EXEMPTION)
Versus
GUJARAT CRICKET ASSOCIATION

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Appearance:
MR. M.R. BHATT, LD. SR. COUNSEL WITH MS MAUNA M BHATT, LD. COUNSEL for the Appellants in all the Tax Appeals.
MR. J. P. SHAH, LD. SR. COUNSEL WITH MR.MANISH J SHAH, LD. COUNSEL for the Gujarat Cricket Association
MR. S.N. SOPARKAR, LD. SR. COUNSEL WITH MR. B.S. SOPARKAR, LD. COUNSEL for the Baroda Cricket Association
MR. TUSHAR HEMANI, LD. SR. COUNSEL WITH MS. VAIBHAVI PARIKH, LD. COUNSEL for the Saurashtra Cricket Association.

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
**HONOURABLE MR.JUSTICE A.C. RAO**

**Date : 27/09/2019**

**COMMON ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

1. Since the issues raised in all the captioned tax appeals preferred at the instance of the Revenue are the same,those were heard analogously and are being disposed of by this common judgment and order.

2. In the tax appeals captioned above, the respondent-assessee are the three Cricket Associations, namely, (I) Gujarat Cricket Association (ii) Baroda Cricket Association and (iii) Saurashtra Cricket Association.

3. In the following tax appeals, the respondent-assessee is the Gujarat Cricket Association;

*"(i) Tax Appeal No.268 of 2012;*
*(ii) Tax Appeal No.317 of 2019;*
*(iii) Tax Appeal No.318 of 2019;*
*(iv) Tax Appeal No.319 of 2019;*
*(v) Tax Appeal No.375 of 2019;*
*(vi) Tax Appeal No.333 of 2019;*
*(vii) Tax Appeal No.334 of 2019;*
*(viii) Tax Appeal No.335 of 2019;*
*(ix) Tax Appeal No.336 of 2019;*
*(x) Tax Appeal No.337 of 2019;*
*(xi) Tax Appeal No.338 of 2019;*
*(xii) Tax Appeal No.339 of 2019;*
*(xiii) Tax Appeal No.340 of 2019;"*

4. In the following tax appeals, the respondent-assessee is

the Baroda Cricket Association.

"(i) Tax Appeal No.320 of 2019
(ii) Tax Appeal No.321 of 2019
(iii) Tax Appeal No.374 of 2019
(iv) Tax Appeal No.675 of 2019

5. In the following tax appeals, the respondent-assessee is the Saurashtra Cricket Association;

"(I) Tax Appeal No.152 of 2019;
(I) Tax Appeal No.358 of 2019;
(II) Tax Appeal No.359 of 2019;
(III) Tax Appeal No.360 of 2019;
(IV) Tax Appeal No.123 of 2014;"

**Tax Appeal No.268 of 2012**

6. We propose to first take up the Tax Appeal No.268 of 2012.

*7.* This tax appeal under Section 260A of the Income Tax Act, 1961 (for short "the Act, 1961") is at the instance of the Revenue and is directed against the order passed by the Income Tax Appellate Tribunal, 'A' Bench, Ahmedabad in the ITA No.93/Ahd/2011 for the A.Y.2004-05. This tax appeal was admitted vide order passed by this Court dated 19th July, 2012 on the following substantial question of law;

> *"Whether the Hon'ble ITAT has erred in not taking cognizance of the latest amendment in the nature of the proviso to section 2(15) of the I.T. Act inserted with effect from 01/04/2009?"*

8. The facts giving rise to this tax appeal may be summarized as under;

*8.1* The assessee, namely, Gujarat Cricket Association (for short "the GCA") is a society registered under the Societies Registration Act, 1860. The GCA came to be registered with the Registrar of Societies vide the Registration Certificate dated 10th July, 1984. Later, the GCA was notified under Section 10(23) of the Act, 1961 vide notification dated 30th March, 1999 from A.Y. 1999-2000 to 2001-2002 by the Government of India, Ministry of Finance, Department of Revenue.

*8.2* In the absence of renewal of the notification under Section 10(23) of the Act, the GCA preferred an application for registration under Section 12AA of the Act, 1961. The registration under Section 12AA of the Act came to be granted by the DIT (Exemption), Ahmedabad vide its order dated 16th April, 2003, i.e., from A.Y.2004-05 onwards.

*8.3* A show-cause notice dated 26th September, 2010 came to be issued upon the GCA under Section 12AA(3) of the Act, calling upon the GCA to show cause why the registration granted under Section 12AA of the Act should not be cancelled from 2004-05 onwards.



*8.4* The Commissioner, after hearing the assessee, cancelled the registration under Section 12AA for the period from A.Ys.2004-05 till the date of his order, i.e. 6th December, 2010 in exercise of his powers under Section 12AA(3) by invoking the Proviso to Section 2(15) of the Act, 1961 inserted by the Finance Act, 2010 with effect from 1st April, 2009. The

Commissioner, while cancelling the registration of the assessee held that the activities of the trust were commercial in nature. The relevant observations in the order passed by the Director of Income Tax (Exemption), Ahmedabad are quoted herein below;

> "The legislature in its wisdom has introduced section 12AA of the I.T. Act, 1961 by the Finance Act No.2, 1996 w.e.f 1.4.1997 i.e. A.Y.1997-98 onwards which requires the Commissioner to be satisfied with the objects of the Trust and the genuineness of its activities. As a logical corollary of the provisions of Section 12AA of the Act, the Commissioner has to examine the objects of the Trust by their reference to the definition of "charitable purpose" along with the newly inserted proviso to charitable purpose in Section 2(15) of the Act w.e.f 1.4.2009. In fact there is a mutual, symbiotic relationship between the two provisions, namely section 2(15) and section 12AA of the I.T. Act, 1961. The definition of "charitable purpose" in section 2(15) of the Act is the engine which drives the machinery of the provisions of Section 12AA of the Act.
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> *Thus it is clear that even as per pre-amended section 2(15) of the I.T. Act, the GCA is not entitled for registration u/s 12A of the I.T. Act as per ratio of judgments of Hon. Courts as discussed above. When this is the position even as per pre-amended section 2(15) of the I.T. Act, there remains no case at all for continuation of registration u/s 12A after the amendment of section 2(15) by Finance Act 2008 as applicable from A.Y.2009-10 which, inter alia, clearly applicable to sports associations and is not applicable to educational institutions. In view of this, registration allowed to GCA u/s 12A of the I.T. Act stands withdrawn from A.Y.2004-05 onwards.*
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> *The Ld. Counsel has further submitted that GCA has no contract with any party from which the funds are credited by BCCI coupled with the fact that GCA has no enforceable rights to receive any portion of TV rights which have been received by BCCI and the corpus donation received at the sweet will of BCCI may be in furtherance of the objects of that Institution namely BCCI.*

*I am constrained to state that there is no merit in the argument of the Id. Counsel. It goes without saying that BCCI is a huge money spinning machine in the field of Cricket. It is following practice of giving some portion of its TV rights to certain Cricket Associations in the country including the GCA. BCCI also has commercial transactions like receipts of TV rights, IPL matches etc. This commercial chain further percolates down to the State Associations like GCA which shows the receipts of TV rights as corpus donations. This accounting procedure is incorrect as it is purely commercial receipt which falls within the ambit and scope of newly inserted proviso to section 2(15) of the I.T. Act w.e.f. 1/4/2009. It partakes the character of tax avoidance device clearly attracting the decision of Constitution Bench (5 Judges) of the Apex Court in McDowell and Co. Ltd. Vs. CTO (1985) 154 ITR 148 (SC) which fortifies the cancellation of registration of GCA. In this landmark case, their Lordships have held that tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning (Per Ranganath Misra at Pg.171 of the order).*

*A critical analysis of Receipts and Expenditure of GCA shows that there Is huge generation of income of Rs.16,37,747.54, (-) Rs.70,50,486.28 and (-) Rs.5,91,708.94 in F.Ys. 2006-07, 2007-08 and 2008-09 respectively after meeting out only a nominal expenditure on promotion of sports of Rs.67,76,530/-, Rs.15,16,311/and Rs.24,90,579/ in F.Y.2006-07, 2007-08 and 2008-09 respectively. There is capital expenditure of Rs. 11,37,64,313/~, Rs.6,63,80,215.80 and Rs.1,99,23,701/ in F.Y. 2006-07, 2007-08 and 2008-09 respectively. It is reiterated that this capital expenditure cannot be considered as charitable expenditure for promotion of sports as It is simply an act of business organization to enhance its Infrastructure and income earning apparatus. Thus the expenditure on promotion of sports as percentage .of total receipts has further declined further in F.Y.2008-09. If GCA was really a charitable organization, it should have acted as such and instead of earning huge income, it should have ensured as under:*

*(a) There should have been no ticket for watching cricket*

*matches so that more and more youth, students and common man are able to watch these matches. Instead there are costly tickets for general public for watching these important Cricket Matches and true to its character as an out and out commercial organisation.*

*(b) GCA should have allowed the free use of its Cricket ground for conducting tournaments and also popularizing the game of Cricket in the state of Gujarat for the common man.*

*viii) It is further seen from the Auditor's Report for F.Y. 2006-07 dated 20/8/07 (Page 2), 2007-08 dated 11/8/98 (Page 11) and 2008-09 dated 23/7/09 (Page 7) that TV rights received from BCCI are amounting to Rs.17,58,00,000/-,Rs.6,83,46,038/ and Rs.20,69,60,338/- respectively have been shown as CORPUS. The accounting practice followed by GCA by treating TV rights received from BCCI as corpus is incorrect. This is purely a commercial receipt which falls within the ambit and scope of aforesaid proviso to section 2(15) of the I.T. Act, 1961.*

*From the above discussion, it is quite clear that there is huge generation of revenue of Rs.2,52,96,831/-, Rs.1,80,04,862/- and RS.3,98,07,027/- in F.Ys.2006-07, 2007-08 and 2008-09 respectively after meeting out small expenditure on promotion of Sports of Rs.67,76,530/-, Rs.15,16,311/- and Rs.24,90,796/- in F.Ys.2006-07, 2007-08 and 2008-09 respectively giving a percentage of expenditure on promotion of Sports at 26.78%, 8.42% and 6.25% for the aforesaid three financial years respectively. In other words, GCA is not spending much of the revenue generated for the promotion of Sports. This is a clear violation of the educative object of GCA as is seen from the submission of the Id. Counsel above.*

*From the reasons mentioned above, it is quite manifestly and palpably evident that the entire character and focus of GCA has become totally commercial with the object of earning revenue and it is no more a charitable organization. As stated above, the facts and ratio of the decision of the Uttarakhand High Court in the case of Queens' Educational Society (supra) call for withdrawal of registration allowed to GCA u/s 12AA of the I.T. Act, 1961*

*even with pre-amended section 2(15) of the I.T. Act, 1961. Furthermore, a fortiori, with the amendment u/s 2(15) of the I.T. Act, 1961 by the Finance Act, 2008 w.e.f. A.Y.2009~10, GCA has lost the status of charitable organisation. Its activities, proprio vigore, are being carried on commercial lines. GCA, though, was granted registration in principle by this Office Order dated 16/4/03, did not carry out any activity which has charitable object and also by invoking Doctrine of Just Cause in the light of the observations of Hon Supreme Court in 259 ITR, 1 (SC) (supra), I strongly conclude that the activities of GCA are not genuine charities and are being carried out with Pure commercial considerations bereft of any element of charity. Accordingly, the registration granted earlier vide this Office Order dated 16.4.2003 is cancelled w.e.f 16.4.2003 i.e. A.Y.2004-05 onwards."*

*8.5* The assessee, being dissatisfied with the order passed by the Director of Income Tax (Exemption), cancelling the registration, preferred an appeal before the Income Tax Appellate Tribunal, 'A' Bench, Ahmedabad. The ITAT allowed the appeal preferred by the GCA. While allowing the appeal, the ITAT observed as under;

*"We have considered the rival submissions, perused the material on record and have gone through the orders of authorities below and the tribunal decision cited by the Ld. A.R. In the present case, the registration of the assessee was cancelled by the DIT(E) on this basis that the main source of income of the assessee is derived form sponsorship, bank interest, annual subscription, income from ICC matches, income from trophy/tournament matches, scrap sale, rental income and sale of tickets. It is observed by him that none of these sources of income has any nexus with the education of the cricketers. He also observed that in fact, the assessee has been engaged itself in transaction of commercial nature. He also observed that the assessee has been carrying its activities with a commercial motive. He has decided the issue on this basis that as per the amended provisions of Section 2(15) of the Income Tax*

*Act, 1961. In the case of Vidarbha Cricket Association (supra) also, registration was cancelled u/s.12AA(3) of the Act on the basis of amended provisions of Section 2(15) of the Act and under these facts, the issue has been decided by the tribunal in favour of the assessee. The relevant para is para 7, 8 & 9 of the Tribunal decision which are reproduced below:*

*"7. In this view of the matter, we may now examine the reasons put forth by the Commissioner in this case to cancel registration already granted to the assessee under section 12A of the Act. In this direction, we have carefully perused the impugned order, wherein the Commissioner has primarily examined the application of revised definition of charitable purpose under section 2(15) as amended by the Finance Act, 2003 with effect from 1.4.2009. The ultimate conclusion of the Commissioner in paragraph 17 of the impugned order is pertinent, which is reproduced as under-*

*"17. In view of the amended provisions of sec. 2(15), it Is seen that assessee's activities can no longer be regarded as charitable activities. Especially the proviso to sec. 2(15) is violated by assessee and hence, it cannot be regarded as a charitable society engaged In charitable purposes. I have duly considered the nature of activities, the sources of income, the activities on which expenditure was made, surplus generated existence of profit motive, commercial exploitation of assets, fees and Charges collected, nature of other income and other activities and case law before coming to a final conclusion, the assessee Vidarbha Cricket Association cannot be held to be an organization meant for charitable purposes in view of the above findings.*



*18. In the result, the deemed registration benefit under section 12AA as claimed and enjoyed by the assessee is hereby withdrawn/cancelled from assessment year 2009-10 onwards.*

*8. On a perusal of the aforesaid, It is clearly established that as per the Commissioner, the activities of the assessee do not qualify to fall within the meaning of charitable purpose as per proviso to section 2(15) inserted with effect from 1.4.2009. Quite clearly, as we have observed earlier, such an objection cannot be the*

*basis of invoke section 12AA(3) so as to cancel the registration already granted to the assessee under section 12A of the Act. In our considered opinion registration already granted to the assessee could not have been re-visited by the Commissioner on the basis of the reasoning aforesaid, since his power to cancel registration under section 12AA(3) was confined to the examination as to whether the activities of the assessee society/association are genuine or that the same are not being carried out in accordance with the stated objects. In the light of the discussion emerging form the order of the Commissioner in our considered opinion, action taken by the Commissioner does not fall within the parameters of section 12AA(3) of the Act and, therefore, the impugned order is bad in law.*

*9. At this stage, we may hasten to add that we are not commenting on the merits of the issue as to whether the activities of the assessee fall within the meaning of expression charitable purpose as per section 2(15) as amended with effect from 1.4.2009. The only point decided in the appeal is to the effect that it was not within the scope and ambit of section 12AA(3) for the Commissioner to have examined the applicability of the amended section 2(15) of the purposes of invoking his powers of cancellation provided in section 12AA(3) of the Act. At this stage, we may also state that the issues raised by the Commissioner in the impugned order are not beyond the powers of the revenue to examine, so however, the same can only be examined in the appropriate proceedings, such as assessment proceedings in the present case. Our decision is resting only on the foundation that the impugned order passed by the Commissioner is not permissible in view of the limited powers available to him under section 12AA(3) of the Act. However it would be open for the A.O. to consider the issues raised in the impugned order, if so advised, in the course of the relevant assessment proceedings.*"

*5. Since the present case also, registration has been cancelled by DIT(E) on the basis of amended provisions of Section 2(15) of the Income tax Act,1961, we are of the considered opinion that the action taken by DIT(E) does not fall within the permissible limits of Section 12AA(3) of the Income tax Act, 1961 and therefore, the*

*impugned order is bad in law. We also add that we are not commenting on the merits of the issue as to whether the activities of the assessee falls within the meaning of charitable purpose as per Section 2(15) of the Income tax Act, 1961 as amended and we are only deciding this aspect of matter that the order passed by the DIT(E) u/s 12AA(3) is bad in law. This issue raised by the DIT(E) is not permissible in view of the limited powers available to him U/s. 12AA(3) of the Income tax Act, 1961. However, it would be open for the A.O. to consider all the issues raised in the impugned order, if so advised, in the course of relevant assessment proceedings*

*6. In view of our discussion in the above para, we set aside the order of DIT(E) u/s. 12AA(3) of the Income Tax Act, 1961 and restore the registration granted to the assessee u/s.12A of the Income tax Act, 1961."*

8.6 The Revenue, being dissatisfied with the order passed by the ITAT has come up with the present appeal.

**Submissions on behalf of the Revenue:-**

9. Mr. M.R. Bhatt, the learned senior counsel appearing for the Revenue vehemently submitted that the ITAT committed a serious error in disturbing the order passed by the Director of Income Tax (Exemption), cancelling the registration of the GCA under Section 12AA of the Act. According to Mr. Bhatt, in view of the amendment under Section 2(15) of the Act, the DIT (Exemption) was justified in taking the view that the activities of the GCA cannot be termed as charitable and such activities were commercial in nature with the element of earning profit from the income of sale of tickets, income from the ICC, income from hosting the international cricket matches etc. Mr. Bhatt would submit that the DIT (Exemption) was justified in taking the view that though the BCCI confirmed the payment to the assessee as grant of subsidy, the same was not in the

nature of grant. Mr. Bhatt would submit that most of the advertisements through TV telecasting are received by the BCCI, it being the apex body,thus the so-called subsidy given by the BCCI is nothing but some sort of sharing of the advertisement income on account of holding of international test matches and one-day international matches, due to which, the BCCI has amassed huge advertisement income. Mr. Bhatt would submit that the nature of receipt, even though called subsidy by the assessee, was necessarily in the nature of income received by the activity of the assessee.

10. Referring to Section 12AA(3) read with Section 2(15) of the Act, 1961, Mr. Bhatt submitted that even if the activities were carried on in accordance with the arrangement with the other party,the activities, being not charitable, it was hit by Section 12AA(3) of the Act, 1961. Reading genuineness into the activities of the trust and considering the objects of the trust, Mr. Bhatt submitted that the term “genuineness” has been used only to find out whether the institution was charitable or not. Once the institution was held as not for charitable purpose, Section 12AA registration came to be rightly cancelled by the DIT (Exemption).

11. In such circumstances, referred to above, Mr. Bhatt prays that there being merit in this appeal, the same be allowed and the substantial question of law be answered in favour of the Revenue and against the assessee.

**Submissions on behalf of the respondent-assessee:**

*12.* On the other hand, this appeal has been vehemently opposed by Mr. J.P. Shah, the learned senior counsel appearing

for the GCA. Mr. Shah would submit that no error, not to speak of any error of law, could be said to have been committed by the ITAT in quashing and setting aside the order passed by the DIT (Exemption). Mr. Shah would submit that since the inception of the GCA and the date of grant of the registration under the Act, the objects of the Association have remained the same and have not undergone any change to question its genuineness. Mr. Shah would submit that the view of the DIT (Exemption) that the assessee could not be said to be carrying on the charitable activity as per Section 2(15) of the Act is erroneous in law. Mr. Shah would submit that in any event all that the Section 12AA(3) of the Act prescribes for cancellation is the genuineness of the activities of the trust or that the activities are not carried on in accordance with the objects of the trust.

13. Mr. Shah took us through the various objects of the Association and pointed out to the clear distinct words used in Section12AA(1) and 12AA(3) of the Act as well as the first Proviso to Section 2(15) of the Act. Mr. Shah submitted that the grant of registration originally as early as in 2003 clearly indicates the satisfaction of the authorities that the assessee is a public charitable trust under Section 12AA of the Act. Mr. Shah would submit, referring to Section12AA(3) of the Act, that the cancellation of registration granted is permissible in law only under the following circumstances;



*(I)* On the Commissioner recording his satisfaction that the activities of the trust are not genuine or are not being carried out in accordance with the objects of the trust or institution,; thus unless and until the show cause notice issued contained

the grounds and materials as prescribed under Section 12AA(3) of the Act, the question of cancellation of registration, *per se*, does not arise.

*14.* Mr. Shah, thereafter, took us through the Circular No.11 of 2008 issued by the Central Board of Direct Taxes dated 19th December, 2008. The circular was issued in the wake of the insertion of the Proviso to Section 2(15) of the Act, 1961. Mr. Shah would submit that from the reading of the circular, it is evident that the question of rejection of registration under Section 12AA(3) of the Act would arise only in those cases where an entity uses this status of charitable institution with a charitable object of general public utility as a mask or a device to hide the true purpose and that object is nothing other then trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Mr. Shah would submit that in the case on hand, the Revenue has not been able to substantiate with any cogent material to indicate the absence of the genuineness of the activities. Mr. Shah would submit that the erroneous misconception in the mind of the Revenue is that by conduct of matches, the GCA could be said to have exhibited a sense of business or commercial character. In such circumstances, referred to above, Mr. Shah prays that there being no merit in this appeal, the same be dismissed and the substantial question of law, on which, this tax appeal has been admitted, may be answered in favour of the assessee and against the Revenue.



15. Mr. Shah in support of his submissions, has placed strong reliance on a decision of the Madras High Court in the case of ***Tamil Nadu Cricket Association vs. Director of***

***Income Tax (Exemptions) & Ors.***, *(2014) 360 ITR 633 (Mad.)*.

16. Mr. Bhatt, the learned senior counsel appearing for the Revenue, in rejoinder, brought to the notice of this Court that the decision of the Madras High Court in the case of Tamil Nadu Cricket Association (supra), on which strong reliance is sought to be placed on behalf of the assessee, has been challenged by the Revenue before the Supreme Court . The Supreme Court is yet to hear the appeal preferred by the Revenue.

**ANALYSIS**

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the ITAT committed any error in passing the impugned order.

*18.* Section 12AA of the Act prescribes the procedure for registration. As per this, on receipt of the application for registration, the Commissioner is to call for such documents or information from the trust or institution in order to satisfy himself about the genuineness of the activities of the trust or institution. The Section further empowers the Commissioner to make such enquiry as he deems necessary in this regard. Once the Commissioner is satisfied or convinced about the objects of the trust or institution and the genuineness of the activities of the trust, he has to pass an order in writing registering the trust or institution; if he is not so satisfied, he has to pass an order in writing refusing to register the trust or institution.

19. Section 12AA(3) of the Act inserted with effect from 01.10.2004 under the Finance (No.2) Act, 2004 and the amendment inserted by Finance Act, 2010, with effect from 01.06.2010 therein empowering the Commissioner to cancel the registration granted under the stated circumstances, reads as under:-

> *"Provision inserted under Finance Act, 2004:*
>
> *Section 12AA(3):- Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution.*
>
> *Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard."*

20. After the amendment in the year 2010, Section 12AA(3) of the Income Tax Act reads as follows:

> "*Section 12AA(3):- Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:*
>
> *Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.*"

21. Thus in contrast to Section 12AA(1)(b) of the Income Tax Act, 1961, where the grant of registration requires the

satisfaction about the objects of the trust as well as the genuineness of the activities, for the cancellation of the registration under Section 12AA(3), all that it is insisted upon is the satisfaction as to whether the activities of the trust or institution are genuine or not and whether the activities are being carried on in accordance with the objects of the trust. Thus, even if the trust is a genuine one i.e., the objects are genuine, if the activities are not genuine and the same not being carried on in accordance with the objects of the trust, this will offer a good ground for cancellation. Thus, in every case, the grant of registration as well as the cancellation of registration rests on the satisfaction of the Commissioner on findings given on the parameters given in Sections 12AA(1) and 12AA(3) of the Act, as the case may be.

22. The registration of the trust under the Act, confers certain benefits from taxation under the provisions of the Act. The conditions under which the income of the trust would be exempted under the provisions of the Act are clearly laid down under Section 11 as well as in Section 12 of the Act. Section 11 of the Act specifically points out the circumstances under which the income of the trust is not to be included in the total income of the previous year of the person. So too, Section 12 of the Act on the income derived from the property held for the charitable or religious purposes.

23. Thus, when the assessee is in receipt of income from the activities, which fits in with Sections 11 and 12 of the Act as well as from the sources which do not fall strictly with the objects of the trust, would not go for cancellation of

registration under Section 12AA of the Act on the sole ground that the assessee is in receipt of income which does not qualify for exemption straight away by itself. All that ultimately would arise in such cases is the question of considering whether Section 11 of the Act would at all apply to exempt these income from liability. These are matters of assessment and has nothing to do with the genuineness of the activity or the activities not in conformity with the objects of the trust. As rightly pointed out by learned Senior counsel appearing for the assessee, as is evident from the reading of Circular No.11 of 2008 dated 19.12.2008, the object of the insertion of the first proviso to Section 2(15) of the Act was only to curtail the institution, which under the garb of 'general public utility', carry on business or commercial activity only to escape the liability under the Act thereby gain unmerited exemption under Section 11 of the Act.

24. The sum and substance of the submissions canvassed by Mr. J.P. Shah, the learned senior counsel appearing for the assessee, may be summed up thus;

(I) The Gujarat Cricket Association is an affiliated member of the BCCI which controls and regulates all the cricket activities in India.



(ii) The only source of income for the Gujarat Cricket Association is the receipt of some amount from the BCCI on account of the tournament subsidy.

(iii) The Gujarat Cricket Association is a non-profit organization and applies its surplus for the promotion of the game of cricket, and that its objects prohibit the distribution of any surplus amongst its members.

(iv) All the members of the Executive Committee hold honorary position in the Gujarat Cricket Association.

(v) The Gujarat Cricket Association has produced a number of excellent cricketers of international repute and the same was achieved by nurturing the talent irrespective of the cast, creed, status, religion etc. It also provides support to one another facet of the game of cricket, i.e. umpiring.

(vi) The Gujarat Cricket Association has a self-sustaining model and promotes cricket in the State of Gujarat without any support, aid, grant or subsidy from any Government.

(vii) The Gujarat Cricket Association has constructed a world class infrastructure facility by modernizing the entire Motera Stadium at Ahmedabad.

(viii) The Gujarat Cricket Association provides medical aid to its players, remuneration to Coaches, Physiotherapists, Doctors etc.

(ix) It organizes various programmes to encourage the game of cricket.

(x) On the ground booking charges, it was submitted that only in the special cases, it has charged exclusively for the purpose of playing cricket matches.



(xi) The Ranji Trophy and other matches are open to public viewing and no tickets are sold.

(xii) On the international matches, charge is levied, but the same would be a nominal charge as it would be impossible to manage the affairs if the viewing is free of cost.

25. The aforesaid indicates that there is no profit motive.

26. On income from the advertisement etc., it was submitted that the assessee has to maintain the stadium for the whole year and whereas, the international matches are played only once or twice in a year or may be in two years, the cost of maintenance of the stadium is as high as compared to the charges for transfer of interstate rights.

27. All the funds are used for building up infrastructure for promotion of cricket and for the purpose of development of players and for the promotion of the game and no funds are being utilized for personal purpose of any of the members of the Association.

28. The activities of the Association are not carried out on commercial basis.

29. The Registration could not have been cancelled on an erroneous ground that the activities of the assessee are commercial in nature. For invoking Section 12AA read with Section 2(15) of the Act, the Revenue has to show that the activities are not in accordance with the objects of the Association.



30. For achieving its main charitable object, if an institution carries on some commercial activity and there is profit, it cannot be considered to be a business activity, with profit motive, so long as, the profit earned is utilized for the purpose of achieving the main charitable object.

31. The sum and substance of the submissions canvassed on behalf of the Revenue may be summed up thus;

(i) It is only logical to hold that the activities of the assessee are no longer falling within the definition of charitable purposes after the amendment of Section 2(15) of the Act w.e.f 1st January, 2019.

(ii) The assessee, in the name of general public utility, is engaged in business.

(iii) Once the activities ceases to qualify as charitable, the same cannot be said to be genuine for the purpose of charity.

(iv) Instead of promoting and developing the game of cricket, the assessee could be said to be promoting and developing the game of cricket as an entertainment and the tickets of the international matches are highly priced. The assessee, in such circumstances, could be said to have shifted the activities of the general public utility to commercial activity for generating revenue.



32. We have gone through the entire judgment of the Madras High Court in the case of Tamil Nadu Cricket Association (supra). We are convinced with the line of reasoning assigned by the Madras High Court and the view taken on the subject. It is true that the decision of the Madras High Court has been challenged before the Supreme Court. The Supreme Court has yet to look into the issue and consider whether the view taken by the Madras High Court is the correct proposition of law or not?. However, as on date, the view taken by the Madras High Court on the subject holds the field. We may quote the

relevant observations made by the High Court of Madras.

> *"Going by the objects , we find that the trust falls under the head of "any other object of general public utility" and hence falls within the meaning of charitable purpose under Section 2(15) of the Act. Section 2(15) of the Act defines "charitable purpose" as it originally stood at the time of grant of registration as under:-*
>
> *" 'charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility."*
>
> *23. Section 2(15) was amended under Finance Act,2008, with effect form 1.4.2009 by substituting the following provision which reads s under:*
>
> *"2. Definitions. .... (15) "charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including waterheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.*
>
> *Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;)*
>
> *24. Section 2(15) as it stood prior to 1983 defined 'charitable purpose' to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. The phrase "not involving the carrying on of any activity for profit" was omitted from the Section by the Finance Act 1983, with effect from 01.04.1984, consequent on the amendment to Section 11, where under profits and gains of business in the case of charitable or religious trust and institutions would not be entitled to exemption under that Section, except in cases where the business fulfilled the conditions under Section 11 (4). The Section was once again amended by substitution in the year 2008 under*

*the Finance Act, 2008, with effect from 01.04.2009, streamlining the definition of 'charitable purpose', considering the fact that taking advantage of the phrase 'advancement of any other object of general public utility', number of entities operating on commercial lines claimed exemption on their income either under Section 20(23c) or under Section 11 of the Act. Thus, to limit the scope of this expression, Section was amended in the year 2008 that the advancement of any other object of general public utility shall not be a charitable purpose, if the object involved the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. Though the section as it stood prior to the substitution in 2008 contained no provision as in the proviso under the 2008 amendment, yet the Supreme Court held that 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: vide CIT v. Andhra Chamber of Commerce [1965] 55 ITR 722 (SC) (referred to in the decision reported in (1980) 121 ITR 1(Addl. Commissioner of Income-tax v. Surat Art Silk Cloth Manufacturers Association). Thus if the dominant object or the primary object was charitable, the subsidiary object for the purpose of securing the fulfillment of the dominant object would not militate against its charitable character and the purpose would not be any the less charitable. The amendment in the year 2008 made a drastic amendment to deny the status of a charitable purpose to an institution with the object of general public utility, having 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.*

*25. Proviso to Section 2(15) of the Income Tax Act states that if the objects involve the carrying on 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, the status of the institution will not be one*

*for 'charitable purpose'.*

*26. The Central Board of Direct Taxes, in paragraph 3.2 pointed out to the scope of the circular as under:-*

*" In such a case, the object of 'general public utility' will be only a mask or a device to hide the true purpose, which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessees, who claim that their object is 'charitable purpose' within the meaning of Section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business."*

*27. Thus, the anxiety of the Parliament in introducing the proviso to Section 2(15) of the Act is only to check those institution, which attempt to gain exemption under the cloak of a trust.*

*28. Section 11 of the Act states that income from property held for religious or charitable purposes shall not be included in the total income of the previous year. Section 12 deals with income of trusts or institutions from contributions. Section 12A deals with making application for registration of the trust/association so that the said institution will have the benefit of exemption under Section 11 and 12 of the Act.*

*29. Section 12AA of the Act prescribes procedure for registration. As per this, on receipt of the application for registration, the Commissioner is to call for such documents or information from the trust or institution in order to satisfy himself about the genuineness of activities of the trust or institution. The Section further empowers the Commissioner to make such enquiry as he deems necessary in this regard. Once the Commissioner is satisfied himself about the objects of the trust or institution and the genuineness of the activities of the trust, he has to pass an order in writing registering the trust or institution; if he is not so satisfied, he has to pass an order in writing refusing to register the trust or institution.*

*30. Section 12AA(3) of the Act inserted with effect from 01.10.2004 under the Finance (No.2) Act, 2004 and the amendment inserted by Finance Act, 2010, with effect*

*from 01.06.2010 therein empowering the Commissioner to cancel the registration granted under the stated circumstances, reads as under:-*

*Provision inserted under Finance Act, 2004:*

*Section 12AA(3):- Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution.*

*Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.*

*31. After amendment in the year 2010, Section 12AA(3) of the Income Tax Act reads as follows:*

*"Section 12AA(3):- Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:*

*Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard."*

*32. Thus in contrast to Section 12AA(1)(b) of the Income Tax Act, 1961, where the grant of registration requires satisfaction about the objects of the trust as well as genuineness of the activities, for the cancellation of the registration under Section 12AA(3), all that it is insisted upon is the satisfaction as to whether the activities of the trust or institution are genuine or not and whether the activities are being carried on in accordance with the objects of the trust. Thus, even if the trust is a genuine one i.e., the objects are genuine, if the activities are not genuine and the same not being carried on in accordance with the objects of the trust, this will offer a good ground for cancellation. Thus, in every case, grant of registration*

*as well as cancellation of registration rests on the satisfaction of the Commissioner on findings given on the parameters given in Section 12AA(1) and 12AA(3) of the Act, as the case may be.*

*33. Registration of the trust under the Act, confers certain benefits from taxation under the provisions of the Act. The conditions under which the income of the trust would be exempted under the provisions of the Act are clearly laid down under Section 11 as well as in Section 12 of the Act. Section 11 of the Act specifically points out the circumstances under which income of the trust is not to be included in the total income of the previous year of the person. So too, Section 12 of the Act on the income derived from property held for charitable or religious purposes.*

*34. Thus, when the assessee is in receipt of income from activities, which fits in with Sections 11 and 12 of the Act as well as from sources which do not fall strictly with the objects of the trust, would not go for cancellation of registration under Section 12AA of the Act on the sole ground that the assessee is in receipt of income which does not qualify for exemption straight away by itself. All that ultimately would arise in such cases is the question of considering whether Section 11 of the Act would at all apply to exempt these income from liability. These are matters of assessment and has nothing to do with the genuineness of the activity or the activities not in conformity with the objects of the trust. As rightly pointed out by learned Senior counsel appearing for the assessee, as is evident from the reading of Circular No.11 of 2008 dated 19.12.2008, the object of the insertion of first proviso to Section 2(15) of the Act was only to curtail institution, which under the garb of 'general public utility', carry on business or commercial activity only to escape the liability under the Act thereby gain unmerited exemption under Section 11 of the Act.*



*35. In the decision reported in (2012) 343 ITR 23 (Bom) (Sinhagad Technical Education Society V. Commissioner of Income Tax (Central), Pune & Anr), the Bombay High Court held as follows:*

*"As a result of the amendment, which has been brought about by the Finance Act of 2010, Subsection (3) of Section 12AA has been amended specifically to empower the Commissioner to cancel a registration obtained under*

*Section 12A as it stood prior to its amendment by the Finance (No.2) Act, 1996. SubSection (3) was inserted into the provisions of Section 12AA by the Finance (No.2) Act, 2004 with effect from 1 October 2004. As it originally stood, under subsection (3), a power to cancel registration was conferred upon the Commissioner where a trust or an institution had been granted registration under clause (b) of subsection (1) of Section 12AA. The Commissioner, after satisfying himself that the objects of the trust or an institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, was vested with the power to pass an order in writing cancelling the registration of such trust or institution. By the Finance Act of 2010, subsection (3) was amended so as to empower the Commissioner to cancel the registration of a trust or an institution which has obtained registration at any time under Section 12A (as it stood before its amendment by the Finance (No.2) Act, 1996). As a result of the amendment, a regulatory framework is now sought to be put in place so as to cover also a trust or an institution which has obtained registration under Section 12A as it stood prior to its amendment in 1996.*

*.....*

*power under Section 12AA(3) can be exercised by the Commissioner in respect of a trust registered prior to 1 June 2010. The mere fact that a part of the requisites for the action under Section 12AA (3) is drawn from a time prior to its passing namely registration as a charitable trust under Section 12A prior to 2010 would not make the amendment retrospective in operation. The amendment does not take away any vested right nor does it create new obligations in respect of past actions."*



*36. As already pointed out earlier, the question as to whether the particular income of trust is eligible for exemption under Section 12 of the Act is a matter of assessment and this Court had pointed out in the decision reported in 343 ITR 300 in the case of CIT Vs. Sarvodaya Ilakkiya Pannai, as under:-*

*" In order to avail the benefit of exemption under Section 11 of the Income Tax Act, 1961, a Trust can make an application to the Commissioner for registration under Section 12A of the Income Tax Act, 1961. On receipt of the said application for registration of a trust or*

*institution, the Commissioner should satisfy himself about the genuineness of the activities of the trust or institution. In order to satisfy himself, the Commissioner may also make such enquiry as he may deem necessary in that behalf. In the event the Commissioner satisfies himself that the trust is entitled to registration keeping in mind the objects, shall grant registration in writing in terms of Section 12AA(1)(b)(i) of the Income Tax Act, 1961. In the event the Commissioner is not satisfied, he shall refuse such registration in terms of Section 12AA(1)(b)(ii) of the Income Tax Act, 1961. Once such a satisfaction is arrived at by the Commissioner to grant, such registration cannot be cancelled by following the very same provision of section 12AA(b)(i) of the Income Tax Act, 1961 to go into the genuineness of the activities of the trust. However, the Commissioner is empowered to revoke the certificate in terms of Section 12AA(3) of the Income Tax Act, 1961. As Commissioner is empowered to revoke the certificate in terms of section 12AA(3) of the Income Tax Act, 1961. As per the said provision, in the event the Commissioner is satisfied subsequently i.e., after registration that the activities of such trust or institution are not genuine or not being carried out in accordance with the objects of the trust or the institution as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution.*"

*37. After the grant of registration, if the Commissioner is satisfied subsequently that the activities of the institution are not genuine or they are not carried on in accordance with the trust/ institution, he could pass an order in writing cancelling the registration of such trust or institution.*

*38. Referring to Section 11 and 12A of the Act, this Court pointed out that the act of granting registration under Section 12AA(1) itself is a result of a satisfaction recorded by the Commissioner as regards the genuineness of the objects of the trust as well as the activities of the trust and once a satisfaction is arrived at by the Commissioner, the cancellation could only be in terms of Section 12AA(3) of the Income Tax Act, 1961.*

*39. This Court pointed out that the cancellation made in the case of assessee therein was not on the ground that the activities were not genuine, but the activities of the trust in publication and sale and spread of Sarvodaya*

*Literature and Gandhian Ideologies was not the objects of the trust. This Court pointed out that the cancellation was made not on the ground that the activities of the trust were not genuine but the activities of the trust were not in accordance with the objects of the trust; when the trust was registered with definite objects, carrying on such activities would be in terms of the objects for which registration was granted.*

*40. Referring to Section 12AA of the Income Tax Act, 1961, this Court has held as under:-*

*" 9. Under section 12AA, the Commissioner is empowered to grant or refuse the registration and after granting registration, would be empowered to cancel and that too, only on two conditions laid down under Section 12AA(3) of the Income Tax Act, 1961. Whether the income derived from such transaction would be assessed for tax and also whether the trust would be entitled to exemption under section 11 are entirely the matters left to the assessing officer to decide as to whether it should be assessed or exempted."*

*41. In the light of the law declared by this Court in the above said decision, we do not find that the scope of Section 12AA(3) of the Act is of any doubt for a fresh look. It is relevant herein to point out that in two other assessee's case, the Income Tax Appellate Tribunal, Ahmedabad Bench-A rendered in the case of Gujarat Cricket Association Vs. DIT (Exemption) in ITA.No.93(Ahd)/2011 dated 31.01.2012 and that of the Nagpur Bench rendered in the case of M/s.Vidarbha Cricket Association Vs. Commissioner of Income-tax-I, Nagpur in ITA.No.3/Nag/10 dated 30.05.2011, considered the said decision reported in 343 ITR 300 in the case of CIT Vs. Sarvodaya Ilakkiya Pannai rendered under Section 12AA(3) of the Act. On appeal before the respective High Courts, the decision of the Income Tax Appellate Tribunal was confirmed.*

*42. Leaving that aside, there being no dispute raised by the Revenue as to the genuineness of the trust, or as to the activities of the trust not being in accordance with the objects of the trust, the question of cancellation under Section 12AA of the Act does not arise. We further hold that at the time of grant of registration on 28.3.2003, the same was made taking into consideration the objects of the institution fitting in with the definition*

*of 'charitable purpose' defined under Section 2(150 of the Act and the substitution of the Section itself came only 2008, with effect from 01.04.2009. As rightly pointed out by the learned senior counsel appearing for the assessee, the circular clearly brings out the object of the amendment and the amended provision has no relevance to the case . The power regarding cancellation, hence has to be seen with reference to the registration and the object satisfying the definition on 'charitable purpose', as it stood at the time of registration and not by the subsequent amendment to Section 2(15) of the Income Tax Act.*

*43. Learned Standing counsel appearing for the Revenue placed heavy reliance on the proviso to Section 12AA(3) of the Act and submitted that when the assessee has income received from conduct of the matches, which are commercial in nature, as had been found by the Income Tax Appellate Tribunal, the objects of the trust ceased to be charitable. He submitted that going by the definition of Section 2(15) of the Act, rightly, the Commissioner assumed jurisdiction under Section 12AA(3) of the Act to cancel the registration. He further pointed out that for the finding to be recorded that the activities of the trust are not genuine, one must necessarily look into the objects of the association; if the objects of the association reveal commercial nature in the conduct of matches, the association cannot be one for charitable purpose as defined under Section 2(15) of the Act. Thus, there could be no inhibition for the Commissioner to assume jurisdiction to issue show cause notice calling upon the assessee to state whether the association is genuine or not. He further submitted that on looking at the activities of the association, the Commissioner had rightly come to the conclusion that the assessee's registration was liable to be withdrawn.*

*44. We do not accept the submission of learned Standing counsel appearing for the Revenue. As rightly observed by learned Senior counsel appearing for the assessee, the Revenue granted registration under Section 12AA of the Act satisfying itself as to the objects of the association befitting the status as charitable purpose as defined under Section 2(15), as it stood in 2003 and after granting the registration, if the registration is to be cancelled, it must be only on the grounds stated under Section 12AA(3) of the Act with reference to the objects*

*accepted and registered under Section 12AA, as per the law then stood under the definition of Section 2(15) of the Income Tax Act. Even therein, Courts have defined as to when an institution could be held as one for advancement of any other object of general public utility. Thus, if a particular activity of the institution appeared to be commercial in character, and it is not dominant, then it is for the Assessing Officer to consider the effect of Section 11 of the Act in the matter of granting exemption on particular head of receipt. The mere fact that the said income does not fit in with Section 11 of the Act would not, by itself, herein lead to the conclusion that the registration granted under Section 12AA is bad and hence, to be cancelled.*

*45. It may be of relevance to note the language used in the definition "charitable purpose" in Section 2(15) of the Act, which states that charitable purpose includes relief of the poor, education, medical relief and advancement of any other object of general public utility. The assessee's case falls within the phrase of the definition general public utility . In the decision reported in (2000) 246 ITR 188 in the case of Hiralal Bhagwati Vs. Commissioner of Income Tax, the Gujarat High court considered the said phrase in the context of Section 12AA registration and held that registration of the charitable trust under Section 12AA of the Act is not an idle or empty formality; the Commissioner of Income-tax has to examine the objects of the trust as well as an empirical study of the past activities of the applicant; the Commissioner of Income-tax has to examine that it is really a charitable trust or institution eligible for registration; the object beneficial to a section of the public is an object of "general public utility". The Gujarat High Court held that to serve as a charitable purpose, it is not necessary that the object must be to serve the whole of mankind or all persons living in a country or province; it is required to be noted that if a section of the public alone are given the benefit, it cannot be said that it is not a trust for charitable purpose in the interest of the public; it is not necessary that the public at large must get the benefit; the criteria here is the objects of general public utility. Thus, the Gujarat High Court held that in order to be charitable, the purpose must be directed to the benefit of the community or a section of the community; the expression "object of general public utility", however,*

*is not restricted to the objects beneficial to the whole of mankind; an object beneficial to a section of the public is an object of general public utility; the section of the community sought to be benefited must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature.*

*46. The above said decision (2000) 246 ITR 188 - Hiralal Bhagwati Vs. Commissioner of Income Tax) came up on April 18, 2000. Evidently, the Revenue has not gone on appeal as against this judgment. In the decision reported in (2008) 300 ITR 214(SC) in the case of Assistant Commissioner of Income Tax Vs. Surat City Gymkhana, reference was made about this decision and the Apex Court pointed out that the Revenue did not challenge this case and it attained finality.*

*47. It is no doubt true that the decision reported in (2008) 300 ITR 214(SC) in the case of Assistant Commissioner of Income Tax Vs. Surat City Gymkhana, was in the context of Section 10(23) of the Income Tax Act, 1961, nevertheless, the fact remains that the understanding of the scope of the expression "general public utility" would nevertheless is of relevance herein. Admittedly when the assessee was granted registration, the Revenue recorded its satisfaction that the objects are of charitable purpose. Thus only possible enquiry under Section 12AA of the Act for cancellation is to find out whether the activities of the trust are genuine or in accordance with the objects of the trust. If any of the income arising on the activities are not in accordance with the objects of the trust, the assessees income, at best, may not get the exemption under Section 11 of the Act. But this, by itself, does not result in straight rejection of the registration as 'trust' under Section 12AA of the Act. Consequently, we reject the prayer of the Revenue that Section 12AA(1) of the Income Tax Act, 1961 must be read along with Section 12AA(3) of the Income Tax Act, 1961 before considering the cancellation.*

*48. As far as the unreported decision of this Court in T.C(A).No.91 of 2013 dated 29.04.2013 (Gowri Ashram Vs. Director of Income Tax (Exemptions) is concerned, on which heavy reliance was placed by the Revenue, the said decision relates to the rejection of the registration at the threshold of the application filed for registration. So too the decision of the Apex court reported in 315 ITR*

*428 in the case of Commissioner of Income Tax Vs. National Institute of Aeronautical Engineering Educational Society, wherein, rejection was made on the threshold of application for registration made by the assessee. The decisions relied on is thus distinguishable and has no relevance to the facts of the present case.*

*49. As far as unreported decision of this Court in T.C(A).No.91 of 2013 dated 29.04.2013 (Gowri Ashram Vs. Director of Income Tax (Exemptions) is concerned, while rejecting the appeal filed by the assessee on the rejection of the application for registration, this Court observed that it was open for the assessee Society to renew its application as and when it expanded the objects of the Society and were approved by the competent Court. The rejection order passed by the Revenue was on the ground that the objects of the trust were not charitable in character. This decision also has no relevance to the case on hand.*

*50. As already noted in the preceding paragraphs, considering the provision under Section 12AA(3) of the Act, the cancellation or registration in a given case could be done only under the stated circumstances under Section 12AA(3) of the Act and in the background of the definition relevant to the particular year of registration. As rightly pointed out by the assessee, Revenue does not allege anything against the genuineness of the objects of the assessee or its activities. It rests its order only on the ground of the assessee receiving income from holding of matches which according to the assessee were not held by it. Thus, as regards the question as to whether the particular income qualified under Section 11 of the Act or not is not the same as activity being genuine or not. In the circumstances, we do not agree with the view of the Income Tax Appellate Tribunal that the order passed by the Director of Income Tax (Exemptions) was in accordance with the provisions of the Income Tax Act, 1961. He viewed that the conduct of test matches and ODI are in the nature of commerce or business. Though the assessee claimed their activities for promotion of sports, he held that the dominant feature is evident from the huge profits received and hence the amount received from BCCI as subsidy are commercial. As regards conducting of IPL Matches, he pointed out that though no services are rendered by the assessee for conducting the matches, the ground where the matches are played are*

*given for rent which is a commercial venture. The subsidy received from BCCI included mainly TV Advertisements sold by BCCI for the conduct of IPL and their commercial receipts arising for IPL transactions. Therefore, the nature of receipt was important than the name of account under which it was accounted. Thus he viewed that the objects and activities would no longer come within the definition of Section 2(15) of the Act after the amendment come in effect from 01.04.2009.*

*51. As rightly pointed out by the assessee, the Revenue does not question the objects of the Association as not genuine or are in accordance with the objects. All that the Revenue stated was that the nature of receipt could not be called a subsidy. Thus Revenue came to the conclusion that the objects and activities could not come within the meaning of 'charitable purpose' under Section 2(15) of the Act.*

*52. On going through the materials, the Income Tax Appellate Tribunal pointed out that instead of promoting and developing the game of cricket, the assessee was promoting and developing cricket as an entertainment and the tickets are highly priced; here, the assessee has shifted the activities of general public utility to commercial activity for generating revenue; the public merely participate to view costly matches; hence the conditions of Section 12AA(3) were satisfied. The Income Tax Appellate Tribunal agreed with the Director of Income Tax (Exemptions) that the expression 'subsidy from BCCI' was a misleading nomenclature and it was a share from the revenue collected by BCCI from the sale of telecast rights. The surplus from IPL Season-I worked out to 8.5% of the total receipts. It further held that 78% of the total receipt came out of advertisement revenue.*



*53. The Income Tax Appellate Tribunal pointed out that the physical aspect of the game was one in accordance with the objects of the assessee and the activities are genuine. However, the matches held were not in advancement of any specific object of general public utility. The pattern of receipt is commercial in character and the matches conducted are not in accordance with the objects of the Association. Thus, it rejected the assessee's case and held that both the conditions under Section 12AA(3) of the Act stood attracted.*

*54. 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 receipt 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 materials indicating objects of general public utility.*

*55.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 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 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.*

56. *As regards the observation of the Income Tax Appellate Tribunal that IPL Matches and Celebrity Cricket Matches are also being held by the Association and hence it is an entertainment industry, we need not go into these aspects, for, the order of the Director of Income Tax (Exemptions) casts no doubt on the genuineness of the objects of the trust. Hence, it is for the Assessing Officer to take note of all facts, while considering the same under Section 11 of the Income Tax Act, 1961. We disapprove the approach of the Tribunal in this regard. In the above said circumstances, we set aside the order of the Income Tax Appellate Tribunal. "*

*33.* The Delhi High Court, in the case of ***M/s. GST India vs. DIT, Delhi***, reported in *360 ITR 138*, held that:

"*Section 2(15) of the Income-tax Act, 1961, was amended by the Finance Act, 2008, with effect from April 1, 2009, and a proviso was added to it. A second proviso was inserted to section 2(15) by the Finance Act, 2010, with retrospective effect from April 1, 2009. There are four main factors that need to be taken into consideration before classifying the activity of the assesseee as "charitable" under the residuary category, i.e.," advancement of any other object of general public utility" under section 2(15) of the Act. The four factors are (i) the activity should be for advancement of general public utility; (ii) the activity should not involve any activity in the nature of trade, commerce and business; (iii) the activity should not involve rendering any service in relation to any trade, commerce, or business; and (iv)*

*the activities in clauses (ii) and (iii) should not be for fee, cess or other consideration and if for fee, cess or consideration the aggregate value of the receipts from the activities under (ii) and (iii) should not exceed the amount specified in the second proviso. The earlier test of business feeding or application of income earned towards charity because of the statutory amendment is no longer relevant and apposite. It is evident from Circular No. 11 of2008 that a new proviso to section 2(15) of the Act is applicable to assessees who are engaged in commercial activities, i.e., carrying on business, trade or commerce, in the garb of "public utility" to avoid tax liability. The legal terms "trade, commerce, or business" in section 2(15) mean activity undertaken with a view to make or earn profit. Profit motive is determinative and a critical factor to discern whether an activity is business, trade or commerce. Business activity has an important pervading element of self-interest, though fair dealing should and can be present, whilst charity or charitable activity is the anti-thesis of activity undertaken with profit motive or activity undertaken on sound or recognised business principles. The quantum of fee charged, the economic status of the beneficiaries who pay commercial value of benefits, in comparison to the fee, the purpose and object behind the fee, etc., are several factors which will decide the seminal question, is it business? Charitable activities require operational/running expenses as well as capital expenses to be able to sustain and continue in the long run. There is no statutory mandate that a charitable institution falling under the last clause should be wholly, substantially or in part must be funded by voluntary contributions. A practical and pragmatic view is required to examine the data, which should be analysed objectively and a narrow and coloured view will be counter-productive and contrary to the language of section 2(15). The second proviso applies when business was/is conducted and the quantum of receipts exceeds the specified sum. The proviso does not seek to disqualify a charitable organization covered by the last limb, when a token fee is collected from the beneficiaries in the course of activity which is not a business but clearly charity for which it is established and it undertakes."*

34. The principles of law discernible from the aforesaid two decisions may be summed up thus:-

(a) For the purpose of cancellation of the registration u/s 12AA(3), the Commissioner should record a satisfaction that the activities of the Trust or Institution are not genuine or that the activities are not being carried on in accordance with the objects of the Trust. In the absence of such a finding, the registration granted u/s 12A or u/s 12AA cannot be cancelled. Cancellation of registration of a charitable Trust, in a given case, is permissible, only under the circumstances stated u/s 12AA(3) of the Act.

(b) For an assessee to be classified as charitable under the residuary category i.e. "advancement of any other object of general public utility" u/s 2(15) of the Act, the following four factors need to be satisfied.

i) Activity should be for the advancement of the 'general public utility'.

ii) Activity should not be in the nature of trade, commerce or business.

iii) Activity should not involve rendering of services in relation to any trade, commerce or business.

iv) Activities in Clauses b and c above, should not be for fees, cess or other consideration, the aggregate value of which should not exceed the amount specified in the Second Proviso to S.2(15).

(c) The earlier test that if the income so collected, is applied towards the charitable activity, then the trust cannot be held as non-charitable, is no longer relevant after the statutory

amendment.

(d) The scope of the term "activity in the nature of trade, commerce or business" would mean that:

i) It is undertaken with a profit motive;

ii) The activity is continued on sound and recognized business principles and is pursued with reasonable continuity;

iii) There should be facts and other circumstances which justify and indicate that the activity undertaken is in fact, in the nature of business;

iv). The five tests propounded in the case of Customs and Excise Commissioner vs. Lord Fisher (1981) STC 238 and the propositions in the case of CST vs. Sai Publication Fund 258 ITR 70 (SC) apply.

v). Business activity is an important prevailing element of self interest.

(e) From a perusal of the Circular no.11 of 2008 issued by the CBDT, it is clear that the new Proviso of S.2(15) of the Act, is applicable to the assesses who are engaged in commercial activities i.e. carrying of trade, commerce or business in the garb of "public utility" to avoid tax liability, and where the object of the "general public utility" is only a mask or device to hide the true purpose, which was "trade, commerce or business."



(f) Charitable activity is the anti-thesis of activity having an element of self interest. Charity is driven by altruism and desire to serve others, though the element of self preservation may be present. For charity, benevolence should be omnipresent and demonstratable but it is not equivalent to self sacrifice and abnegation.

(g) The antiquated definition of the term charity, which entails giving and receiving nothing in return is outdated.

(h) Enrichment of oneself or self-gain should be missing and the predominant purpose of the activity should be to serve and benefit others, the mandatory features being, selflessness or illiberal spirit.

(i) The quantum of fee charged, the economic status of the beneficiaries who pay, commercial values in comparison to the fee, purpose and object behind the fee etc. are several factors which decide the seminal question, is it business?

(j) The Revenue cannot take a contradictory stand that, the assessee carries on charitable activity under the residuary head "general public utility", but, simultaneously record the said activity as business.

(k) There is no statutory mandate that a charitable Institution falling under the residuary Clauses, should be wholly, substantially or in part be funded by voluntary contributions.

(l) A pragmatic view is required to be taken while examining the data and the same should be analysed objectively. A narrow and coloured view may prove to be counter productive and contrary to S.2(15) of the Act.



(m) Accumulation of money/funds over a period of two to three years may not be relevant in determining the nature and character of the activity and whether the same should be treated indicative of profit motive i.e. the desire or intention to carry on business or commerce.

(n) The so called business activities, when intrinsically woven into and is part of the charitable activity undertaken, the business activity is not feeding charitable activities, as they

are integral to the charity/charitable activity.

(o) What has to be seen is, as to what is the core/main activity of the assessee. The predominant activity shall be the basis of the decision making.

**ANALYSIS**

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.

39. Mr. Shah also invited our attention to the observations made by this High Court in the case of ***Commissioner of Income Tax vs. Sarabhai Sons Ltd.***, *(1983) 143 ITR 473 (Guj.)*. Mr. Shah seeks to rely upon this decision, more particularly, the observations we shall quote hereinafter to make good his submission that the view taken by the Madras High Court should be accepted in conformity with the uniform policy as laid down in the Income Tax matters. We quote the observations upon which Mr. Shah would like to rely upon;

> *"Under the circumstances, as observed by Chagla, CJ, in Maneklal Chunilal & Sons Ltd. vs. CIT (1953) 24 ITR 375 (Bom.) in conformity with the uniform policy, which has been laid down in income tax matters, whatever our view may be, we must accept the view taken by the another High Court on the interpretation of the section of a statute which is in all India statute. Similar view has expressed by the Bombay High Court in Ramanlal Amarnath (Agency) Ltd. vs. CIT (1973) 91 ITR 250, while following a decision of this Court in Baroda Traders Ltd. vs. CIT (1965) 57 ITR 490. Even though, we may be persuaded to take a different view, we are not inclined to do so in view of the settled practice referred to in the decision of the Madras High Court and the decision of Bombay High Court and the Madhya Pradesh High Court adverted to above. Therefore, respectfully following the decisions of the Madras High Court and the Madhya Pradesh High Court, we must answer the third question referred to us also in the affirmative and against the revenue."*

40. However, Mr. Bhatt would submit, by placing reliance on the decision of this Court in the case of ***N.R. Paper & Board***

***Limited vs. Deputy Commissioner of Income Tax***, *1998 (234) ITR 733* that while the decision of any other High Court is entitled to highest esteem and respect by this Court, the system of law should not be evolved by such mechanical process of following the dictum as laid. According to Mr. Bhatt, if it becomes impossible to agree with the decisions of the other High Courts, this Court should be free to give its reasons which may not coincide with the conclusions reached in the persuasive precedent relied upon. Mr. Bhatt seeks to rely upon the following observations of this Court, as contained in para-27;

> *"27. While the decision of any other High Court is entitled to our highest esteem and respect, the constitutional powers of the High Court in its writ jurisdiction cannot be reduced to simply matching the colours of the case at hand against the colours of many sample cases spread out upon its desk and accept the sample nearest in shade as the applicable rule. The system of law cannot be evolved by such mechanical process and no judge of a High Court worthy of his office, views the function of his place so narrowly. If that were all there was to our calling there will be little of intellectual interest about it.*
>
> *The choice of a path for us cannot be made so blind and unintelligent, to be followed without a survey of the route which has been travelled and of the place where it would lead. Necessarily therefore, reasons that are given in the decisions of other High Courts relied upon for the petitioners, which have great persuasive value as precedent are required to be considered and the consequences are to be noted and if it becomes impossible to agree with them, or if there are no reasons at all and only announcements of legal precepts, the court would be free to give its reasons, which may not coincide with the conclusions reached in the persuasive precedent relied upon. The decisions of any High Court are after all not intended to be "gag orders" for other High Courts and do not have the effect of freezing judicial thinking on the points covered by them. This is why in*

*Arvind Boards and Paper Products Ltd. [1982] 137 ITR 635 (Guj), the court after reviewing the authorities on the subject, clearly spelt out exceptions, such as where the decision is sub-silentio, per incuriam, obiter dicta or based on a concession or takes a view which it is impossible to arrive at, etc., which would justify the High Court from taking its own view and not just follow the precedent which may otherwise have a persuasive value, though not binding."*

41. Mr. Bhatt, the learned senior counsel appearing for the Revenue may be right in his submission that if this Court is not persuaded to follow the view taken by the High Court of Madras in the case of Tamil Nadu Cricket Association (supra), then by only following the principle as laid down in the case of Maneklal (supra), this Court may not adopt or follow the view of the High Court of Madras for the purpose of consistency. We may only say that having regard to the materials on record, we are not persuaded to take a different view than the one taken by the High Court of Madras. Therefore, we are not going much into the issue as regards the dictum as laid down in Maneklal (supra). We find the view taken by the ITAT in its impugned order quite reasonable and in accordance with law. The Tribunal, in its impugned order, has made itself very clear that it was not expressing any opinion on the merits of the issue as to whether the activities of the GCA would fall within the meaning of charitable purpose in accordance with Section 2(15) of the Act as amended. The ITAT has also clarified that the issue with regard to registration under Section 12AA of the Act can be examined in the assessment proceedings.

42. In the aforesaid view of the matter, we are not convinced with the case put up by the Revenue. It is not the case of the

Revenue that the objects of the Trust are not charitable, but the case of the Revenue is that the activities undertaken by the Association are not charitable in nature.

43. In the result, this appeal fails and is hereby dismissed. The substantial question of law, as formulated by this Court, is answered in favour of the assessee and against the Revenue.

**Tax Appeal No.317 of 2019**

44. We shall now take up the Tax Appeal No.317 of 2019. This tax appeal under Section 260A of the Income Tax Act, 1961 is at the instance of the Revenue and is directed against the order passed by the Income Tax Appellate Tribunal, Ahmedabad, Bench 'D', Ahmedabad in the ITA No.1257/Ahd/2013 for the A.Y.2009-10. This tax appeal came to be admitted by this Court vide order dated 15th July, 2019 on the following substantial questions of law;

> *"[A]. Whether, on the facts and in the circumstances of the case the Appellate Tribunal was justified in allowing the benefit of Sections 11 and 12 when the Assessing Officer has clearly brought on record that assessee is covered under the proviso to Section 2(15) r.w.s 13(8) of the Act?*
>
> *[B]. Whether, on the facts and in the circumstances of the case the Appellate Tribunal has erred in holding that the assessee is not covered under the proviso to section 2(15) when the Officer has clearly brought on record that assessee is engaged in the activity of "advancement of objects of general public utility?"*
>
> *[C]. Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was justified in deleting the addition made in respect of corpus donations u/s.11(l)(d) of the Act without appreciating that the assessee failed to discharge its onus by not bringing anything on record in support of its claim of corpus donation?"*

*[D]. Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was justified in deleting the addition made on account of infrastructure subsidy of Rs.2,13,34,033/-, treating it as capital receipts without appreciating the findings of the Assessing Officer?"*

45. We may borrow the facts giving rise to this appeal from the memorandum of the appeal. The pleadings in the memo of the appeal are as under;

*"(A) In the present case, the assessee filed its return of income on 14/09/2009 declaring total loss of Rs.3,45,54,247/-. The summary assessment u/s.143(1) of the Act was resulted in Refund of Rs.46,14,500/-. The assessment u/s.143(3) of the Act was completed on 30/12/2011 determining total income at Rs.22,77,02,663/-.*

*(B) Disallowance of benefit of section 11 of the Act.*

*1) During the assessment proceedings, the Assessing Officer observed that the activity of the assessee was held as in the nature of trade, business or commerce for a cess or fees in the form of tickets with profit motive and the receipt from the BCCI in the form of TV rights was not voluntary contribution but price paid for hosting cricket tournament on assessee's stadium and therefore, it was not educational activity of the assessee. The activity of the assessee was running of its business of entertainment of the people at large for a fee of cess by arranging cricket tournament at various levels. Further, the DIT(E), Ahmedabad had passed speaking order considering all the relevant legal and actual position cancelling the registration u/s.12AA(3) of the Act on 06/12/2010 w.e.f. A.Y. 2004-05 onwards. The Assessing Officer relied upon the decision of Hon. Supreme Court in the case of Sole Trustee Loka Shikshana Trust Vs CIT (1975) 101 ITR 234 (SC). The Assessing Officer held that the BCCI is the richest Sport Authority in India. Arranging national and international level cricket tournament and its allocation to various affiliated Associations like the assessee and preparation for conduct of such cricket matches, selection of players, coaches, venue, TV Broadcasting rights, Audio & Video Publicity, sale of tickets, issue of license for parking lots, sale of edibles*

*and drinking water in stadium during tournament, five star arrangement of lodging and boarding for players, arrangement of security for players and in stadium a lot of other ancillary squarely fit in the definition of trade or services for profit as defined by the Apex Courts. Therefore, the Assessing Officer held that the activities carried out by the assessee were in the nature of advancement of any other object of general public utility. Accordingly, the Assessing Officer had invoked provisions of section 2(15) of the Act and thereby denying benefit of section 11(1)(a) or 11(1)(b) of the Act.*

*2) Being aggrieved, the assessee filed appeal before CIT(A). The CIT(A) had held that the assessee was not doing any charitable/educational activity by promoting game of cricket but it was in the business of entertainment of people at large by arranging/hosting national and international levels cricket tournaments and thereby received approximately 3 crores which indicate that the activities of the assessee was carrying out activities in the nature of trade, commerce or business. The C1T(A) relied on the decision of Hon. Supreme Court in the case of Sole Trustee Loka Shikshana Trust Vs CIT 101 ITR 234 (SC) and Hon. High Court of Calcutta in the case of Cricket Association of Bengal Vs CIT 37 ITR 277 (Calcutta). The C1T(A) held that with the introduction of Section 13(8) of the Act w.e.f. 01/04/2009 (Finance Act, 2012) it was clear that the assessee was covered by the proviso to section 2(15) of the Act. Accordingly, the C1T(A) had dismissed the appeal of the assessee.*

*3) Being aggrieved, the assessee preferred appeal before the Appellate Tribunal. The Appellate Tribunal relied on co-ordinate bench's decision in the case of Hoshiarpur Improvement Trust Vs ACIT (2015) 155 ITD 570 (Asr) which were approved by the Hon. Punjab & Haryana high Court in the case of C1T(E) Vs Improvement Trust Monga in TA No. 147 of 2016 reported as Tribune Trust Vs C1T(2017) 390 ITR 547 (P&H). Further, Appellate Tribunal has relied on the decision of this Hon'ble Court in the case of Sabarmati Gaushala Trust and held that accrual of profit cannot be held that the assessee is not covered by the section 2(15) of the Act. The receipts in the hands of the cricket associations are nothing but appropriation of profits and that are not taxable. Further, the Department has not*

*been able to point out a single object of the assessee which is in the nature of trade, commerce or business. On perusal of the annual reports and annual financial statements of the assessee, the objects of the assessee exist and operate purely for the purpose of promoting cricket. The Appellate Tribunal held that the assessee cricket associations were not really engaged in the activities in the nature of trade, commerce or business. Accordingly, the Appellate Tribunal held that the assessee has covered by the section 2(15) of the Act and thus the assessee is entitled to relief u/s.11l of the Act.*

*4) The decision of the Appellate Tribunal is erroneous. It is seen that control of cricket is in a few powerful hands and that cricket is completely monopolized by the Board of Cricket Control in India. The BCCI is not a rank outsider for these cricket associations but the apex bodies of these cricket associations. These cricket associations act in tandem with the BCCI and the cricket is pursued in as commercial a manner as it can be pursued auction of players for playing matches and the format of the matches being improvised as per the requirements of commercial interests. It is submitted that cricket as it is pursued by the BCCI and its affiliates is pure entertainment, and these are the dictates of its entertainment value that decides the form and presentation of cricket. If it is a noble activity of education in a gentleman's sport, where is the need of auctioning of the players. The commerce is glaring in each facet of cricket today. It is also submitted that even imparting cricket coaching is a big business rather than a selfless education. What is being pursued by these associations is pure commercial exploitation of cricket and that is the reason that the profits of these associations needs to be brought to tax. The financial relationship between the assessees and the BCCI cannot be without quid pro quo between the BCCI and these cricket associations, or else why would anyone share such huge amounts with cricket associations. BCCI organizes the events on pure commercial lines, makes huge monies on organizing these events, and share the monies with the local cricket associations. What the associations get is on account of fruits of the commercial operations, and that precisely is the reason these monies should be brought to tax. Learned Commissioner then takes us through the legislative amendments to Section*

*2(15) and links the same to how the sports have been exploited commercially in the last few decades. It is an admitted position that the cricket associations were all along treated as involved in "advancement of an object of general public utility" and, effective 1st April 2009, the proviso to Section 2(15) came in force which made it clear that if the activities of such institutions is in the nature of trade, commerce or business or rendition of services, for a cess, fee or any other consideration, to the business entities. The principle is clear. When you are here to make money from such activities on commercial lines, in the garb pursuing advancement of an object of general public utility, you may as well pay tax on the earnings from such activities. There is no dispute that the cricket is now biggest source of making money and, therefore, the income of the entities organizing cricket events should also be taxed. It is pertinent to mention that as per the CBDT Circular No.395 dated 24/09/1984, it was held that promotion of sports and games is "advancement of objects of general public utility'. Thus, in the instant case, the Assessee is clearly engaged in an activity that is of "advancement of objects of general public utility". Since the Assessee is covered by the last limb of the definition of Section 2(15), now it is to be seen whether the conditions in the proviso 1 of the Section 2(15) are applicable to the facts of the case. It is very clear from the audited accounts of the assessee that it earns income out of sale of tickets, sale of space, A/C Cabin Ticket sale etc. out of the cricket matches conducted at the grounds of cricket association which is nothing but a business activity carried out by the Assessee. Thus, it is clearly evident that the Assessee is engaged in business activity, thereby satisfying the conditions prescribed in the proviso 1 to Section 2(15) of the I.T Act. Since the gross receipts of the Assessee exceed the amount decided in the provisos, the provisions of the second proviso to Section 2(15) of the I.T Act are also satisfied. Thus, the Assessee is clearly covered by the provisions of Section 2(15) read with the proviso 1 & 2 to the said section.*

*[C] Disallowance of corpus donation.*

*(1) During the assessment proceedings, the Assessing Officer observed that the assessee claimed to have been received amount of Rs.20,69,60,338/being corpus from*

*BCCI and sponsorship money of Rs.20,00,000/ from Reliance Industries Ltd. The assessee was asked to submit documentary evidences to support its claim for corpus donation. The assessee failed to discharge its onus either by bringing anything on records or producing representative of BCCI as its witness in support of its claim of corpus donation that can be considered as corpus donation on instruction of BCCI. The auditor was also of the opinion that the amount of Rs.20,69,60,338/ considered as corpus was not in consonance with provisions of law and facts of the case. The Assessing Officer held that the assessee had not complied with the requirements of section 11(1)(d) of the Act. Accordingly, the claim of corpus donation of Rs.20,69,60,338/- of the assessee was rejected by the Assessing Officer.*

*2) Being aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) held that no written specific direction was available with the respective amounts for the respective A.Ys. Accordingly, the CIT(A) held that the Assessing Officer has rightly treated the donation received from the BCCI as income of the assessee and thereby had confirmed the addition of Rs.20.69,60,338/-.*

*3) Being aggrieved. the assessee preferred appeal before the Appellate Tribunal. The Appellate Tribunal held that there was specific confirmation to the effect that amounts were corpus donations. Further, on perusal of the BCCI resolution No. 5 which specifically stated that the TV subsidies should henceforth be sent to the member association towards corpus funds. Therefore, any payments made by the BCCI, without a legal obligation and with a specific direction that shall be form corpus fund. Thus, the condition u/s.l 11(1)(d) of the Act are satisfied. The Appellate Tribunal has relied on the decisions in assessee's own case in orders for A.Ys. 2004-05 to 2007-08 and thus directed the Assessing Officer to treat the TV subsidy of Rs.20,69,60,338/received from BCCI as a corpus donation.*

*4) The decision of the Appellate Tribunal is erroneous. As per provisions of section 11(1)(d) of the Act voluntary contributions with a specific direction that can be used as a corpus donation. However, in the instant case there is no specific direction from the BCCI to treat the said amounts as towards the 'corpus fund'. If the intention of*

*the donor was to donate this amount towards the 'corpus fund' of the assesee, then it has to be specifically mentioned. In the absence of written direction, a particular donation cannot be considered as 'corpus donation'. In this case, as the specific direction was clearly missing, said receipt of subsidy had to be considered as the income of the assessee trust and it cannot be exempt u/s.11(1)(d) of the Act.*

*[D] Disallowance of infrastructure subsidy*

*1) During the assessment proceedings, the Assessing Officer observed that the activity of the assessee was held as in the nature of trade, business or commerce for a cess or fees in the form of tickets with profit motive and the receipt from the BCCI in the form of TV rights was not voluntary contribution but price paid for hosting cricket tournament on assessee's stadium and therefore, it was not educational activity of the assessee. The activity of the assessee was running of its business of entertainment of the people at large for a fee of cess by arranging cricket tournament at various levels. Further, the DIT(E), Ahmedabad had passed speaking order considering all the relevant legal and actual position cancelling the registration u/s.12AA(3) of the Act on 06/12/2010 w.e.f. A.Y. 2004-05 onwards. On perusal of Income & Expenditure A/c., the assessee had received amount of Rs.3,98,07,028/-. The Assessing Officer relied upon the decision of Hon. Supreme Court in the case of Sole Trustee Loka Shikshana Trust Vs CIT (1975) 101 ITR 234 (SC). The Assessing Officer held that the BCCI is the richest Sport Authority in India. Arranging national and international level cricket tournament and its allocation to various affiliated Associations like the assessee and preparation for conduct of such cricket matches, selection of players, coaches, venue, TV Broadcasting rights, Audio & Video Publicity, sale of tickets, issue of license for parking lots, sale of edibles and drinking water in stadium during tournament, five star arrangement of lodging and boarding for players, arrangement of security for players and in stadium a lot of other ancillary squarely flt in the definition of trade or services for profit as defined by the Apex courts. Therefore, the Assessing Officer held that the activities carried out by the assessee were in the nature of advancement of any other object of general public utility. Accordingly, Assessing*

*Offlcer had invoked provisions of section 2(15) of the Act and thereby denying benefit of section 11(1)(a) or 11(1)(b) of the Act. The assessee, during the year under consideration, had received infrastructure subsidy from BCCI of Rs.3,52,86,521/- and had utilized of Rs.1,39,52,488/- by way of payment of District Cricket Association. Therefore, differential amount of Rs.2,13,34,033lwas added to the total income of the assessee.*

*2) Being aggrieved, the assessee preferred appeal before CIT(A). The CIT(A) held that the assessee was not an educational institution within the meaning of section 2(15) of the Act. The CIT(A) partly allowed the appeal of the assessee.*

*3) Being aggrieved, the assessee preferred appeal before Appellate Tribunal. The Appellate Tribunal held that the Assessing Officer has not justified in holding that infrastructure subsidy as revenue in nature. The assessee was made claim for subsidy only after the expenditure having been incurred which is relatable to capital assets. The infrastructure subsidy was given to the assessee for the reimbursement of 50% of expenditure which was incurred on infrastructure related to the capital assets and therefore it was not revenue receipt. Accordingly, the Appellate Tribunal has deleted the addition of Rs.2,13,34,033/-.*

*4) The decision of the Appellate Tribunal erroneous. In the cases of trusts, the trust is eligible to claim both revenue as well as capital expenses as application of income, so all expenses claimed as application of income should be first treated as income and be routed through the profit and loss accounts.*

*The tax effect involved is Rs.7,72,84,442/- which is above the prescribed monetary limit under the Board's Circular No.03/2018 dated 11/07/2018."*

46. The assessee is a Society registered under the Societies Registration Act, 1860. It came to be registered with the Registrar of Societies vide the Registration Certificate dated

10th July, 1984. The assessee was granted registration under Section 12AA of the Act, 1961 vide order dated 16th April, 2003 by the then DIT (Exemption), Ahmedabad. The registration under Section 12AA of the Act was granted on the premise that the assessee-Association is carrying on the charitable activities like promotion of sports.

47. The objects of the assessee-Association are as follows;

> *"1. To control, supervise, regulate or encourage, promote and develop the game of cricket in the area under the jurisdiction of the Association. The Association can also undertake any other and all activities which may be beneficial to the Association.*
>
> *2. To create, foster and maintain friendly and cordial relationship through sports tournaments and competitions connected therewith and to create a healthy spirit through the medium of sports in general and cricket in particular.*
>
> *3. To instill the spirit of sportsmanship in students attending schools, colleges and members of other institutions and other citizens and to foster the spirit of sportsmanship and instill the ideal of cricket and educate them in the same.*
>
> *4. To maintain a panel of approved Umpires who qualify themselves by passing the prescribed tests for purpose of officiating as such in the matches conducted by the Association.*
>
> *5. To select teams to represent the Association in any tournaments, championship or fixture local or otherwise.*
>
> *6. To arrange, supervise, hold, encourage and finance visits of teams.*
>
> *7. To arrange, and/or manage among other things league and/or any other tournaments.*
>
> *8. To promote and hold either alone or jointly with any*

*other Association. Club or persons, sports, meetings, competitions and matches and to offer, give or distribute towards prizes, medals and awards.*

*9. To make provision for coaching deserving persons in the various departments of the game in general and cricket in particular.*

*10. To impart physical education through the medium of Cricket and take all steps to assist to the citizens to develop their physique.*

*11. To organize matches in aid of public charities and Relief Funds.*

*12. To lay out such ground or grounds for playing the game and for other purposes and to provide pavilion, stadiums, other conveniences and amenities in connection therewith.*

*13. To introduce a Scheme of professionalism and to implement the same.*

*14. To start and maintain a journal devoted to sports in general and cricket in particular.*

*15. To maintain a library of books, periodicals and other literature on sports i.e. general and cricket in particular and to start journal or journals on sports in general and/or cricket in particular.*

*16. To engage person or persons and professional cricketers, coaches, umpires, groundsmen and to pay remuneration or honorarium to them.*



*17. To start, sponsor and/or to subscribe to any fund for the benefit of players, umpires, coaches, groundsmen, employees or their families.*

*18. To collect funds for the purpose of the Association and to utilize such in such a manner as the Managing Committee of the Association consider desirable for the fulfillment of the objects of the Association.*

*19. To hold and maintain the Laws of Cricket and The Rules and Regulations of the Board of Control for Cricket*

*in India.*

*20. To take such action as may be necessary to coordinate the activities of affiliated district Cricket Association institutions and their members in to the Association and amongst themselves.*

*21. To stage or sponsor and/or to subscribe funds to stage a match for benefit of the Cricketers or persons who may have rendered service game of cricket or for their families or to denote towards the develop promotion of the game.*

*22. To appoint representative or representatives on the Cricket conference and other conferences, seminars, talent events, symposiums connected with the game of cricket.*

*23. To invest moneys and funds of the Association in such a manner as may be decided upon by the Managing Committee of the Association capable of being conveniently carried on in connection with objects of the Association.*

*24. To carry on any other activity which may seem to the Association capable of being conveniently carried on in connection with objects of the Association.*

*25. To carry on any other activity for promoting the objects of the Association which are calculated directly or indirectly, to protect and/or to enhance the value of its properties or its rights and is conductive to the objects of the Association.*



*26. To acquire movable and immovable property and to apply both the capital and income thereof and the proceeds of the sale or mortgage thereof, for or towards, ail or any of the objects of the Board.*

*27. To start, assist, encourage or promote for training Cricketers and to provide for such amenities and facilities, usually provided in boarding schools.*

*28. To appoint Committee or Committees from time to time to organize matches for the achievement of the objects of the association and to utilize the net proceeds*

*thereof towards the implementation of these objects.*

*29. To purchase, repair, make, supply, take on lease, hire or otherwise acquire any movable and/or immovable property, rights or privileges necessary or convenient for the purpose of carrying out the objects of the Association on such terms and conditions as the Managing Committee may at its discretion deem fit.*

*30. To sell, mortgage, exchange, lease, dispose of or otherwise deal with, all or any part of the property or funds of the Association it may at its discretion deem fit.*

*31. To borrow, whenever necessary by and mode with or without security, with or without interest and to purchase, redeem or pay off any such securities.*

*32. To employ, appoint executive secretaries and assistant secretaries, clerks, managers, coaches, professional cricketers, umpires, scorers, statisticians, groundsmen, peons, servants and other service personnel and staff and to pay to them and other persons in return for their services to the Association salaries, wages, gratuities, pensions, honorariums, compensations, any ex-gratia payments and/or provident funds, other funds and to remove or dismiss such employees.*

*33. To promote such benevolent or other funds and to donate such sum or sums for*

*1. such causes as would be deem ed fit by the Association conducive to the promotion of the game of cricket;*



*2. the benefit of a Cricketer or his widow or children as the Association may deem fit;*

*3. any other person who has served cricket or his widow or his children as the Association considers fit.*

*34. Generally to do all such other acts and things as may seem to the Association to be convenient and/or conductive to the carrying out of the objects of the Association.*

48. The Assessing Officer took the view that the activities of the Association cannot be termed as “charitable activities”. The Assessing Officer took the view that the objects of the trust may be to promote the game of cricket, but the activities are covered by the Proviso to the fourth limb of Section 2(15) of the Act. The Assessing Officer also took the view that the activities of the Association cannot even be termed as the educational activities. In short, the Assessing Officer took the view that the Association is engaged in business. It derives profit from its so-called charitable activities. In such circumstances, according to the Assessing Officer, the Association is not entitled to seek exemption under Section 11 of the Act. The Assessing Officer, in its order, has observed as under;

> *“iv) The legal position as contained in the amended definition of 'Charitable Purpose' u/s 2(15) of the Act and explained vide Clause 4.3 of CBDT Circular No. 1 of 2009 dt. 27-05-2009 on I.T. Act 2008, Finance Minister's Speech, the Notes on Clauses, Memorandum Explaining the provisions of Finance Bill, CBDT circular No. 11 of 2008 dt. 19/12/2008, as well as the alternative submission of the assessee is considered but not found acceptable for the reasons stated below.*
>
> *(a) The assessee has claimed that it is an Educational Institute. The claim of the assessee is not acceptable in view 'Education' defined by H'ble Apex Court has in the case of Sole Trustee Loka Shikshana Trust Vs. Commissioner of Income Tax [1975] 101 ITR 234(SC) has defined 'Education' as under:*
>
> *”Per Khanna J. The sense in which the word 'education has been used in section 2(15) is the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received The word ’education’ has not been used in that wide and extended sense, according to which every*

*acquisition of further knowledge constitutes education. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling."*

*The so called "Educational Activity" of the assessee is not the education activity but an activity directed at to keep the flow of future cricketers uninterrupted for smooth running of its business of entertainment of the people at large for a fee or cess by arranging cricket tournament at various levels by it as well as hosting them arranged by BCCI, irrespective of the use of money. It is pertinent to note that the assessee is imparting only cricket related training. Hence the claim of the assesse that it is an 'Educational Institution' is not acceptable and hence rejected.*

*(b) the receipt of the previous year of the assessee as reported in the Income & Expenditure Account is Rs.3,98,07,028/- which is not less than Rs. 10 lakh,*

*(c) The assessee is in the business of entertainment of public at large by arranging/hosting/managing/executing cricket matches at national and international level 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. This issue is discussed below at length.*

*(d) The analysis of its activities and justification of applicability of amended definition of "Charitable Purpose' i.e. Carrying on activity, engaged in carrying on Trade, Commerce or Business etc. and the activities should be carried out for any fee, cess etc. as analyzed in the tabular form is misleading and contrary to the interpretation of any activity, document, agreement or law as settled by various judicial pronouncements. The activities and object of the trust should be seen as a whole. The above referred activities are ancillary to the main activities of the business of entertainment of people at large for a fee or cess by arranging/hosting cricket tournaments on commercial basis with profit motive. The assessee during year under assessment has earned fee income of Rs.1,51,97,741/- for India Vs. South Africa Test Match in Income & Expenditure Account and hence, assessee's claim of non collecting of fees is incorrect.*

*(e) As discussed above, the assessee was given ample opportunities right from the issue and service of first notice issued u/s 143(2) of the Act dated 24/09/2010, which provides an opportunities to the assessee to submit any account, document, statement or evidences relying upon which it has made its return of income till last opportunity offered to it vide letter dated 8/12/2011. The assessee has avoided defining its relation with BCCI, revenue sharing with BCCI in respect of TV broadcasting rights of cricket matches played on its ground, nature of agreements made with RIL for sponsorship, nature of receipt of income from sale of tickets. The assessee has failed to discharge its onus to establish the nature of the income earned in the form of 'Sponsorship Money' 'Sharing of TV Broadcasting Income with BCCI. It has tried 'to conceal the revenue income in the garb of 'Corpus Donation'. It has failed to establish why and how BCCI is giving "Corpus Donation" It is to bring on record that as against the receipt of 'Sponsorship Money' of RS. 20,00,000/- from Reliance Industries Ltd., the assessee has claimed expenses of Rs: 25,84,636/- for Reliance Inter District Tournaments. Shri Parimal Nathwani holding a very senior position in Reliance Industries Ltd. is also Vice*

*President of the assessee.*

*It is very well known fact that BCCI is the richest 'Sport Authority' in India. Arranging national and international level cricket tournament and its allocation to various affiliated Associations like the assessee, and preparation for conduct of such cricket matches, selection of Players, Coaches, venue, TV Broadcasting rights, Audio & Video Publicity, sale of tickets, issue of license for parking lots, sale of edibles and drinking water in stadium during tournament, five star arrangement of lodging and boarding for players, arrangement of security for players and in stadium a lot of other ancillary activities squarely flt in the definition of trade or service for profit as defined by the Apex court. Even by stretch of imagination it cannot be considered that the BCCI had its affiliated bodies who are represented on its board through elected representative is doing any sort of chaele or educational activity. The expenses claimed by the assessee in the Income & Expenditure Account for arranging various*

*cricket tournaments in various levels round the year proves that it is a business activity as defined by Ho'ble Apex Court by the above referred judgement. "*

49. The assessee, being dissatisfied with the order passed by the Assessing Officer preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax partly allowed the appeal. However, the Commissioner of Income Tax (Appeals) also took the view that the activities of the Association are not charitable in nature and the Association is not entitled to claim any exemption under Sections 11 and 12 of the Act. The CIT (A), while partly allowing the appeal, held as under;

*"26. It is clear from the above that to claim exemption u/s 11 & 12 of the Income tax Act there must exist educational institution. Secondly the educational institute must exist solely for the purpose of education and not for the purpose of profit.*

*27. Considering the elaboration on education above including that of the judgment by the hons court in the case of Sole Trustee Loka Shikshana Trust Vs. CIT 101 ITR 234 (SC), it is clear that education in clause 2(15) refers to the process of training and development of knowledge, skill, mind and character of student by normal schooling. It is also clear that the term 'education' has a very specific meaning and is not used in a wide and extended sense and to be within the definition of education u/s. 2(15), the trust should be an educational institution which primarily engaged in education activity and if such trust does not have education activity as primary activity, it cannot avail examination on the basis of incidental training activity*

*28. In the instant case, the appellant trust is admittedly in promotion of cricket as a game in the state of Gujarat. Even the plain reading of objects of appellant does not support the view that the appellant trust is an education institution. The argument that cricket is a subject in school under the broad subject of 'Health and Physical*

*Education' cannot make such physical training as education as it is not scholastic instruction as was held by the Hon'ble apex court. To add this chapter is only for class from Standard VI to Standard IX. Further, this subject is an optional subject in higher classes as is evident from both of the certificates from school submitted by the appellant. I am inclined to state that merely having a chapter on cricket and that too under a broad subject 'Health and Physical education' will not be suffice to make appellant as 'education institute'. The A.O on the other hand amply elaborate the fact that how appellant is in the promotion of game cricket and has also highlighted that gross receipt of about 3 crores from the sale of tickets to general public. Considering the above facts. I am not inclined to support this argument with the appellant trust as an educational institution within the meaning of Section 2(15) of the Incometax Act.*

*29. Further, findings made by the A.0. indicates that the appellant indeed is carrying out charitable activities which are of the nature of 'advancement of any other objective of the general public utility'. During the course of scrutiny by the A.O it was established that the assessee was not doing any 'charitable/educational activity' but it was in the business of entertainment of people at large by arranging/hosting national and international levels cricket tournaments for a fee/cess. The A.O has rightly pointed out that the receipts by the appellant predominantly from the sale of India Vs. Sri Lanka match amounting to approximately Rs.3 crores and also other activities indicate that the appellant is carrying out activities in the nature of trade, commerce or business.*



*30. At this point, it may be pointed out that CBDT has clarified that promotion of sports and games is considered to be general public utility vide Circular No.395 dated 24.09.1984. The text of circular is reproduced below:*

*SECTION 2(15) CHARITABLE PURPOSE*

*11. 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.*

*Circular No. 395 [F. No. 181(5) 82/IT(A-I)], dated 24.9. 1984.*

*31. I may hasten to add that in Cricket Association of Bengal Vs. CIT 37 ITR 277 (Calcutta) wherein it was held that a club formed for the development of promotion of sports or games or entertainment are held to be not charitable institution. The head note of the decision is reproduced as under:*

*Section 11 of the Income-tax Act 1961 (Corresponding to section 4(3)(i) of the Indian Income-tax Act 1922)- Charitable or religious trust Exemption of income from property held under-Assessment years 1950-51 to 1952-53 Whether while promotion of games as a part of education of those who participate in them may be a charitable purpose, promotion of practice of game in general either for entertainment of public or for advancement of game itself could not be held to be charitable- Held, yes Assessee was an association whose main object was to promote game of cricket- Another object authorized assessee to carry out any other business or activity which might seem to assessee capable of being carried on in connection with above*

*Assessee merely held some demonstration or exhibition matches and did not provide any training in game of cricket to novices or any advanced training for persons who were already practiced players its activities outside holding matches was limited entirely to its own members and only contact it had with public was by way of having them as spectators, on payment of fee, of matches arranged by it- Whether income that was derived from fees charged for admission to games held under auspices of association could not be said to be income derived from any property- Held, yes Whether further, there was no general public utility, so as to amount to charity, in arranging cricket matches which public could see on payment and hence, assessee was not entitled to exemption conferred by sections 4(3)(i) and 4(3)(ia) of 1922 Act- Held, yes*

*32. Section 2(15) of the Act defines 'charitable purposes'. First proviso, thereto with effect from assessment year 2009-10 laid down that, if any trust etc. (a) is engaged in pursuing objects of general public utility ('other objects') and (b) carries on any activity in the nature of trade, business or commerce or provides any services in relation to the trade, commerce services or business and (c) aggregate receipts there from exceed Rs.25 lacs, it shall be considered that other objects is not a charitable purpose. If so, such a trust is not eligible for the exemption inasmuch as the primary condition of being existing for charitable purpose is not satisfied.*

*33. With the introduction of Sec. 13(8) of the Act, w.e.f 1/04/2009 (Finance Act 2012), it is clearly evident that the appellant whose case is squarely covered by the proviso to Sec 2(15) sha11 forfeit all the exemptions that are otherwise available u/s 11 and 12 of the Act. The relevant provisions are as under:*

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

*The new sub-section (8) provides that the exemption under section 11 & 12 will not be available to a Trust, in a*

*previous year, in which the First proviso to section 2(15) becomes applicable, for that previous year.*

*34. Therefore, in the light of the provisions of Sec 13(8) of the Act, the appellant loses all the exemptions claimed u/s 11 & 12 of the Act. It is clear from the plain reading of the said provision that once proviso to Sec 2(15) becomes applicable to the facts of the case, all the exemptions otherwise allowable u/s 11 and 12 are not available to the appellant in that previous year.*

*35. Considering all the above, I am of the view that the AO has rightly invoked proviso to Section 2(15) of the Income-tax Act and denied exemptions u/s 11 & 12 of the Income tax Act as the appellant trust was engaged in pursuing objects of general public utility and it carried on activities in the nature of trade, business or commerce where the aggregate receipts exceeded Rs.25 lacs. Accordingly, ground Nos. 1(a) & 1(b) and ground Nos. 2 & 3 are dismissed. "*

50. The assessee carried the matter further in appeal before the Income Tax Appellate Tribunal, Ahmedabad, Bench 'D', Ahmedabad. The Tribunal, while allowing the appeal preferred by the assessee-Association, has observed as under;

*"34. What essentially follows from the above discussions is that, even after the 2008 amendment and insertion of proviso to Section 2(15), so far as 'any other object of general public utility' is concerned, as long as profit earning is not the predominant purpose of the activity of the assessee, the benefit of Section 2(15) cannot be declined. In other words, the accrual of profits to the assessee, by itself, cannot, therefore, be reason enough to hold that the assessee is not covered by the definition of 'charitable institution' under section 2(15). Of course, all these discussions are relevant only for the residuary clause i.e. "any other object of general public utility". In case, therefore, where the objects being pursued by the assessee is "relief of the poor", "education" or "medical relief", it is not even material whether or not the assessee is carrying on an activity in the nature of trade, commerce or business in the course of such activities.*

*The key factor is as to what are the activities of the assessee institution and as to what these activities seek to achieve.*

*35. Let us take a pause here and examine as to what are the activities of the assessee cricket associations so as to be brought within the ambit of trade, commerce or business. We have seen objects of the association, which are reproduced earlier in our order, and it is not even the case of the revenue that these objects have anything to do with any trade, commerce or business; these objects are simply to promote cricket. The trigger for invoking proviso to Section 2(15), as Shri Soparkar rightly contends has to an activity of the assessee which is in the nature of trade, commerce or business. However, the case of the revenue authorities hinges on the allegation that the way and manner in which cricket matches are being organized, particularly the IPL matches, the activity of organizing cricket matches is nothing but brute commerce. Undoubtedly, it would appear that right from the time Kerry Packer started his World Series Cricket in 1977, there has been no looking back in commercialization of cricket and the impact of this commercialization has not left Indian cricket intact. The Indian Premier League and the rules of the game being governed by the dictates of commercial considerations may seem to be one such example of commercialization of Indian cricket. The difficulty for the case of the revenue before us, however, is that these matches are not being organized by the local cricket associations. We are told that the matches are being organized by the Board of Cricket Control of India, but then, if we are to accept this claim and invoke the proviso to Section 2(15) for this reason, it will amount to a situation in which proviso to Section 2(15) is being invoked on account of activities of an entity other than the assessees- something which law does not permit. We are not really concerned, at this stage, whether the allegations about commercialization of cricket by the BCCI are correct or not, because that aspect of the matter would be relevant only for the purpose of proviso to Section 2(15) being invoked in the hands of the BCCI. We do not wish to deal with that aspect of the matter or to make any observations which would prejudge the case of the BCCI. Suffice to say that the very foundation of revenue's case is devoid of legally sustainable basis for the short reason*

*that the commercialization of cricket by the BCCI, even if that be so, cannot be reason enough to invoke the proviso to Section 2(15). We are alive of the learned Commissioner (DR)'s suggestion that the cricket associations cannot be seen on standalone basis as the BCCI is nothing but an apex body of these cricket associations at a collective level and whatever BCCI does is at the behest of or with the connivance of the local cricket associations, and that it is not the case that anyone can become a Member of the BCCI because only a recognized cricket association can become a Member of the BCCI. We are also alive to learned Commissioner's argument that what is being sought to be protected by the Charitable status of these associations is the share of these cricket associations from the commercial profits earned by the BCCI by organizing the cricket matches. The problem, however, is that the activities of the apex body; as we have explained earlier, cannot be reason enough to trigger proviso to Section 2(15) in these cases. Whether these cricket associations collectively constitute BCCI or not, in the event of BCCI being involved in commercial activities, the taxability of such commercial profits will arise in the hands of the BCCI and not the end beneficiaries. Even in such a case the point of taxability of these profits is the BCCI and not the cricket associations, because, even going by learned Commissioner's arguments, these receipts in the hands of the cricket associations is nothing but appropriation of profits. What can be taxed is accrual of profits and not appropriation of profits. In any event, distinction between the cricket associations and the BCCI cannot be ignored for the purposes of tax treatment. There is no dispute that the matches were organized by the BCCI, and the assessee cannot thus be faulted for the commercial considerations said to be inherent in planning the matches. As we make these observations, and as we do not have the benefit of hearing the perspective of the BCCI, we make it clear that these observations will have no bearing on any adjudication in the hands of the BCCI. Suffice to say that so far as the cricket associations are concerned, the allegations of the revenue authorities have no bearing on the denial of the status of 'charitable activities' in the hands of the cricket associations before us- particularly as learned Commissioner has not been able to point out a single object of the assessee cricket associations which is in the nature of trade, commerce or*

*business, and, as it is not even in dispute that the objects being pursued by the assessee cricket associations are "objects of general public utility"under section 2(15). All the objects of the assessee cricket associations, as reproduced earlier in this order, unambiguously seek to promote the cricket, and this object, as has been all along accepted by the CBDT itself, an object of general public utility.*

*36. Cricket is indeed an immensely popular game in this part of the world, and anything to do with cricket results 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. These facts, by itself, and without the assessees before us deviating from their objects or venturing into trade, commerce or business, cannot require the activities to be treated as commercial activities. When a cricket stadium is to be built, it has to accommodate a very large number of persons but the size of the stadium would not mean that the activity is for anything other than promotion of cricket.. When the numbers are large, the scale of operations is large, and when scale of operations are larger, even the surplus or deficit could be large, but then the scale of operations may be a scale on which commercial activities could be carried out but that fact cannot convert an object of general public utility into a commercial activity. We have carefully analyzed the annual reports and the annual financial statements of the assessee, and we do not find any objects, other than objects of the cricket associations, being pursed by these cricket associations. The objects of these cricket associations clearly demonstrate that these cricket associations exist and operate purely for the purpose of promoting cricket. We are, therefore, of the considered view that the proviso to Section 2(15) has been wrongly invoked in these cases.*

*41. We have noted that all the learned representatives have advanced detailed arguments on the proposition that since the assessee cricket associations are engaged in educational activities, it is not really material whether or not the assessee has engaged itself in the activities in the nature of trade, commerce or business. However, in the light of our categorical finding that the assessee*

*cricket associations were not really engaged in the activities in the nature of trade, commerce or business, it is not really necessary to adjudicate on this plea. We leave the question open for adjudication in a flt case.*

*Conclusions on this issue:*

*42. For the detailed reasons set out above, we are of the considered view that the authorities below were in error in invoking the proviso to Section 2(15) and thus in declining the benefit of Section 11 and 12 to the appellant cricket associations. To this extent, plea of the appellants must be upheld. We uphold the plea. "*

51. Being dissatisfied with the order passed by the ITAT, Ahmedabad, 'D' Bench, Ahmedabad, the Revenue is here before this Court with the present tax appeal.

**Submissions on behalf of the Revenue:-**

52. Mr. M.R. Bhatt, the learned senior counsel appearing for the Revenue vehemently submitted that the ITAT committed a serious error in passing the impugned order. Mr. Bhatt would submit that by any stretch of imagination, the activities of the assessee do not fall within the definition of the term "charitable purpose" as defined under Section 2(15) of the Act. Mr. Bhatt submitted that the activities, in no manner, could be said to be for the purpose of promotion of sports (game of cricket). Mr. Bhatt would submit that the activities of the Association are in the nature of business. The Association derives huge profit by hosting international cricket matches in the stadium. Mr. Bhatt would submit that the Association receives a huge amount from the BCCI for the purpose of organizing the international matches. Mr. Bhatt would submit that the registration of the Association under

Section 12A of the Act will not make the assessee automatically eligible to seek exemption under Section 11 of the Act. Mr. Bhatt submitted that howsoever laudable the objects of the trust may be, but the activities undertaken by such trust are to be looked into for the purpose of deciding whether such trust is entitled to be called a charitable trust within the meaning of Section 2(15) of the Act and is liable to claim exemption under Sections 11 and 12 of the Act or not.

53. According to Mr. Bhatt, the Tribunal has not discussed the relevant issues in their true perspective and, therefore, the matters should be remitted to the Tribunal for fresh consideration of all the relevant aspects. According to Mr. Bhatt, although the Income Tax Appellate Tribunal is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it, this Court may not interfere, yet it is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal is obliged to give its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings recorded on the evidence on record before it. According to Mr. Bhatt, when the Assessing Officer and the CIT (A) have assigned cogent reasons for the purpose of coming to the conclusion that the activities of the assessee cannot be termed as charitable and the case of the assessee is covered within the Proviso to the fourth limb of Section 2(15) of the Act, then to upset such findings, the Tribunal was expected to assign cogent reasons. Mr. Bhatt, in support of this submission, has placed reliance on a decision of the Supreme Court in the

case of ***Omar Salay Mohamed Sait vs. CIT***, reported in *(1959) 371 ITR 151 (SC),* in which the Supreme Court succinctly expressed the expectation from a Tribunal while deciding such appeals. The following observations of the Supreme Court have been relied upon by Mr. Bhatt;

> "*We are aware that the Income Tax Appellate-Tribunal is a fact finding Tribunal and if it arrives at its own conclusion of fact after due consideration of the evidence before it this court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this court.*"

54. Mr. Bhatt, in support of his submissions, has placed reliance on the following decisions;

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| 1 | Section 2(15) | Director of Income Tax (Exemption) vs. Tamil Nadu Cricket Association, 57 taxmann.com 136 (SC) | 1 |
| 2 | | Commissioner of Income Tax vs. Truck Operators Association, 328 | 02/05/19 |

| | | | |
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| | | ITR 636 (Punjab & Haryana) | |
| 3 | | Commissioner of Income Tax, Dehradun vs. National Institute of Aeronautical Engg. Educational Society, 315 ITR 428 (Uttranchal) | 06/09/19 |
| 4 | | Hyderabad Race Club vs. Commissioner of Income Tax, 153 ITR 521 (Andhra Pradesh) | 10/19/19 |
| 5 | | Dharmaposhanam Co. vs. Commissioner of Income Tax, 114 ITR 463 (SC) | 20-25 |
| 6 | | Sole Trustee Loka Shikshana Trust vs. Commissioner of Income Tax, 101 ITR 234 (SC) | 26-43 |
| 7 | | Cricket Association of Bengal vs. Commissioner of Income Tax, 37 ITR 277 (Cal.) | 44-53 |
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| 8 | Education | Travancore Education Society vs. Commissioner of Income Tax, 369 ITR 534 (Kerala) | 54-55 |
| 9 | | Dawn Educational Charitable Trust vs. Commissioner of Income Tax, 370 ITR 724 (Kerala) | 56-57 |
| 10 | | Dawn Educational Charitable Trust vs. Commissioner of Income Tax, 73 taxmann.com 61 (SC) | 58 |
| 11 | | Saurashtra Education Foundation vs. Commissioner of Income Tax, 273 ITR 139 (Gujarat) | 59-67 |
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| 12 | Actual activities to be seen | N.N. Desai Charitable Trust vs. Commissioner of Income Tax, 246 ITR 452 (Gujarat) | 68-74 |
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| 13 | Reasons to be given by ITAT on each fact | Ramesh Chandra M. Lutra vs. Assistant Commissioner of Income Tax, 257 ITR 460 (Gujarat) | 75-77 |
| 14 | Decision of another High Court, persuasive and not | N.R. Paper & Board Ltd. vs. Deputy Commissioner of Income Tax, 234 ITR 733 (Gujarat) | 78-92 |

| | | | |
|---|---|---|---|
| | binding | | |

***Submissions on behalf of the assessee:***

55. On the other hand, Mr. J.P. Shah, the learned senior counsel appearing on behalf of the assessee has vehemently opposed this tax appeal. Mr. Shah submitted that no error, not to speak of any error of law, could be said to have been committed by the ITAT in passing the impugned order. Mr. Shah submitted that the assessee is engaged in the activities of promoting the game of cricket. In other words, according to Mr. Shah, the assessee is engaged in promotion of sports. Mr. Shah brought to our notice the following relevant facts;

> *"1, GCA has given following renowned players to Indian Cricket:*
>
> *Mr. Jashubhai Patel,*
> *Mr. Parthiv Patel,*
> *Mr.Jasprit Bumrah,*
> *Mr. Axar Patel*
>
> *The above named cricketers have been rendered coaching and training by GCA.*
>
> *Mr. Jashubhai Patel, Mr. Parthiv Patel and Mr. Axar Patel have played as the members of the Indian Cricket Team in Cricket matches against Foreign Teams in the past.*
>
> *Mr. Jasprit Bumrah is currently a star Cricketer in Indian Cricket Team in International Cricket and is ranked as World No.1 bowler.*
>
> *Apart from the above players, Mr. Priyank Panchal is a renowned Ranji Trophy player playing for the GCA at present and is knocking on the doors of International cricket.*
>
> *All the above players have been coached by the GCA.*

*2. GCA has the following Cricket teams for Men.*

*(a) Under 14 years*
*(b) Under 16 years*
*(c) Under 19 years*
*(d) Under 23 years*
*(e) Seniors Ranji Trophy Team, Duleep Trophy, etc.*

*There are cricket teams for women also.*

*4. GCA has employed former national level cricketers as coaches for each of all the above stated segments of cricket teams, i.e. a coach appointed for under 14 team would look after coaching of that team only.*

*5. GCA looks after the cricketing activities in the following eleven districts/provinces of the Gujarat State.*

*(I) Ahmedabad*
*(ii) Ghandhinagar*
*(iii) Kheda*
*(iv) Surat*
*(v) Bulsar(Balsad)*
*(vi) Bharuch I*
*(vii) Anand*
*(viii) Banaskantha*
*(ix) Daman*
*(x) Dadar Nagar Haveli*
*(xi) Panchmahal.*



*6. Currently the GCA has employed former Indian Team Cricketer, Mr. Sairaj Bhautule, as coach for the Seniors i.e. GCA Ranji Trophy Team Players etc. He is also responsible for co-ordinating with the coaches of other age group segment teams of GCA.*

*7. Coaching of Cricketers encompasses the following aspects :*

*(a) Skill development in nuances of Cricketing.*
*(b) Physical development,*
*(c) Mental development,*
*(d) Building Personality of a Cricketer.*

*8. It is a known fact that each large size school has its*

*own cricket team where the players are mostly under 14 years in age.*

*These schools play inter-school cricket and compete with each other for cricket shield for best school team. From these championships, talent is spotted by GCA and invited for coaching and training. The budding cricketers are coached by renowned past cricketers and their talent is nurtured.*

*9. The coach monitors the progress of players and trains them for overcoming their deficiencies so that each one of them progresses and is able to shine at national level.*

***In Physical development**, generally the following tests are done as an ongoing process.*

*(a) Fitness Test under which the MSK is done, i.e., Muscular, Skeleton Test.*

*(b) Endurance Test,*

*(c ) Agility Test.*

*Players are informed of their deficiencies and during the training sessions, the coaches concentrate for removal of such deficiencies e.g. If one of the shoulders is not strong enough, the coach would suggest to and supervise the player for undertaking specific exercises to strengthen the shoulder.*

***In Skill development** the player is shown videos of his actions. Coach points out the deficiency and would suggest corrective actions. e.g. if a batsman needs improvement in his batting stance, the same will be captured in the video first and thereafter it would be shown to him for corrective action. There is one to one discussion with each player for improvement in his game and this is an on going process.*

*In Mental development, the coach has one to one discussion with all the players to know about their deficiencies like getting nervous while facing opening bowling spell etc. Curative actions are taken by coach.*

*Players are also trained to face media, e.g., if a cricketer is awarded 'Man of the match trophy' then how to face interview etc.*

***Coaching and Support Staff at present.***

*GCA has employed at present following personnel;*

| | | |
|---|---|---|
| *(a)* | *Coaches* | *14* |
| *(b)* | *Physios* | *6* |
| *(c )* | *Trainers* | *5* |
| *(d)* | *Video Analyst* | *2* |
| *(e)* | *Pitch Curator* | *1* |
| | *Total* | *28"* |

56. Mr. Shah submitted that the Association received corpus donation of Rs.20,69,60,338/- from the BCCI. The Assessing Officer held that it is not corpus donation and added the same to the income. Before the C.I.T (Appeals), the Association drew the attention to a letter addressed to the Officer dated 28th December, 2011 where two specific letters from the BCCI dated 12th October, .2001 and 13th October, 2001 respectively addressed to the Secretary of Gujarat Cricket Association were produced. The letter dated 12th October, 2001 from the BCCI draws attention to the decision in the Annual General Meeting, and the resolution incorporating the said decision as follows [reproduced at page 59 of the order of CIT (A)]

*"5. Chairman suggested that as already decided in working Committee henceforth the TV subsidies should be sent towards 'Corpus Fund' and this decision can also be approved by the members of this meeting. Thereafter the members unanimously approved that henceforth the TV subsidies should be sent by the Board to the Member Associations towards "Corpus Fund" instead of subsidy fund."*

57. Mr. Shah submitted that the C.I.T.(Appeals), in his order, in para-18 on page 65 noted that the above “donation of Rs.1,38,36,800/- was treated as the Corpus donation in A.Y. 2002-03.”. The above resolution mentioned in the letter of BCCI dated 12th October, 2001, which used the word “henceforth”, which means in future also, was not considered good enough by him as “a specific direction” as required by section 11(1)(d) and only on that reasoning, he held that It Is not the corpus donation. The Department did not file appeal against the said decision but the Association did file an appeal to the Tribunal against the finding of absence of specific direction in every year. The Tribunal, on page 242, para-49 reproduced from their order in A.Ys. 2004-05 to 2007-08 pointing out that “similar amounts received in the earlier years have been treated all along as the corpus donation”. ‘Earlier Year’ means A.Ys. 2002-03 and 2003-04. On page 245, the Tribunal reproduced para-15 of their order for A.Ys. 2004-05 to 2007-08 as follows:

> "*15. We find that, at pages 46 and 47 of the paperbook, the assessee has filed specific confirmations to the effect that these amounts were corpus donations. We have also perused the BCCI resolution no 5 dated 29th September 2001 which specifically states that the TV subsidies should henceforth be sent to the Member Associations towards “corpus funds*". *There is no dispute that the TV subsidy in question is sent under this resolution. On these facts, and In the light of the provisions of Section 11(1)(d) which only require the income to be “by way of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution”, we are of the considered view that any payments made by the BCCI, without a legal obligation and with a specific direction that it shall be for corpus fund as admittedly the present receipt is, is required to be treated as corpus donation not includible in total*

*income. We are unable to find any legal support for learned CIT(A)'s stand that each donation must be accompanied by a separate written document. The contribution has to be voluntary and it has to be with specific direction that it will form corpus of the trust'. These conditions are clearly satisfied. Any payment which the assessee is not under an obligation to make, whatever be the mode of its computation, is a voluntary payment, and, any payment which is with a specific direction that it for corpus fund is a corpus donation. In our considered view, even without the two specific confirmations filed by the assessee, in the light of the BCCI resolution under which the payment is made and in the light of the payment not being under any legal obligation, the conditions under section 11(1)(d) are satisfied. We, therefore, uphold the plea of the assessee. The Assessing Officer is accordingly directed to delete this addition of Rs.1,58,00,000."*

58. Mr. Shah submitted that in view of the fact that in the A.Ys. 2002-03 and 2003-04, the Assessing Officer accepted on the same facts and evidence of the above two letters and resolution, the identical donations to be corpus donations, It was not open for the revenue to take a contrary view and hold to the contrary in the succeeding assessment years i.e. A.Ys. 2004-05 to 2012-13 in view of the Supreme Court decision of ***CIT vs. Excel Industries Ltd***. *(2013) 358 ITR 295*, which applied the rule of consistency of approach to the same issue arising in all other Assessment Years. The Supreme Court in the aforesaid decision has observed "the Revenue cannot be allowed to flip-flop on the issue".



59. Mr. Shah further submitted that the Tribunal has rightly construed the word "henceforth" used in the resolution as covering up all the payments in the future years by citing the decision of ***CIT (Exemption) vs. Mata Amrithanandamayi Math***- (2017) 85 taxmann.com 261 (Ker), holding that once

the assessee donated the principal and the future interest to the corpus account, every year, specific direction regarding interest is not necessary.

60. Mr. Shah submitted that the following Question (D) is only for the A.Y.2009-10:

> "Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was justified in deleting the addition made on account of infrastructure subsidy of Rs.2,13,34,033/-, treating it as capital receipts without appreciating the findings of the Assessing Officer"

61. Mr. Shah further submitted that in respect of the aforesaid disallowance, the Assessing Officer in his order has observed as follows:

> *"Corpus Donation under the heading "Infrastructure Subsidy" received from BCCI: The assessee during the year under assessment, has received infrastructure subsidy from BCCI for Rs.3,52,86,521/- and has utilized Rs.1,39,52,488/- by way of payment to District Cricket Association and hence balance amount of Rs.2,13,34,033/- is added to the assessee's total income in view of the detailed discussion made in para 5, 6 & 7 above."*

*62.* Mr. Shah also submitted that the C.I.T. (Appeals) agreed with the Assessing Officer and the Tribunal on the appeal being disposed off on the issue in favour of the Respondent in para-55 at page 249 as follows:

> *"55. On a perusal of the BCCI Infrastructure Subsidy rules, we find that what is given to the assessee as infrastructure subsidy is reimbursement of 50% of costs in respect of certain expenditure on infrastructure which is inherently in the capital field. The mere fact that it is not a reimbursement to an outside party, such as a district cricket association, does not really matter. As*

*long as the subsidy is relatable to a capital asset created by the assessee on his own or by an eligible district cricket association, as the present subsidy undisputedly is, it is outside the ambit of revenue receipt and taxable income. The very foundation of the stand of the Assessing Officer is thus devoid of legally sustainable merits. As such, there can hardly be an occasion, in principle, to hold such a subsidy as a revenue receipt or taxable income. There is not even a whisper of a discussion by the Assessing officer to the effect that infrastructure subsidy is revenue in nature. As a matter of fact, the claim is made for the subsidy only after the expenditure having been incurred. The authorities below have simply brushed aside the case and the submissions of the assessee and proceeded to hold it as an income. Looking to the nature of the subsidy, which is clearly relatable to the capital assets generated, we are unable to hold this receipt in the revenue field. We, therefore, uphold the plea of the assessee on this point as well and delete the addition of Rs 2,13,34,033/-."*

63. Mr. Shah, in regard to the common question In the A.Ys. 2004-05 to 2008-09 pertaining to allowing of the benefit of exemption u/s.11, submitted that if the Respondent succeeds in the Tax Appeal No.268 of 2012, the aforesaid question in the above appeals for the A.Ys 2004-05 to 2008-09 will have to be answered in favour of the assessee

64. Mr. Shah further submitted that the activity other than the International match for the A.Ys. 2009-10 to 2012-13 entrusted by the BCCI Invariably have resulted into deficit and this activity goes on round the year without a break. It is only if the activity is a one day International match or twenty-twenty or five days test match that there may be a surplus but one or two matches cannot convert the altruistic activity of the Association into trade or business. The activities carried on by the Gujarat Cricket Association are enumerated at para-19 of the Tribunal's order.

65. Mr. Shah submitted that the findings of the Tribunal are very clear on the controversy. The Tribunal, after due consideration of all the relevant aspects, concludes; “We are, therefore, of the considered view that the Proviso to section 2(15) had been wrongly Invoked In these cases.”

66. Mr. Shah submitted that even prior to the amendment of section 2(15) w.e.f. 01.04.2019 i.e. the A.Y. 2009-10, the following provision, sub-section (4A) in section 11, inserted w.e.f. 01.04.1992 was in the statute book:

> *“11(4A) Sub-section (1) or sub-section (2) or subsection (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.”*

67. Mr. Shah submitted that inspite of the facts being identical in the years, A.Y. 2009-10 and preceding to A.Y. 2009-10 and in A.Ys. 2008-09, 2007-08 backward upto 2002-03, there is total absence of finding of application of sec.11(4A) or finding of business in all these years prior to A.Y. 2009-10. This very aspect goes to show that the Assessing Officer is not consistent and the rule of consistency laid down by the Supreme Court in CIT vs. Excel Industries Ltd. (2013) 358 ITR 295 very much applies in A.Ys. 2009-10 and onward.

68. Mr. Shah placed strong reliance on the following documentary evidences also looked into by the ITAT.

*"(i) Note in the form of summary of activities other than the international match entrusted by the BCCI;*

*(ii) List of matches played in A.Y.2009-10*

*(iii) Income & Expenditure for A.Y. 2009-10 including the income of Rs.1,51,97,741/- from India vs. South Africa Test Match, yet resulting into loss of Rs.5,91,708/- accepted by the Assessing Officer in his assessment order u/s. 143(3).*

*(iv) Break-up of remuneration of the support staff in current years' cricket season 2019-20 of Rs.49,20,000/-.*

*(v) Break-up of remuneration of coaches in current years' cricket season 2019-20 of Rs.95,00,000/-"*

69. Mr. Shah has placed strong reliance on the following two decisions;

"(i) In the case of ***Commissioner of Income Tax vs. Excel Industries Ltd***., *(2013) 358 ITR 295 (SC)*;

(ii) In the case of ***Commissioner of Income Tax, (Exemption) vs. Mata Amrithanandamayi Math***, *(2017) 85 taxmann.com 261 (Kerala)*;

70. Mr. Shah also brought to our notice the following;

*"1(a) The learned Assessing Officer has not found any defect in books of account. In his Assessment Order, he starts with the figure of (-) Rs.5,91,708/against which he has stated thus: "Excess of income over expenditure".*

*(b) Analysis of Income and Expenditure account which is accepted by AO is as follows.*

*2. GCA has incurred total expenditure of Rs.4,03,98,737/- as per audited Income and Expenditure A/c. GCA has receipts of Rs.3,98,07,028/-. The net result is loss i.e. Excess of Expenditure over Income of Rs.5,91,709/-, i.e. there is a deficit.*

*3. The Receipt side comprises of following heads of receipts as summarized from Income and Expenditure A/c.*

| | | Rs. |
|---|---|---|
| *(I)* | *International Cricket Match Surplus* | *1,51,97,741/-* |
| *(ii)* | *Bank FDR Interest* | *2,21,88,527/-* |
| *(iii)* | *Other Income* | *24,20,760/* |
| | | *3,98,07,028/* |

*4. The Expenditure side comprises of following heads of Expenses as summarized:*

| | |
|---|---|
| *(i) Match Expenses [Local Matches]* | *1,70,84,594/-* |
| *(ii)Cricketing Expenses as per Chart attached* | *1,53,90,325/-* |
| *(iii) Administration and Other Expenses* | *79,23,818/-* |
| | *4,03,98,737/-* |

*5. From the above summary, it is quite clear that;*

*Surplus income from International matches is less than expense incurred for Local Matches.*

| | Rs. |
|---|---|
| *(a) Cricketing expenses incurred by GCA for domestic matches other than International Matches where no fees are charged. [1,70,84,594 + 1,53,90,325/-]* | *3,24,74,919/-* |
| *(b) Surplus Income from International Matches over all Deficit from Cricketing activities.* | *1,51,97,741/-* |
| *Deficit* | *(-)1,72,77,178/-"* |



71. Mr. Shah also brought to our notice the income and expenditure account for the year ended on 31st March, 2009. The same is as under;

| Sr. No. | EXPENDITURE | AMOUNT (RS.) |
|---|---|---|
| 1 | Price Money to all Teams | 27,86,796 |

| | | |
|---|---|---|
| 2 | Ground Expense | 20,06,228 |
| 3 | Salary Expense | 26,60,008 |
| 4 | Security charges | 11,67,279 |
| 5 | Coaches Fee | 10,06,040 |
| 6 | Cricket Academy Expenses | 9,51,067 |
| 7 | Leaveling Expenses | 9,26,080 |
| 8 | Repairing & Maintenance Expenses | 8,53,084 |
| 9 | Municipal Tax | 7,11,945 |
| 10 | Senior & Junior Tournament Subsidy to District Cr. | 7,00,000 |
| 11 | Coaches Seminar Expense | 4,87,360 |
| 12 | Labour Charges | 2,08,930 |
| 13 | Physio Fee Expense | 1,75,500 |
| 14 | Curator Fee Expense | 1,39,333 |
| 15 | Prize Distribution Function Expense | 1,29,145 |
| 16 | Gardening Expense | 1,01,765 |
| 17 | Level B Coaches course Expense | 94560 |
| 18 | Supervision Fee | 91000 |
| 19 | Level Trainer Exam Expense | 82281 |
| 20 | NCA Camp Expense | 53435 |
| 21 | Suspect Action Expense | 18266 |
| 22 | Balling Action Workshop Expense | 17953 |
| 23 | MRF Camp Expense | 9087 |
| 24 | Trainer fee Expense | 6000 |
| 25 | Umpire Medical Exam Expense | 3780 |
| 26 | Cricket Equipment Purchase | 3403 |
| | **Total** | 1,53,90,325 |



**BARODA CRICKET ASSOCIATION:-**

72. We shall now proceed to the Tax Appeals Nos.320 of 2019, 321 of 2019, 374 of 2019 and 675 of 2019 respectively.

73. In these tax appeals, the assessee is the Baroda Cricket Association. In these appeals also Mr. Bhatt, the learned

senior counsel has reiterated the very same submissions as canvassed in the Tax Appeal No.317 of 2019.

74. The Tax Appeal No.320 of 2019 is treated as the lead matter. This appeal was ordered to be admitted on the following substantial questions of law;

> *"[A] Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was justified in allowing the benefit of exemptions u/s.11 & 12 of the Act without considering the fact that the assessee is involved in widespread commercial activities in nature of business and the activities of the assessee is covered under first and second proviso to section 2(15) of the Act?*
>
> *[B]. Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was justified in deleting the addition made in respect of corpus donation u/s.11(1)(d) of the Act without appreciating that the assessee failed to discharge its onus by not bringing anything on record in support of its claim of corpus donation?"*

75. Mr. Soparkar, the learned senior counsel appearing for the Baroda Cricket Association, by an large, adopted all the submissions of Mr. Shah, the learned senior counsel who has argued on behalf of the Gujarat Cricket Association. However, Mr. Soparkar has something to add over and above what has been submitted by Mr.J.P. Shah, the learned senior counsel appearing for the Gujarat Cricket Association.

76. Mr. Soparkar submitted that the objects as well as the actual activities carried out by the Baroda Cricket Association are for the education in the field of cricket as well as promotion and development of the sport of cricket (object of general public utility) not being in the nature of trade, commerce or business. Mr. Soparkar invited our attention to the objects of

the Baroda Cricket Association set out as per clause (4) of its Memorandum of Association. The objects are as under;

*"(a) To promote develop & encourage cricket within its jurisdiction.*

*(b) To arrange and promote the establishment of Cricket clubs within its jurisdiction.*

*(c) To directly control and manage all cricket activities within its jurisdiction.*

*(d) To pay special attention and care to the development of cricket at all levels within its jurisdiction.*

*(e) To arrange for good cricket ground and maintain the pitch for practice and matches arranged by the Association.*

*(f) To popularize the game of cricket within its jurisdiction by organizing and/or conducting and/or controlling tournaments and matches.*

*(g) To select teams to represent the Association in any tournament Championship or fixture local or otherwise.*

*(h) To start or sponsor and/or to subscribe to funds or to stage a match for the benefit of cricketers or persons who have rendered services to the game of cricket or for their families or to a sporting cause or institution.*

*(i) To borrow or raise money which may be required for the purpose of the Association.*



*(j) To collect funds and to utilize the same in such manner as may be considered fit for the fulfillment of the objects of the Association.*

*(k) To invest moneys and funds of the Association in such manner as may be decided upon from time to time.*

*(l) To train umpire and to form a panel of umpires.*

*(m) To collect all the cricket statistics of different players and clubs so as to give guidance in the selection of*

*players for important matches.*

*(n) To do any other acts in furtherance of the above objects not inconsistent there with."*

77. Mr. Soparkar, thereafter, invited our attention to the fact that to meet with the aforesaid objects, the Baroda Cricket Association incurs the following types of expenditure.

*"(i) Local tournament expense- cricketing tournament*

*(ii) District cricket expense- to promote game of cricket in our jurisdictional districts.*

*(iii) Seminar, training, meetings, exhibition, etc. for coaches, umpires, trainers, physics, scorers, and other cricketing support staff.*

*(iv) Junior cricketing expense wherein kids from young age of below 12 years, below 14 years*

*(v) sports material like balls, clothes, shoes, drinks. etc are bought for cricketers during the year which are used in various tournaments played over the year.*

*(vi) Medical, physical training, gym, fitness, etc expenses are incurred for the players during the year.*

*(vii) Women cricketing expense are also incurred.*

*(viii) Prize distribution expenses are also incurred for various tournaments organized by the association during the year.*



*(ix) Cricketing ground maintenance expenses are incurred for the upkeep of all the cricket ground in Baroda and in the jurisdictional districts.*

*(x) Fees are paid to professionals like coaches, trainers, physics, curators and so on whose services are used by the association during the year.*

*(xi) All other establishment and other related expenditure are incurred to run the association."*

78. Mr. Soparkar, thereafter, invited our attention to the details of income and expenditure of the assessee from the paper-book furnished by him to this Court.

| Assessment Year | 2009-10 | 2010-11 | 2011-12 |
|---|---|---|---|
| Income and Expenditure Account | At Pg 57 | At Pg.38 | At Pg.60 |
| Income and Expenditure from One Day International Schedule IX | At Pg 58 | At Pg 39 | |
| Schedule E: Cricketing and Tournament expenses<br><br>Schedule F: Property and Ground Maintenance Expenses<br><br>Schedule G tournaments and other receipts | At Pg 61 | At Pg 42 | At Pg 63 |

79. Mr. Soparkar submitted that the Association is engaged into the activities of seminar, training, meetings, exhibition, etc. for the coaches, umpires, trainers, physics, scorers, and other cricketing support staff for the purpose of promoting the game of cricket. Mr. Soparkar also invited our attention to the annual report of the Association. Mr. Soparkar, in support of his submissions, has placed reliance on three decisions;.



(i) ***Ahmedabad Urban Development Authority***, *2017 396 ITR 323 (Gujarat);*

(ii) ***Gujarat Industrial Development Corporation***, *2017 83 taxmann.com 366 (Gujarat)*

(iii) ***Naroda Enviro Projects Limited (Gujarat)***, *Tax Appeal No. 189 of 2019*;

80. Mr. Soparkar submitted that in carrying on the activities, certain surplus may ensue. The earning of surplus itself would not mean that the appellant existed for profit. 'Profits' means that surplus over which the owners of the entity have a right to withdraw for any purpose including the personal purpose. Profit making would therefore means private profit. Profit making would not mean the surplus that results from certain activities for which the organization is devoted is ploughed back for the promotion of the very same activities.

81. Mr. Soparkar submitted that the Assessee Association has not distributed any profits outside the organization. All the profits are ploughed back into the very activities of education and promotion and development of the sport of cricket and therefore the Assessee cannot be termed to be carrying out commercial activities in the nature of trade, commerce or business:

82. Mr. Soparkar submitted that the case of the Revenue is that the appellant is an alter ego of BCCI. Assessee receives "share of income" from the BCCI and therefore the activities of the BCCI are the activities of the assessee. Further the activities of the BCCI are commercial in nature. The activities of the BCCI is the exhibition of sports and to earn profit out of it. It is only when such exhibition of substantial part of the income of the assessee is coming from the BCCI and therefore necessarily the receipts of the assessee partake character of commercial nature.



83. Mr. Soparkar submitted that the state cricket associations and the BCCI are distinct taxable units and must be treated as

such, as there is no provision in the law that a member body can be held liable for taxation on account of the activities of the apex body.

84. Mr. Soparkar submitted that irrespective of the nature of the activities of the BCCI (Commercial or Charitable) what is pertinent for determining the nature of the activates of the assessee is the object and activates 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. Examples are plenty where a corporate house supports activities of a Hospital or a School. Simply because the corporate house is not a charitable organization, the Hospital or the school doesn't cease to remain charitable.

85. Mr. Soparkar submitted that even if the BCCI is held to be involved in carrying out the commercial activities, the disbursements from the BCCl to the cricket associations cannot become commercial profits of the assessee cricket associations liable to be taxed. It is again urged that the trigger for denial of Section 2(15) benefit, or for the proviso to Section 2 (15) being invoked, is the activity of the assessee and not an outsider.



86. With respect to the question relating to the corpus donation received by the Association from the BCCI and claimed as exempt by the assessee under Section 11(1)(d) of the Act, Mr. Soparkar submitted that according to the Revenue, there is no specific direction from the BCCI to treat the said amount towards the corpus donation and, in such circumstances, the same cannot be considered as "corpus donation" and the same should be treated as income of the

assessee not exempt under Section 11(1)(d) of the Act. According to Mr. Soparkar, such stance of the Revenue is not sustainable in law.

87. Mr. Soparkar submitted that the ITAT has followed its earlier decision in the case of Gujarat Cricket Association for the A.Ys.2004-05 to 2007-08 (ITA 1253/Ahd/2013), wherein the ITAT held as under;

> *"1. The assessee has filed specific confirmations to the effect that these amounts were corpus donations.*
>
> *2. BCCI resolution no 5 dated 29th September 2001 specifically states that the TV subsidies should henceforth be sent to the Member Associations towards "corpus funds". There is no dispute that the TV subsidy in question is sent under this resolution. This resolution includes the present assessee-Baroda Cricket Association as well.*
>
> *3. On these facts, and in the light of the provisions of Section 11(1)(d) which only require the income to be "by way of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution", Tribunal was of the considered view that any payments made by the BCCI, without a legal obligation and with a specific direction that it shall be for corpus fund as admittedly the present receipt is, is required to be treated as corpus donation not includible in total income.*
>
> *4. There is no legal support for learned CIT(A)'s stand that each donation must be accompanied by a separate written document.*
>
> *5. The contribution has to be voluntary and it has to be with specific direction that it will form corpus of the trust'. These conditions are clearly satisfied. Any payment which the assessee is not under an obligation to make, whatever be the mode of its computation, is a voluntary payment, and, any payment which is with a specific direction that it for corpus fund is a corpus donation.*

*6. Therefore, even without the two specific confirmations filed by the assessee, in the light of the BCCI resolution under which the payment is made and in the light of the payment not being under any legal obligation, the conditions under section 11(1)(d) are satisfied."*

88. In such circumstances, referred to above, Mr. Soparkar submits that the Tribunal has correctly found on facts and in law that the said amount is towards the corpus fund and, therefore, the same will be exempted under Section 11(1)(d) of the Act, 1961.

**SAURASHTRA CRICKET ASSOCIATION:-**

89. We shall now take up the Tax Appeals Nos.358-360 of 2019. In these two tax appeals, the respondent-assessee is the Saurashtra Cricket Association.

90. The Tax Appeal No.358 of 2019 is treated as the lead matter. This tax appeal was ordered to be admitted on the following substantial questions of law;

*"[A]. Whether, on the facts and in the circumstances of the case the Appellate Tribunal was justified in allowing the benefit of Sections 11 and 12 when the Assessing Officer has clearly brought on record that assessee is covered under the proviso to Section 2(15) r.w.s 13(8) of the Act?*

*[B]. Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was justified in directing the Assessing Officer to allow the claim of accumulation of Rs.5,37,04,677/- under section 11(1)(a) and Rs.23,44,45,000/- under section 11(2) of the Act without appreciating the findings of the Assessing Officer with regard to applicability of section 2(15) of the Act?*

*[C]. Whether on the facts and circumstances of the case*

*and in law, the Appellate Tribunal was justified in remitting the issue of infrastructure subsidy of Rs.4,57,95,448/- back to the file of the Assessing Officer, without appreciating the findings of the Assessing Officer?"*

91. Mr. Tushar Hemani, the learned senior counsel appearing for the respondent-assessee has, by and large, adopted all the submissions canvassed by Mr. J.P. Shah, the learned senior counsel appearing for the Gujarat Cricket Association and Mr. Soparkar, the learned senior counsel appearing for the Baroda Cricket Association. However, Mr. Hemani added something important of his own to what has been submitted on behalf of the other two Associations. His submissions are broadly as under;

***"I) Imparting training in sports is an educational activity and hence not an object of general public utility. Hence, the proviso to Section 2(15) of the Act is not applicable at all.***

***II) Alternatively and without prejudice:***

***a. The activities carried out by the Respondent are in the nature of "general public utility."***
***b. Mere generation of surplus does not add the element of "trade, commerce or business" to an otherwise charitable activity.***

***III) Where two views are possible, view in favour of the assessee should be adopted.***

***<u>The aforesaid is elaborated as follows</u>:***

***I) <u>Imparting training in sports is nothing but education activity and therefore the Respondent would fall in the first limb of definition of "charitable purpose" as defined u/s.2(15) of the Act and not under the residual clause of 'the advancement of any other object of general public</u>***

***utility'. If that be the situation, proviso to Section 2(15) would not apply at all.***

*Section 2(15):*

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

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

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

***It is submitted that it is a settled position that "education" is a term with a very wide meaning, going beyond traditional classroom teaching and taking within its ambit training in sports:***

***[CIT vs. Secretary, Regional Committee, National Sports Club of Assam [1989] 180 ITR 648 (Gauhati)*** *is squarely applicable:*



*"To satisfy us in this regard, we have been taken through the order of the Tribunal passed in ITA Nos. 684 (Gauhati) to 689 (Gauhati) of 1973-74 which related to the same assessee. A perusal of that judgment shows that after going through the aims and objects of the assessee, it was held that* ***the main object of the assessee is to provide means for improving the health and physique of the youth of Assam through the medium of sports and games of all kinds. The learned Tribunal, therefore, concluded that, in its considered opinion, the main object of the institution falls***

***within the head "Education".*** *In this context, our attention has been invited by Shri Bhattacharjee to Addl. CIT v. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 (SC) in which it has been held that if the primary or dominant purpose of a trust or institution is charitable, the subsidiary object would not militate against its charitable character and the purpose of the assessee would not be any the less charitable.* ***It thus seems that, to decide whether the purpose of an assessee is charitable or not within the meaning of section 2(15) of the Act, attention has to be paid to the dominant or primary purpose of the assessee. As, in this case, it has been held by the learned Tribunal in its earlier judgment which was followed in the present case that the main object of the assessee falls within the head "Education", it has to be accepted that the purpose of the assessee is charitable.***

*Shri Choudhury, however, contends that the assessee is also carrying on an activity for profit by running a guest-house. As to this, it has been brought to our notice by Shri Bhattacharjee that the words "not involving the carrying on of any activity for profit" which found place in section 2(15) of the Act at the relevant time are relatable to the last head of charitable purpose of which mention has been made in the section. We may note section 2(15) which at the relevant time read as below:*

*" 'Charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."*

*It has been held in Surat Art Silk's case [1980] 121 ITR 1 (SC) that* ***the words "not involving the carrying on of any activity for profit" qualify or govern only the last head of charitable purpose and not the earlier three ones. It was, therefore, held that if the purpose of a trust or institution be relief of the poor, education or medical relief, the requirement of the definition of "charitable purpose" would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution.***

***This being the settled law by now and the finding of the learned Tribunal being that the main object of the institution falls within the head "Education", and the primary purpose being the criterion for deciding whether the income has been earned for a charitable purpose, it has to be held that the questions of law involved in the present case are concluded by a judgment of the highest court of the land.*** *In such a situation, any direction to make a reference would be academic and the High Court would be right in refusing the same as stated in Mathura Prasad v. CIT [1966] 60 ITR 428 (SC).”*

*(Emphasis supplied)]*

*[It has been held in* ***Gujarat State Co-Operative Union vs. CIT [1992] 195 ITR 279 (Gujarat)*** *with reference to the decision of the Hon’ble Supreme Court in Sole Trustee, Loka Shikshana Trust v. CIT [1975] 101 ITR 234 that the meaning of “education” is not to be narrowly construed:*

*“The observations of the Supreme Court only indicate the proper confines of the word "education" in the context of the provisions of section 2(15) of the Act. It will not be proper to construe these observations in a manner in which they are construed by the Tribunal when it infers from these observations, in para 17 of its judgment, that the word "education" is limited to schools, colleges and similar institutions and does not extend to any other media for such acquisition of knowledge.* ***The observations of the Supreme Court do not confine the word "education" only to scholastic instructions but other forms of education also are included in the word "education".*** *As noticed above, the word "schooling" also means instructing or educating. It, therefore, cannot be said that the word "education" has been given an unduly restricted meaning by the Supreme Court in the said decision. Though, in the context of the provision of section 10(22), the concept of education need not be given any wide or extended meaning,* ***it surely would encompass systematic dissemination of knowledge and training in specialised subjects as is done by the assessee.*** *The changing times and the ever widening horizons of knowledge may bring in changes in the methodology of teaching and a shift for the better in the institutional setup.* ***Advancement of knowledge brings within its fold***

***suitable methods of its dissemination and though the primary method of sitting in a classroom may remain ideal for most of the initial education, it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel. Its progress lies in the acceptance of new ideas and development of appropriate means to reach them to the recipients."***

*(Emphasis supplied)]*

***[Director of Income-tax (Exemption) v. Ahmedabad Management Association [2014] 366 ITR 85 (Gujarat)***

*"5.6 Now applying the ratio of the decision of the Division Bench of this Court in the case of Gujarat State Co-operative Union (Supra) reproduced hereinabove and* ***the activities of the assessee such as Continuing Education Diploma and Certificate Programme; Management Development Programme; Public Talks and Seminars and Workshops and Conferences etc., we are in complete agreement with the view taken by the tribunal that the activities of the assessee is educational activities and/or is in the field of education."***

*(Emphasis supplied)]*

***[Delhi Music Society vs. DGIT [2013] 357 ITR 265 (Delhi)***

*In the context of Section 10(23C)(vi) of the Act, it was held that assessee society whose object clause "says that the objects of the school are to teach western, classical music, to promote musical knowledge and the appreciation among the students as well as among the interested public by means of workshops, lectures/demonstrations, recitals etc., to acquire and maintain instruments for teaching purposes, to create and update a world class library of music literature both audio and video to add more class rooms and other required facilities for the purpose of musical education and to construct and maintain concert hall/auditorium for the school" was held to be an educational institute under Section 10(23C)(vi) of the Act.]*

*In light of these decisions, it is submitted that since the objects of the Respondent include promoting the game of cricket, imparting physical education through the medium of cricket and maintaining a library and periodicals on sports and cricket, Respondent's activities pertain to "education" and hence fall under "charitable purpose" under Section 2(15) of the Act. The* ***relevant objects*** *are as follows (pgs.57-58 of Paper book for AY 2012-13):*

*3.(e) To promote the game throughout Saurashtra and Kutch by organising coaching schemes, Tournaments, Exhibition Matches and by any other manner.*

*3.(f) To foster the spirit of sportsmanship and the ideals of cricket amongst School, College and University students and others and educate them for the same.*

*3. (l) To impart physical education through the medium of cricket and take all steps to assist the citizens to develop their physique.*

*3. (p) To start and maintain a library of books, periodicals and museum on Sports in general and cricket in particular and to start journal or journals in cricket.*

*Respondent has incurred expenses to hold various tournaments including the Inter District tournaments for the various age groups, Women's matches and various Trophy tournaments which squarely fall under the* ***educational activity****. The Details of Tournament Expenses are on* ***pg.12*** *of the Paperbook for the Assessment Year 2012-13. Further details of such Tournament Expenses were submitted to the Assessing Officer vide letter dated 07.03.2015. Copy of the same is at* ***pgs.72-76*** *and details are on* ***pgs. 77-144 of the Paperbook*** *for Assessment Year 2012-13.*



***II Alternatively and without prejudice, the activities carried out by the Respondent-Trust are charitable in nature, being "general public utility" and not in the nature of trade, commerce or business in view of amended provisions of Section 2(15) of the Act :***

- *It has been observed by the lower authorities that the Respondent – Trust has arranged one day international matches of cricket and in turn has received TV subsidy / subvention income i.e sharing of TV broadcasting right income from BCCI and Advertisement sales income, and therefore, such activities are in the nature of trade, commerce or business in view of first proviso to S.2(15).*

- *These observations by the lower authorities, as discussed by the ITAT on pages 453-454, are factually incorrect in as much as arranging of one day international matches of cricket, sale and auction of TV broadcasting rights and Advertisement sales income from holding one day internationals are all carried out by BCCI and not by the Respondent Cricket Association.*

- *The question then for the kind consideration of this Court would be whether the activities of the Respondent Cricket Association can be held to be charitable within the meaning of S.2(15) so as to entitle it to claim exemption u/s 11 of the Act.*

- *The entire issue has to be seen from the **two limbs** of the provisions of Section 2(15) of the Act viz.:*

  *(a) whether the promotion of sports and games, cricket in the present case is charitable or not within the definition as provided u/s 2(15) of the Act and*

  *(b) whether such promotion of sports and games of cricket are carried out with the profit – motive or not so to be treated as in the nature of trade, commerce or business or charitable purpose.*

***<u>Promotion of cricket is an advancement of "general public utility" and is hence a "charitable purpose" :</u>***

- *Insofar as the **first limb** as mentioned in (a) above is concerned, attention is invited to the Circular : No. 395 [F. No. 181(5) 82/IT(A-I)], dated 24-9-1984, wherein the Board has advised that promotion of sports and games is considered to be a charitable purpose within the meaning of section 2(15).*

*It is not in dispute that the Respondent is involved **only in the activity of promoting the game of cricket.** The Assessing Officer himself has noted so in **para 3.3 of the order on page 61** of Tax Appeal that "the assessee is admittedly involved in promotion of cricket as a game." Further, all of the objects of the assessee are related to promotion of cricket.*

*Moreover, the Circular has also been held to be applicable by the lower authorities **(Assessment Order on pg.3 and CIT(A) on pg.210-211** of Tax Appeal**)***

- *It is submitted that all the expenses of the Respondent have been incurred towards the object clause i.e., promotion of cricket:*

*The Expenses are as follows (**pg.3 of Paperbook** for Assessment Year 2012-13):*

***Establishment Expenses : pg.11***
***Stadium Expenses : pg.12***
***Tournament Expenses : pg.12***
***Depreciation : pg.9***
***Cricket Infrastructure Fund* : pg.4, Resolution** is on **pg.21***

** **Accumulation (pgs.20-21 of Paperbook** for AY 2012-13**)***

- *Even from the **Computation of Income** on **pg.15 of Paperbook** for AY 2012-13, it can be seen that none of the expenses have been incurred for non-trust purposes.*



- *Moreover, details and evidences of all the various incomes and expenses related to the objects of the Respondent have been submitted to the Assessing Officer vide letter dated 07.03.2015, reproduced on **pgs. 72 to160 of Paperbook** for AY 2012-13.*

- *Even after perusal of the same, it is not the case of the lower authorities that the Respondent has conducted activities or incurred expenses outside of the objects of the Respondent.*

- *Even the Income Tax Appellate Tribunal has held that the **Commissioner has not been able to point out a single object of the Respondent which is in the nature of trade, commerce or business** and that it is not even in dispute that the objects are "objects of general public utility." All objects unambiguously promote cricket. (**ITAT Order para 35., pg.456** of Tax Appeal)*

*Hence, the activity of the Respondent is a charitable activity.*

***Once it is established that the objects of the trust are of "general public utility" and that no activities deviating from the objects have been carried out, mere generation of surplus cannot turn it into an activity in the nature of trade, commerce or business.***

- *Now so far as the second limb i.e first proviso to S.2(15) of the Act as inserted by the Finance Act, 2008 w.e.f 01/04/2009 is concerned, it is submitted that the law is settled by the larger bench of Supreme Court in the case of **ACIT vs. Surat Art Silk Cloth Manufacturers Association reported in 121 ITR 1 (SC)** that (a) 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 profit and (b) 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 S.2(15) of the Act.*



- *Since the terms trade, commerce or business is not defined under the scheme of the Act, general or dictionary meaning has to be resorted to. In order to determine whether an activity is in the nature of trade, commerce or business OR charitable, the determining factor is profit motive. The nature of activities may remain the same. However, if they are carried out for profit motive, the same are to be characterized as trade, commerce or business. Conversely, if the profit motive is absent, these very activities become charitable.*

- *It is further submitted that (a) first proviso to S.2(15) of the act should not be generalized to each and every facts of the case where there is a surplus over the expenditure in respect of the activities or objects carried out by the Trust which are in any case of the charitable purpose, (b) the cardinal principle is the predominant object of the Trust. If the predominant object of the Trust is of charitable nature and with no-profit motive, the said activities cannot be treated as trade, commerce or business merely because some surplus has remained left over the expenditure to carry out such activities. The essence of trade, commerce or business is profit motive and absence thereof makes such activities charitable.*

- *It is further submitted that even after insertion of proviso to S.2(15) of the Act wef 01/04/2009, the following authorities, after following the law laid down by Apex Court in **Surat Art Silk (supra)**, have taken a view that if the predominant object of the Trust is of charitable nature and with no-profit motive, the said activities cannot be treated as trade, commerce or business merely because some surplus has remained left over the expenditure to carry out such activities :*

***(a) CIT v. Gujarat industrial Development Corporation [2017] 83 taxmann.com 366 (Gujarat)***

*Where collection of fees and cess was incidental to the main charitable object of the trust, it would not fall under the second part of the proviso to Section 2(15) of the Act.*

***(b) Sabarmati Ashram Gaushala Trust vs. ADIT (Exemption) [2014] 362 ITR 539 (Gujarat)***

*"12. All these were the **objects of the general public utility** and would squarely fall under section 2 (15) of the Act. Profit making was neither the aim nor object of the Trust. It was not the principal activity. **Merely because while carrying out the activities for the purpose of achieving the objects of the Trust, certain incidental surpluses were generated, would not render the activity in the nature of trade, commerce or business.** As clarified by the CBDT in its Circular No. 11/2008 dated 19th December 2008 the proviso aims to*

*attract those activities which are truly in the nature of trade, commerce or business but are carried out under the guise of activities in the nature of ' public utility'."*

*(Emphasis supplied)*

***(c) Ahmedabad Urban Development Authority vs. ACIT (Exemption) [2017] 396 ITR 323 (Gujarat)***

*"13.*

*xxx...*

*Merely because under the statutory provisions and to meet with the expenditure of Town Planning Scheme and/or providing various services under the Town Planning Scheme, such as road, drainage, electricity, water supply etc. if the assessee is permitted to sale the plots (land) to the extent of 15% of the total area under the Town Planning Scheme and while selling the said plots they are sold by holding the public auction, it cannot be said that activities of the assessee is profiteering, to be in the nature of trade, commerce and business.*

*xxx...*

*15. Now, so far as another question which is posed for the consideration of this Court i.e. whether while collecting the cess or fees, activities of the assessee can be said to be rendering any services in relation to any trade, commerce or business is concerned, for the reasons stated above, merely because the assessee is collecting cess or fees which is regulatory in nature, the proviso to Section 2(15)of the Act shall not be applicable. As observed herein above neither there is element of profiteering nor the same can be said to be in the nature of trade, commerce or business."*
*XXX...*

***(d) Institute of Chartered Accountants of India vs. DGIT reported in 347 ITR 99 (Delhi)***

*The Hon'ble High Court held that the fundamental or dominant function of the Institute was to exercise overall control and regulate the activities of the members/enrolled chartered accountants and merely because the Institute*

*was holding coaching classes which also generate income, the Court held that proviso to Section 2 (15) of the Act would not be applicable*

***In the present case,*** *the main object of the Trust is to promote and encourage the game of cricket in Saurashtra and Kutch by organizing coaching schemes, tournaments, exhibition matches and other matches etc. The attention is further invited to the* ***clause 3(j) of MOA*** *which provides "to organize matches for the achievements of the objects of the Association and utilize the net proceeds thereof towards the implementation of the object set therein". It is submitted* ***that all the receipts arising or accruing to the Respondent-Trust are on account of the activities carried out to meet the object of the Respondent*** *i.e to promote and encourage the game of cricket in Saurashtra and Kutch by organizing coaching schemes, tournaments, exhibition matches and other matches etc, and they are not with the intention to carry out any trade, commerce or business with profit – motive. Such receipts should be strictly confined to the attainment of the objects of the Respondent-Trust and with the intention to carry out any trade, commerce or business.*

***Details of all the receipts were submitted to the Assessing Officer, as reproduced in the Assessment Order on pgs. 4 to 9 of Tax Appeal.*** *As can be seen from the nature of the receipts, none of the incomes pertain to any activity other than promoting the game of cricket.*

*It is submitted that promotion of sports is itself not an activity in the nature of trade, commerce or business and on that count also the proviso is not applicable. The Hon'ble High Court of Bombay in* ***CIT (Exemptions) vs. Bombay Presidency Golf Club Ltd. [2019] 106 taxmann.com 58 (Bombay)*** *has held that:*

*"In the present case, the main object of the assessee club as noted above is to* ***provide golf facilities to the members for promotion of the sport. The Tribunal correctly held that there was no element of the assessee's activity being in the nature of trade, commerce or business.*** *Once the applicability of the*

*proviso to Section 2(15) of the Act is ruled out, the question of the exemption under Section 11 of the Act would arise."*

*(Emphasis supplied)*

*Further reliance is also placed on the Supreme Court decision in the case of* ***CIT vs. Gujarat Maritime Board reported in [2007] 295 ITR 561(SC)****, wherein the question before the Apex Court was that whether the Maritime Board was entitled to the status of a charitable institution u/s 11 of the Act and in that context also, the Apex Court observed that the Gujarat Maritime Board was established for the predominant purpose of development of minor ports within the State of Gujarat, the management and control of Board was essentially with the State Government and there was no profit motive and the income including reserves and surplus earned by the Board was deployed for the development of minor ports in the State of Gujarat and accordingly the Apex Court held that the Board was entitled to be registered as "Charitable Trust" within the scheme of the Act*

***It is submitted that the insertion of proviso to s. 2(15) does not mean that in case an assessee is to receive any payment for anything done for trade, commerce or business, the assessee will be hit by the said proviso.*** *Elaborating the scope of this amendment, CBDT, vide* ***Circular No. 11, dt. 19th Dec., 2008 [(2009) 221 CTR (St) 1],*** *has observed as follows:*

*"3. The newly amended s. 2(15) will apply only to the entities whose purpose is 'advancement of any other object of general public utility' i.e., the fourth limb of definition of 'charitable purpose' contained in s. 2(15). Hence, such entities will not be eligible for exemption under s. 11 or under s. 10(23C) of the Act, if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of activity."*

*As long as the object of general public utility is* ***not merely a mask*** *to hide true purpose or rendering of any service in relation thereto, and where such services are being rendered as purely incidental to or as subservient to the*

*main objective of 'general public utility', the carrying on of bonafide activities in furtherance of such objectives of 'general public utility' cannot be hit by the proviso to Section 2(15).*

*Respondent also draws support from* ***Circular no.194/16-17 II(AI)*** *in which the question referred to board is; whether an educational institution existing solely for educational purpose but which shows some surplus at the end of the year is eligible for exemption? The board had replied this question in the following manner:*

*"If the profit of the educational institution can be diverted for the personal use of the proprietor thereof, then the income of the educational institution will be subject to tax. However, there may be cases where the educational institutions may be owned by the trusts or societies to whom the provisions of section 11 may be applicable. Where all the objects of these trusts are educational, and the surplus, if any, from running the educational institution is used for educational purposes only, it can be held that the institution is existing for educational purposes and not for purposes of profit. However, if the surplus can be used for non-educational purposes, it cannot be said that the institution is existing solely for educational purposes and such institutions will not be liable for exemption u/s 10(22). But, in such cases, the applicability of section 11 can be examined and if the conditions laid down therein are satisfied, the income will be exempt u/s 11."*

*The principle would also apply to the case of the Respondent.*

***It is submitted that there are decisions of other Hon'ble High Courts that are in favour of the Respondent:***

- *Tamil Nadu Cricket Association v. DIT (Exemptions) [2014] 360 ITR 633 (Mad)*

- *CIT (Exemptions) v. Rajasthan Cricket Association [2018] 98 taxmann.com 425 (Raj)*

***I****II* ***Legally it is well settled that while adjudicating upon an appeal, where two views are***

***possible, the view in favour of the assessee should be adopted. In the facts of the present case, there are large numbers of decisions which are in favour of the assessee and therefore, even if the view against the assessee is plausible and probable, the view in favour may kindly be adopted:***

*(a) Mysore Minerals Ltd. V CIT 239 ITR 775 (SC)*
*(b) Orissa State Warehousing Corporation v CIT 237 ITR 589 (SC)*
*(c) CIT v. Podar Cement Pvt. Ltd. and Others. 226 ITR 625 (SC)*
*(d) CIT v Gwalier Rayon Silk Mfg. Co. Ltd. 196 ITR 149 (SC)*
*(e) CIT v Sahazada Nand 60 ITR 392 (SC)*
*(f) CIT v Kulu Valley Transport Co. Ltd. 77 ITR 518, 530 (SC)*
*(g) CIT v Vegetable Products Ltd. 88 ITR 192 (SC*
*(h) CIT v Naga Hills Tea Co. Ltd. 89 ITR 236, 240 (SC)*
*(i) Contr. ED v Kanakasabai 89 ITR 251, 257 (SC)*
*(j) CIT v Madho Jatia 105 ITR 179, 184 (SC)*

*In addition to the above, it is submitted with respect to Question [C] that the Tribunal has remitted the issue of infrastructure subsidy to the file of the Assessing Officer. It is submitted that for this reason, no substantial question of law arises."*

92. We propose to first deal with the submission of Mr. Bhatt, the learned senior counsel appearing for the Revenue that the matters deserve to be remitted to the ITAT for fresh consideration of the issues in question. This submission of Mr. Bhatt is canvassed in the wake of the fact that, according to Mr. Bhatt, the ITAT ought to have assigned cogent reasons in its impugned order for the purpose of disagreeing with the concurrent findings recorded by the lower revenue authorities, namely, the Assessing Officer and the CIT(A). We are not impressed by such submission of Mr. Bhatt. We are of the view that there is no good reason to remit the matters for fresh consideration. As discussed above, the only circumstance that

weighed with the CIT(A) is the revenue earned by the Associations through the subsidy paid by the BCCI. We have dealt with this issue at length while deciding the Tax Appeal No.268 of 2012. We take notice of the fact that the issue with regard to the Proviso to Section 2(15) of the Act has been elaborately dealt with by the ITAT in its own way. The ITAT has conveyed, in so many words, that for the purpose of invoking the Proviso to Section 2(15) of the Act, many other aspects need to be looked into and the subsidy paid by the BCCI cannot be the sole factor for brining the case within the Proviso to Section 2(15) of the Act.

93. At the cost of repetition, we, once again, reproduce the findings recorded by the ITAT in this regard. We are highlighting the findings to demonstrate why the ITAT disagreed with the CIT(A) . The findings are as under;

> *"34. What essentially follows from the above discussions is that, even after the 2008 amendment and insertion of proviso to Section 2(15), so far as 'any other object of general public utility' is concerned, as long as profit earning is not the predominant purpose of the activity of the assessee, the benefit of Section 2(15) cannot be declined. In other words, the accrual of profits to the assessee, by itself, cannot, therefore, be reason enough to hold that the assessee is not covered by the definition of 'charitable institution' under section 2(15). Of course, all these discussions are relevant only for the residuary clause i.e. "any other object of general public utility". In case, therefore, where the objects being pursued by the assessee is "relief of the poor", "education" or "medical relief", it is not even material whether or not the assessee is carrying on an activity in the nature of trade, commerce or business in the course of such activities. The key factor is as to what are the activities of the assessee institution and as to what these activities seek to achieve.*

*35. Let us take a pause here and examine as to what are the activities of the assessee cricket associations so as to be brought within the ambit of trade, commerce or business. We have seen objects of the association, which are reproduced earlier in our order, and it is not even the case of the revenue that these objects have anything to do with any trade, commerce or business; these objects are simply to promote cricket. The trigger for invoking proviso to Section 2(15), as Shri Soparkar rightly contends has to an activity of the assessee which is in the nature of trade, commerce or business. However, the case of the revenue authorities hinges on the allegation that the way and manner in which cricket matches are being organized, particularly the IPL matches, the activity of organizing cricket matches is nothing but brute commerce. Undoubtedly, it would appear that right from the time Kerry Packer started his World Series Cricket in 1977, there has been no looking back in commercialization of cricket and the impact of this commercialization has not left Indian cricket intact. The Indian Premier League and the rules of the game being governed by the dictates of commercial considerations may seem to be one such example of commercialization of Indian cricket. The difficulty for the case of the revenue before us, however, is that these matches are not being organized by the local cricket associations. We are told that the matches are being organized by the Board of Cricket Control of India, but then, if we are to accept this claim and invoke the proviso to Section 2(15) for this reason, it will amount to a situation in which proviso to Section 2(15) is being invoked on account of activities of an entity other than the assessees-something which law does not permit. We are not really concerned, at this stage, whether the allegations about commercialization of cricket by the BCCI are correct or not, because that aspect of the matter would be relevant only for the purpose of proviso to Section 2(15) being invoked in the hands of the BCCI. We do not wish to deal with that aspect of the matter or to make any observations which would prejudge the case of the BCCI. Suffice to say that the very foundation of revenue's case is devoid of legally sustainable basis for the short reason that the commercialization of cricket by the BCCI, even if that be so, cannot be reason enough to invoke the proviso to Section 2(15). We are alive of the learned Commissioner (DR)'s suggestion that the cricket*

*associations cannot be seen on standalone basis as the BCCI is nothing but an apex body of these cricket associations at a collective level and whatever BCCI does is at the behest of or with the connivance of the local cricket associations, and that it is not the case that anyone can become a Member of the BCCI because only a recognized cricket association can become a Member of the BCCI. We are also alive to learned Commissioner's argument that what is being sought to be protected by the Charitable status of these associations is the share of these cricket associations from the commercial profits earned by the BCCI by organizing the cricket matches. The problem, however, is that the activities of the apex body; as we have explained earlier, cannot be reason enough to trigger proviso to Section 2(15) in these cases. Whether these cricket associations collectively constitute BCCI or not, in the event of BCCI being involved in commercial activities, the taxability of such commercial profits will arise in the hands of the BCCI and not the end beneficiaries. Even in such a case the point of taxability of these profits is the BCCI and not the cricket associations, because, even going by learned Commissioner's arguments, these receipts in the hands of the cricket associations is nothing but appropriation of profits. What can be taxed is accrual of profits and not appropriation of profits. In any event, distinction between the cricket associations and the BCCI cannot be ignored for the purposes of tax treatment. There is no dispute that the matches were organized by the BCCI, and the assessee cannot thus be faulted for the commercial considerations said to be inherent in planning the matches. As we make these observations, and as we do not have the benefit of hearing the perspective of the BCCI, we make it clear that these observations will have no bearing on any adjudication in the hands of the BCCI. Suffice to say that so far as the cricket associations are concerned, the allegations of the revenue authorities have no bearing on the denial of the status of 'charitable activities' in the hands of the cricket associations before us- particularly as learned Commissioner has not been able to point out a single object of the assessee cricket associations which is in the nature of trade, commerce or business, and, as it is not even in dispute that the objects being pursued by the assessee cricket associations are "objects of general public utility"under section 2(15). All the objects of the assessee cricket associations, as*

*reproduced earlier in this order, unambiguously seek to promote the cricket, and this object, as has been all along accepted by the CBDT itself, an object of general public utility.*

*36. Cricket is indeed an immensely popular game in this part of the world, and anything to do with cricket results 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. These facts, by itself, and without the assessees before us deviating from their objects or venturing into trade, commerce or business, cannot require the activities to be treated as commercial activities. When a cricket stadium is to be built, it has to accommodate a very large number of persons but the size of the stadium would not mean that the activity is for anything other than promotion of cricket.. When the numbers are large, the scale of operations is large, and when scale of operations are larger, even the surplus or deficit could be large, but then the scale of operations may be a scale on which commercial activities could be carried out but that fact cannot convert an object of general public utility into a commercial activity.* ***We have carefully analyzed the annual reports and the annual financial statements of the assessee, and we do not find any objects, other than objects of the cricket associations, being pursed by these cricket associations. The objects of these cricket associations clearly demonstrate that these cricket associations exist and operate purely for the purpose of promoting cricket. We are, therefore, of the considered view that the proviso to Section 2(15) has been wrongly invoked in these cases.***"

94. From the above, it is evident that the ITAT considered the issue bearing in mind the activities of the assessee and what such activities seek to achieve. The ITAT has observed that it carefully analyzed the annual reports and the annual financial statements of the assessee, and upon perusal of the same, the ITAT reached to the conclusion that the activities undertaken by the Associations were not contrary to the objects. This is a

pure finding on a question of fact. In such circumstance, referred to above, it cannot be said or argued that the ITAT passed the impugned order in a very slipshod manner or without assigning any cogent reasons.

95. We shall now proceed to examine the main issue on our own.

96. Section 2(15) of the Act defines the term “Charitable Purpose”. The definition reads as under:

> '*Section 2(15):-*"*charitable purpose*" *includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:*
>
> ***Provided*** *that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—*
>
> *(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
>
> *(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;”*

97. **S.2(15) of the 1961 Act::-**

**Charitable purpose, defined (upto 31-3-2009)**.- According to section 2(15), the expression “charitable purpose” has been defined by way of an inclusive definition so

as to include-

-relief to the poor,

-education,

-medical relief, and

-the advancement of any other object of general public utility [(upto 31-3-1984) not involving the carrying on of any activity for profit].

98. The subject-matter of this definition has been dealt with under section 11, post.

99. **Charitable purpose, defined (operative from 1-4-2009).**-As per section 2(15), newly substituted (w.e.f. 1-4-2009) by the Finance Act, 2008, the expression "charitable purpose" has been defined by way of an inclusive definition so as to include;

-relief to the poor,

-education,

medical relief,

-(w.e.f. 1-4-2009) preservation of environment (including watersheds, forests and Wildlife) and Preservation of monuments or places or objects of artistic of historic interest and,

-the advancement of any other object of general public utility.



100. The first proviso to section 2(15) provides that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity:

- in the nature of trade, commerce or business, or

-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.

101. The second proviso to section 2(15) as newly inserted (w..e.f. 1-4-2009) by the Finance Act, 2010, further provides that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is

-(between 1-4-2009 and 31-3-2012) Rs. 10 lakhs

-(w.e.f. 1-4-2012) Rs. 25 lakhs

or less in the previous year.

102. **Legislative amendments.-**

I. The Finance Act, 1983-By section 3(a) of Act 11 of 1983, section 2(15) has been amended (w.e.f. 1-4-1984).

II The Finance Act, 2008.-The scope and effect of the substitution (w.e.f. 1-4-2009) of section 2(15) by Act 18 of 2008, have been elaborated in the following portion of the departmental circular No. 1/2009, dated 27-3-2009, as under:-

> 'Streamlining the definition of “charitable purpose”.-
>
> 5.1 Sub-section (15) of section 2 of the Act defines “charitable purpose” to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under sub-section (23C) of section 10 or section 11 of the Act on the ground that they are charitable institutions. This is based on the argument that they are engaged in the “advancement of an object of general public utility” as is included in the fourth limb of the current definition of “charitable purpose” Such as claim, when made in

respect of an activity carried out on commercial lines, is is contrary to the intention of the provision.

5.2 With a view to limiting the scope of the phrase "advancement of any other object of general public utility", sub-section (15) of section 2 has been amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. Scope of this amendment has further been explained by the CBDT vide its Circular 11/2008 dated December 19, 2008.

5.3 Applicabilit**y**: This amendment has been made applicable with effect from 1st April, 2009, and shall accordingly apply for the assessment year 2009-10 and subsequent assessment years.'.

III The Finance (No.2) Act, 2009-The scope and effect of the substitution (w..e.f. 1-4-2009) of section 2(15) by Act 33 of 2009 have been elaborated in the following portion of the departmental circular No.5/2010, dated 3-6-2010, as under:-

"Amendment to include certain activities within the ambit of provisions relating to "charitable purpose" in the Income-tax Act.

4.1 For the purposes of the Income-tax Act, "charitable purpose" has been defined in section 2(15) of the Income-tax Act and it includes

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

However, as per proviso to the section, the "advancement of any other object of general public utility" shall not be a charitable purpose, if it involves the

carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

4.2 Clause (15) of section 2 has been amended so as to provide that the preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest would be excluded from the applicability of the aforesaid proviso which is applicable to the "advancement of any other object of general public utility".

4.3 Applicability:-These amendments have been made applicable with effect from 1st April, 2009 and will accordingly apply for assessment year 2009-10 and subsequent assessment years.."

IV The Finance Act, 2010:--The scope and effect of the insertion (w.e.f. 1-4-2009) of a new second proviso in section 2(15) have been elaborated in the following portion of the departmental circular No.1/2011, dated 6-4~2011, as under:

'Change in the definition of "charitable purpose".-

4.1 For the purposes of the Income-tax Act, "charitable purpose" has been defined in section 2(15) which, among others, includes "the advancement of any other object of general public utility".



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

4.3 The absolute restriction on any receipt of commercial nature may create hardship to the

organizations which receive sundry considerations from such activities. Therefore, section 2(15) has been amended to provide that “the advancement of any other object of general public utility” shall continue to be a “charitable purpose” if the total receipts from 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 do not exceed Rs.10 lakhs in the previous year.

4.4 Applicability: This amendment has been made effective retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent years.’.

V. The Finance Act, 2011.-The second proviso to section 2(15) has been amended (w.e.f. 1-4-2012) by section 3 of Act 8 of 2011.

The scope and effect of the amendment made in section 2(15) by the Finance Act, 2011 have been elaborated in the following portion of the departmental circular No.2 of of 2012 dated 22-05-012. as follows:

Definition of “charitable purpose":-

4.1 For the purpose of the 1961 Act, “charitable purpose“ has been determined in section 2(15) which, among others, include "the advancement of any other object of general public utility”.



4.2 However. “the advancement of any other object of general public utility” is not considered as a charitable purpose. if it involves the carrying on of any activity in the nature of trade. commerce or business. or any activity of rendering any service in relation to any trade. commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. if receipts from such activities is above the specified limit in the previous year.

4.3 Second proviso to section 2(15) of the 1961 Act has been amended to provide that the specified monetary limit in respect of receipts from such activities shall be 25 lakh rupees instead of 10 lakh rupees.

4.4 Applicability.--This amendment has been made effective from [1st April. 20l2, and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years."

Departmental circular.-1. Definition of "Charitable purpose" under section 2(15) of the Income-tax Act, 1961-reg-Section 2(15) of the Income-tax Act, 1961 ("the Act"), defines "charitable purpose" to include the following:

(i) relief to the poor
(ii) education
(iii) medical relief, and
(iv) the advancement of any other object of general public utility.

An entity with a charitable object of the above nature was eligible for exemption from tax under section Section 11 or alternatively under section 10(23C) of the Act. However. it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of "charitable purpose". Therefore. section 2(15) was amended, vide Finance Act. 2008, by adding a proviso which states that the "advancement of any other object of general public utility" shall not be a charitable purpose if it involves the carrying on of -

(a) any activity in the nature of trade, commerce or business: or

(b) 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.

2. The following implications arise from this amendment –

2.1 The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

2.2. 'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that



(i) the business should be incidental to the attainment of the objectives of the entity,and

(ii) separate books of account should be maintained in respect of such business.

Similarly, entities whose object is 'education' or 'medical relief' would also continue to be eligible for exemption as charitable

institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

3. The newly inserted proviso to section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

3.1. There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable

organizations would now be governed by the additional conditions stipulated in the proviso to section 2 (15).

3.2. In the final analysis, however, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of 'general public utility' will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessees, who claim that their object is 'charitable purpose' within the meaning of Section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business.

103. In the course of the hearing of these appeals, our attention was drawn to the following extract from the speech of the Minister of Finance on 29th February, 2008.



> *"—180. Charitable purpose' includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade commerce or business and earning income have sought to claim that their purpose would also fall under 'charitable purpose'. Obviously, this way not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected."*

104. Our attention was also drawn to the following extract from the reply of the Finance Minister to the Debate in the Lok Sabha on the Finance Bill, 2008:-

> "—6. Clause 3 of the Finance Bill, 2008 seeks to amend the definition of charitable purpose' so as to exclude 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 or use of application, or retention, of the income from such activity. The intention is to limit the benefit to entities which are engaged in activities such as relief of the poor, education, medical relief and any other genuine charitable purpose, and to deny it to purely commercial and business entities which wear the mask of a charity. A number of Honourable Members have written to me expressing their concern on the possible impact of the proposal on Agricultural Produce Market Committees (APMC) or State Agricultural Marketing Boards (SAMB). Since there is no intention to tax such committees or boards, and in order to remove any doubts, I propose to insert a new clause (26AAB) in section 10 of the Income tax Act to provide exemption to any income of an APMC or SAMB constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce. I once again assure the House that genuine charitable organisations will not in any way be affected. The CBDT will, following the usual practice, issue an explanatory circular containing guidelines for determining whether an entity is carrying on 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. Whether the purpose is a charitable purpose will depend on the totality of the facts of the case. Ordinarily, Chambers of Commerce and similar organisations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as —advancement of any other object of general public utility. (underlining added) "



105. Thus, prima facie, it appears from the above that the object of the introduction of the Proviso to clause (15) of Section 2 of the said Act was to deny the benefit of the Income

Tax Act exemption to purely commercial and business entities which wear the mask of a charity. The genuine charitable organizations were not affected in any way.

106. The first and the foremost thing we want to clarify is that the registration of the assessee as a Charitable Institution would, prima facie, clothe the assesseee with the character of a charitable institution. However, the game, by itself, is not conclusive and the question whether the assessee is established for a charitable purpose or not must be examined independently with reference to the provisions of the Act. The registration of the assessee as a charitable institution under Section 12A of the Act, 1961 is a relevant factor in reaching an appropriate conclusion. Unless the positive requirements of law are satisfied, the assessee, only by virtue of the aforesaid event, cannot be regarded as a Charitable Institution. The objects, for which, the assessee is established either as a Society or as a Association should spell out any charitable purpose.

107. In the aforesaid context, it may be pertinent to refer to the decision of this High Court in the case of ***Hiralal Bhagwati v. Commissioner of Income Tax, [2000] 161 CTR (Guj) 401, wherein the Court has held as under:***

> *"The registration of a charitable trust under section 12A is not an empty formality. This is apparent from the tenor of the provisions of section 12A. It requires that not only an application should be filed in the prescribed form, setting the details of the origin of the trust, but also names and addresses of the trustees and/or managers should be furnished. The CIT has to examine the objects of creation as well as an empirical study of the past activities of the applicant. The CIT has to examine that it*

*is really a charitable trust or institution eligible for registration. The Court further held that once the registration under section 12A(a) of the Act is granted, the Income Tax Officer is not justified in refusing the benefit which would, otherwise, accrue under the registration."*

108. In the case of ***Assistant Commissioner of Income Tax v. Surat City Gymkhana***, *(2008) 300 ITR 214 (SC)*, the Supreme Court was called upon to deal with the question as to whether on the facts and circumstances of the said case, Income Tax Appellate Tribunal was justified in law in holding that registration under section 12A was a *fiat accompli* to hold the Assessing Officer back from further probe into the objects of the trust. On a perusal of the judgment of the Gujarat High Court in the case of ***Hiralal Bhagwati***, the Supreme Court held that the question stood concluded by the said judgment, which had attained finality since the revenue did not challenge the decision in the said case. The relevant observations made by the Supreme Court are as follows;

*"The respondent assessee claimed exemption under **Section 10(23) of the Income Tax Act, 1961** for Assessment Years 1991-1992 and 1992-1993. The said exemption was claimed on the basis that the objects of the respondent assessee are exclusively charitable. The assessing officer rejected the claim. The appeals filed before the Commissioner of Income Tax (Appeals) were also dismissed. Aggrieved thereby, the assessee filed further appeals before the Income Tax Appellate Tribunal (the Tribunal). The Tribunal, by order dated 20-1-2000, allowed the appeals filed by the respondent assessee. The appellant filed appeals before the High Court of Gujarat. The Revenue claimed that the following two substantial questions of law arise from the order of the Tribunal:*

*"(A) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the objects of the trust restricting*

*benefit to the members of the club would fall within the purview of the act of 'general public utility' under* ***Section 2(15) of the Income Tax Act*** *constituting as a section of public and not a body of individuals?*

*(B) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that registration under Section 12-A was a fait accompli to hold the assessing officer back from further probe into the objects of the trust?"*

*2. By the impugned order, the High Court dismissed the appeals, in limine, relying on a decision of the same Court in Hiralal Bhagwati v. CIT 2000 246 ITR 188, holding that the questions raised in the appeals are covered by the aforesaid decision.*

*3. Being dissatisfied by the order of the High Court, the Revenue has filed these appeals.*

*4. This Court, on 22-7-2002, granted leave in respect of Question 'B' only. The appeals were not entertained in respect of Question 'A' and it was noted that the appeals were rightly dismissed by the High Court insofar as Question 'A' is concerned as the appellant did not challenge the correctness of the judgment in Hiralal Bhagwati.*

*5. On a perusal of the judgment of the Gujarat High Court in Hiralal Bhagwati we now find that Question 'B' is also concluded by the said judgment (refer to the 1st paragraph of ITR p. 196). Since the Revenue did not challenge the decision in the said case, the same has attained finality. Question 'B', therefore, is to meet the same fate as Question 'A' as this Court had declined to grant leave in respect of Question 'A' on the ground that the Revenue did not challenge the correctness of the decision in Hiralal Bhagwati. It appears that the fact, that Question 'B' was also covered by the aforementioned judgment, was not brought to the notice of Their Lordships and, therefore, leave granted was restricted to Question 'B'."*

109. This High Court in the case of ***Ahmedabad Urban Development Authority v. Deputy Director of Income Tax (Exemption),*** (supra), has held thus:

*"9. Section 12AA of the Act lays down the procedure for registration in relation to the conditions for applicability of sections 11 & 12 as provided in section 12A of the Act. Therefore, once the procedure is complete as provided in sub-section (1) of section 12AA of the Act and a Certificate is issued granting registration to the Trust or Institution it is apparent that the same is a document evidencing satisfaction about : (1) genuineness of the activities of the Trust or institution, (2) about the objects of the Trust or Institution. Section 12A of the Act stipulates that provisions of sections 11 & 12 shall not apply in relation to income of a Trust or an Institution unless conditions stipulated therein are fulfilled. Thus granting of registration under section 12AA of the Act denotes, as per legislative scheme, that conditions laid down in section 12A of the Act stand fulfilled*."

110. This High Court, in the case of ***Agricultural Produce Market Committee vs. Income Tax Officer***, reported in (2013) 355 ITR 384, held as under;

*"A perusal of the reasons recorded shows that the assessment is sought to be reopened on the ground that even if the petitioner has obtained registration under section 12AA of the Act as an institution carrying on charitable activities, the petitioner is not entitled to the status of trust carrying out charitable activities since the petitioner is conducting the business as an "Association of Persons" and not as a "Trust". Thus, though the petitioner has been granted registration under section 12AA of the Act by the Commissioner of Income-tax, the assessment is sought to be reopened on the basis of revenue audit objection that the petitioner is not eligible for exemption for the aforesaid reasons. The grounds for reopening the assessment are clearly contrary to the settled legal position as laid down by this Court in the case of Hiralal Bhagwati v. Commissioner of Income Tax, (supra) as well as in the case of Ahmedabad Urban Development Authority v. Deputy Director of Income Tax (Exemption), wherein the Court has held that section 12AA of the Act lays down the procedure for registration in relation to the conditions for applicability of sections 11 and 12 as provided in section 12A of the Act.*

*Therefore, once the procedure is complete as provided under sub-section (1) of section 12AA of the Act and a certificate is issued granting registration to the Trust or Institution, it is apparent that the same is a document evidencing satisfaction about: (1) genuineness of the activities of the trust or Institution, and (2) about the objects of the Trust or Institution. While framing the assessment order, it is not open to the Assessing Officer to ignore the certificate of registration granted under section 12AA of the Act by the Director of Income Tax (Exemption).*

*In the facts of the present case, the Assessing Officer while framing the original assessment under section 143(3) of the Act, has, taken into consideration the certificate granted by the Commissioner of Income Tax under section 12AA of the Act, and has found that the petitioner carries on charitable activities. In the return of income filed by it, the petitioner had specifically claimed deduction of Rs.32,40,212/- and Rs.45,00,000/- totalling to Rs.77,40,212/- as a Charitable Trust registered under section 12AA of the Act by the Commissioner of Income Tax. During the course of assessment proceedings the Assessing Officer had issued notice pursuant to which the petitioner had given its reply explaining as to why it was entitled to the said deductions. The Assessing Officer after considering the explanation given by the petitioner had passed a scrutiny assessment order under section 143(3) of the Act specifically allowing the above deductions. From the reasons recorded, it is evident that the Assessing Officer has not recorded any independent opinion regarding income having escaped assessment for the reasons stated therein. The sole ground for reopening the assessment appears to be the observations of the Revenue Audit Party that the assessee is not eligible for exemption to the tune of Rs.77,40,212/- for the year under reference since, the Assessing Officer has not disallowed the exemption while finalizing the assessment under section 143(3) of the Act. Thus, it appears that the belief that income chargeable to tax escaped assessment is that of the Revenue Audit Party and not of the Assessing Officer. In the circumstances, the condition precedent for exercise of powers under section 147 of the Act, namely, that the Assessing Officer should have reason to believe that income chargeable to tax has escaped assessment, does not appear to be fulfilled in*

*the present case.*

*Besides, in the light of the above referred decisions of this Court, it is not permissible for the Assessing Officer to go behind the registration obtained by the assessee under section 12AA of the Act. The Assessing Officer while framing original assessment having taking into consideration the registration under section 12AA of the Act as well as having examined the admissibility of the claims made by the petitioner, has allowed the deduction under section 11 of the Act. Under the circumstances, the reopening of assessment appears to be based on a mere change of opinion, that too, the opinion of the Revenue Audit Party and not that of the Assessing Officer."*

111. The ratio discernible from the aforesaid decision is that once the procedure is completed as provided under sub-section (1) of Section 12AA of the Act and a certificate is issued granting registration to the trust or institution, it is apparent that the same is a document evidencing satisfaction about (i) the genuineness of the activities of the trust or institution and (ii) about the objects of the trust or institution. While framing the assessment order, it is not open to the Assessing Officer to ignore the certificate of registration granted under Section 12AA of the Act by the Director of Income Tax (Exemption). It is not permissible for the Assessing Officer to go behind the registration obtained by the assessee under Section 12AA of the Act.



112. It is apposite to state that the definition of the term "charitable purpose" remains an inclusive one and is not an exhaustive or exclusive one. In other words, the purposes similar to those mentioned in the aforesaid definition could also constitute 'charitable purpose' under the Act. The expression 'charitable purpose' is sufficiently wide in scope to include a variety of activities. For instance, promotion of sports

and games is a charitable purpose, as is promotion of trade and commerce, even when the beneficiaries are confined only to a particular line of trade or commodity. However, at the same time, the fact that remote and indirect benefits are derived by the members of the public will not be sufficient to make the purpose a "charitable purpose" under the Act.

113. The word 'Charity' connotes altruism in thought and action. It involves an idea of benefiting others rather than oneself.

114. For a trust to be accepted as a charitable trust for the purposes of exemption, it is necessary that the objects should be specific so as to confirm to the requirement of the income tax law in this regard. Where they are too wide, the trust may not qualify for exemption. However, a pragmatic view is required to be taken while examining the data. The material on record should be analysed objectively.

115. The onus to prove that the objects are of charitable nature is on the assessee.

116. In our considered opinion, the principle of purposive interpretation of the provision has to be adopted and when such a construction is placed, it serves the legislative intent.

117. In this context we may refer to the decision in State of T.N. v. Kodaikanal Motor Union (P) Ltd., (1986) 62 STC 272 (SC): (1989) 3 SCC 91, wherein the Supreme Court, after referring to K.P. Varghese vs. Income Tax Officer and and Luke v. Inland Revenue Commissioner, (1964) 54 ITR 692 (HL); (1963) AC 557 (HL), observed thus:-

> *"The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but*

*language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye 'some' violence to language is permissible."*

118. In Keshavji Ravji and Co. v. CIT, (1990) 183 ITR 1 (SC); (1990) 2 SCC 231, it has been held by the Supreme Court that when in a taxation statute where literal interpretation leads to a result that does not sub-serve the object of the legislation another construction in consonance with the object can be adopted.

119. We now propose to examine the matter, keeping in mind the fourth limb of Section 2(15) of the Act, i.e., "the advancement of any other object of general public utility".

120. The provision as it existed under the Act of 1922 was that once the purpose of the trust was relief of the poor, education, medical relief or advancement of any other object of general public utility, the trust was considered to be for a charitable purpose. As a result of the addition of the words "not involving the carrying on of any activity for profit" at the end of the definition in section 2(15) of the Act even if the purpose of the trust is "advancement of any other object of general public utility", it would not be considered to be "charitable purpose" unless it is shown that the above purpose does not involve the

carrying of any activity for profit. The result, thus, of the change in the definition is that in order to bring a case within the fourth category of charitable purpose, it would be necessary to show that :

(i) the purpose of the trust is advancement of any other object of general public utility, and

(ii) the above purpose does not involve the carrying on of any activity for profit.

121. Both the above conditions must be satisfied before the purpose of the trust can be held to be charitable purpose.

122. A brief analysis of all the provisions would show that (i) providing relief of the poor; (ii) establishing institution for education; (ii) providing medical relief; and (iv) to advance any other object of general public utility are included within the definition of 'charitable purposes'. With effect from 01.04.2009, a new definition has been substituted, in that, if the advancement of object of general public utility involves carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for cess or fee or any other consideration, such activity shall not be a charitable purpose. Except the addition of the proviso, restricting the purport of the 'advancement of any other object of general public utility', there is not much difference in section 2(15) as it existed prior to 01.04.2009, and thereafter. After the amendment the preservation of environment including the watersheds, forest and wild life, and preservation of monuments or places/objects of artistic or historic interest are also included in the definition 'charitable purpose'. Be that as it is, what is important is any

institution or organization or entity for the advancement of object of general public utility is also considered as an institution or trust for charitable purpose. Section 11 exempts various categories of incomes as enumerated under section 11(1)(a) to (d) from the total income of the previous year. Section 12 exempts the voluntary contributions received by a trust created for charitable purposes from the total income. The benefit of Section 11 and/or 12 can be claimed only when the conditions as stipulated under Section 12A are satisfied. One such condition is that a person in receipt of the income has to apply for the registration of the trust or institution in the prescribed form on or before the expiry of a period of one year from the date of creation of the trust or establishment of institution. The proviso to Section 12A(1) confers the power on the Commissioner to entertain an application under Section 12A (1) even after the expiry of period of one year if he is satisfied that the person was prevented from making an application before the expiry of period of one year for sufficient reasons.



123. Section 11(5) requires every trust or institution for a charitable purpose to invest or deposit the money only in the manner provided therein inter alia investment in Savings Certificates as defined in Government Savings Certificates Act, 1959, deposit with the Post Office Savings Bank, deposit in any account with the scheduled bank i.e., Reserve Bank of India or its subsidiary bank or any scheduled bank under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 or any other bank being a bank included in Second Schedule to Reserve Bank of India Act,

1934 and the like. The breach of **Section 11(5) would attract Section 13(1)(d) of the IT Act** and the benefit under Sections 11 and 12 would not be available if funds are deposited or invested contrary to Section 11(5) or in breach of Section 13(1) generally and Section 13(1)(d) specifically.

124. In ***CIT vs. Andhra Chamber of Commerce***, (1965) 55 ITR 722 (SC), the Supreme Court considered the question as to whether the income of Andhra Chamber of Commerce is exempt under **Section 4(3)(i) of the Income tax Act, 1922**. While observing that the legislature had used language of great amplitude in defining 'charitable purpose' and referring to the Trustees of Tribune, the Court held that the Chamber of Commerce is a charitable institution although it was promoting the interest of trade and commerce, which were only ancillary and subsidiary objects. While observing that the primary object being, "to promote and protect trade, commerce and industries, to aid, stimulate and promote the development of trade, commerce and industries, and to watch over and protect the general commercial interests of India", the Court held as under.

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

125. In ***Addl. Commissioner of Income Tax vs. Surat Art Silk***, (1980) 121 ITR 1 (SC), a Constitution Bench of the Supreme Court interpreting the words 'not involving the carrying on of any activity for profit' occurring in section 2(15) (as it existed), held that the test of predominant object has to be applied while deciding whether an entity is a charitable trust/institution and that profit making by such institution is not excluded. The relevant observations are as follows.

> *"Therefore, for a purpose to fall under the fourth head of "charitable purpose", it must constitute the advancement of an object of general public utility in which the activity of advancement must not involve a profit making activity. The word "involving" in the restrictive clause is not without significance. An activity is involved in the advancement of an object when it is enwrapped or enveloped in the activity of advancement. In another case, it may be interwoven into the activity of advancement, so that the resulting activity has a dual nature or is twin faceted. Since we are concerned with the definition of "charitable purpose", and the definition defines in its entirety a "purpose" only, it will be more appropriate to speak of the purpose of profit making being enwrapped or enveloped in the purpose of the advancement of an object of general public utility or, in the other kind of case, the purpose of profit making being interwoven into the purpose of the advancement of that object giving rise to a purpose possessing a dual nature or twin facets. Now, section 2(15) clearly says that to constitute a "charitable purpose" the purpose of profit making must be excluded. In my opinion, the requirement is satisfied where there is either a total absence of the purpose of profit making or it is so insignificant compared to the purpose of advancement of the object of general public utility that the dominating role of the latter rendersthe former unworthy of account. If the profit making purpose holds a dominating role or even constitutes an equal component with the purpose of advancement of the object of general public utility, then clearly the definition in section 2(15) is not satisfied. When applying Section 11, it is open to the tax authority in an appropriate case to pierce the veil of what is*

*proclaimed on the surface by the document constituting the trust or establishing the institution, and enter into an ascertainment of the true purpose of the trust or institution. The true purpose must be genuinely and essentially charitable. "*

126. In ***CIT vs. Andhra Pradesh State Road Transport Corporation***, *(1986) 159 ITR 1 (SC)*, the question was whether the income of the APSRTC was exempt from income tax under section 4(3)(i). On a reference by the Income Tax Appellate Tribunal, the High Court answered the question in the affirmative in favour of the assessee. Following Trustees of the Tribune, the Supreme Court affirmed the High Court's view observing as under.

*"It is admitted position, as pointed out by the High Court in its judgment under appeal, that no share capital has been raised under Section 23(2) and the entire capital has been provided by the government under Section 23(1) and the Government is only paid interest thereon under Section 28(1) just as interest would be paid on any money due as a debt. That the activity of the respondent Corporation is not carried on with the object of making profit is made abundantly clear by the provisions of section 30 under which, prior to the amendment of that* ***section by the Amendment Act of 1959,*** *the balance of income left, after utilization of the net profits for the purpose set out in section 30, was to be made over to the State Government for the purpose of road development and after the* ***Amendment Act of 1959*** *is to be utilized for financing the expansion programmes of the respondent corporation and the remainder, if any, is to be made over to the State Government for the purpose of road development. As pointed out by this Court in Andhra Pradesh Road Transport Corporation v ITO (1964) 52 ITR 524 (SC), the amount handed over to the State Government does not become a part of the general revenues of the State but is impressed with an obligation that it should be utilized only for the purpose for which it is entrusted, namely, road development. It is not, and cannot be, disputed that road development is an object of general public utility."*

127. ***CIT vs. Agricultural Produce and Market Committee***, *(2007) 291 ITR 419 (Bom)* is a case wherein the Bombay High Court considered the question whether the market committees constituted under the **Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963** are established for charitable purposes and whether they can be registered under section 12A/12AA of the Act. After referring to the various provisions of the Maharashtra Act – the preamble, the powers and duties of market committees, the power to levy and collect fees and regulate the markets, the Court relied on Surat Art Silk (supra) and held as under. (paras 22 and 24)

> *"Applying the tests laid down by the apex court in the aforesaid cases to the facts of the present case, there can be no doubt that the object of the market committees (assessees) established under the 1963 Act is to regulate the entire marketing of agricultural and some other produce from the stage of procuring till it reaches the ultimate consumer, which is squarely covered within the meaning of the expression "advancement of any object of general public utility" contained in section 2(15) of the Act.*
>
> *It is pertinent to note that prior to April 1,1984, the words used in section 2(15) of the Act were "advancement of any other object of general public utility not involving the carrying on of any activity for profit". By the Finance Act, 1983 with effect from April 1, 1984, Legislature has omitted the words "not involving the carrying on of any activity for profit" from section 2(15) of the Act. Thus, after April 1, 1984, even if there is some profit in the activity carried on by the trust/institution, so long as the dominant object is of general public utility, it cannot be said that the said trust/institution is not established for charitable purposes. "*

128. In ***CIT vs. Market Committee***, *(2007) 294 ITR 563*

*(P&H)*, the Punjab and Haryana High Court, after considering the provisions of the Punjab Agricultural Produce Markets Act, 1961 held that the market committee incorporated in terms of **Section 18 of the Punjab Act** is a body corporate and that its activities can be included within the definition of the term charitable purposes. It was also held that the exemptions under sections 10, 11 and 12 of the Act are independent of one another and merely because an assessee is not entitled to claim exemption under one of the aforesaid provisions that cannot ipso facto lead to the conclusion that the claim of the assessee cannot be considered for the grant of tax exemption in some other provisions of the IT Act. The relevant observations are as follows.

> *"It is apparent from the duties and responsibilities of the market committees, delineated in the foregoing two paragraphs, that a market committee, in the background of the provisions of the Markets Act, should be treated as a body, discharging "legal obligation"(s) within the meaning of* ***Section 13(7) of the Income Tax Act.*** *The duties and responsibilities discharged by a market committee, envisaged under the provisions of the Markets Act, referred to above, also lead us to conclude, that the activities of a market committee can be included within the definition of the term "charitable purpose", defined by* ***Section 2(15) of the Income Tax Act.*** *The instant conclusion is inevitable from a cumulative reading and interpretation of* ***Sections 13, 26 and 28 of the Markets Act*** *(analysed in paragraphs 3, 4 and 5 hereinabove). Briefly stated, it may be noticed, that the obligations discharged by a market committee include the regulation of purchase, sale, storage and processing of agricultural produce with the intention of benefiting the producers, as well as, the consumers of agricultural products. A market committee is also obliged to provide for conveniences for the activities of a market area like construction of buildings, sheds, plinths, etc. A market committee is also obliged to provide conveniences for persons visiting a market area, like providing for shelter, shade and parking facilities. A market committee is also*

*obliged to look after the safety, health and convenience of persons visiting the market area. A market committee is also obliged to construct and repair link roads, approach roads, culverts, and bridges, etc. One of the many specified activities of a market committee is to extend loans to financially weak communities as well as in the repayment of such loans and the interest thereon. The market committee under reference, in the discharge of its obligations, besides carrying out all the aforesaid activities, is stated to have spent a huge sum of money for the construction, development and repair of link roads, culverts, bridges, etc "*

129. In ***CIT vs. Gujarat Maritime Board***, *(2007) 295 ITR 561 (SC)*, the question before the Supreme Court was whether Maritime Board is entitled to the status of charitable institution under Section 11 of the Act. Maritime Board was constituted under the Gujarat Maritime Board Act for the purpose of development of minor ports in Gujarat. Under the statute, the Board also renders stevedoring, transport and shipping services besides maintaining the jetties, wharfs, roads, lights etc. The management and control of the Board was with the State Government. There was no profit motive and the income earned by the Board has to be deployed for the development of minor ports in Gujarat. It was registered as 'local authority' under **Section 3(31) of the General Clauses Act, 1897.** Prior to 2002, it was availing exemption as local authority under **Section 10(20) of the IT Act** and, therefore, was not exigible to the income tax. After insertion of the explanation in Section 10(20), the expression 'local authority' was confined to Panchayats, Municipality, Municipal Committee, District Board and Cantonment Board. Maritime Board did not come within the definition of local authority. They, therefore, made an application to the Commissioner for being registered as a

charitable institution as defined under section 2(15). The Commissioner rejected the application. The Tribunal as well as the High Court of Gujarat held that the Maritime Board is a charitable institution. The Supreme Court, while construing **Section 2(15) and Section 11(1),** relied on the Andhra Chamber of Commerce (supra), Surat Art Silk (supra) and APSRTC (supra) and held that the Maritime Board is entitled to be registered as a 'charitable trust' under Section 12A of the Act. The relevant observations are as follows. ;

> *"For the purposes of this section 'property held under trust' includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the assessing officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.*
>
> *According to section 2(15), the expression "charitable purpose" has been defined by way of an inclusive definition so as to include relief to the poor, education, medical relief and advancement of any other object of general public utility. In this case we are concerned with the interpretation of the expression "advancement of any other object of general public utility.*
>
> *Under Section 11(1), income from property held for charitable purposes is not includible and does not form part of total income.*
>
> *Section 11(1) has three sub-sections, (a), (b) and (c). In all the three sub-sections the words used are "income derived from property held under trust wholly for charitable purposes". Under Section 11(4) the expression "property held under trust" includes a business undertaking so held. In other words, income from business undertaking held for charitable purposes can fall under Section 11 subject to such income fulfilling the requisite conditions of that section ...*

*.. At the outset, we may point out that* ***Section 10(20) and Section 11 of the 1961 Act*** *operate in totally different spheres. Even if the Board has ceased to be a "local authority", it is not precluded from claiming exemption under* ***Section 11(1) of the 1961 Act.*** *Therefore we have to read Section 11(1) in the light of the definition of the words "charitable purposes" as defined under* ***Section 2(15) of the 1961 Act.***

*We have perused 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 widest 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 as distinguished from benefit to an individual or a group of individuals would be a charitable purpose (CIT v. Ahmedabad Rana Caste Assn (1983) 140 ITR 1 (SC)). The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would 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 an 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 (****CIT v. Surat Art Silk Cloth Manufacturers' Assn*** *(1980) 121 ITR 1 (SC)). "*

130. The apex Court in the case of Surat Art Silk Cloth Manufacturers Association (supra) has pointed out that the restriction must be read with "the advancement of any other object of general public utility" and not "object of general public utility". The Supreme Court, considering the English

decisions and the Indian law, has pointed out in the aforesaid decision that :

> "*..... There is no such limitation so far as Indian law is concerned even if a purpose is not within the spirit and intendment of the preamble to the statute of Elizabeth, it would be charitable if it falls within the definition of "charitable purpose" given in the statute Every object of general public utility would, therefore, be charitable under the Indian law, subject only to the condition imposed by the carrying on of any activity for profit" added in the present Act. .....*"

131. The apex Court in the case of CIT vs. Federation of Indian Chambers of Commerce & Industry (1981) 130 ITR 186 (SC), after applying the principle laid down in the case of Surat Art Silk Cloth Manufacturers Association (supra), held as under :

> "*..... the income derived by the respondent from the activities, such as holding the Indian Trade Fair and sponsoring the conference of the Afro-Asian Organisation, were for the advancement of the dominant object and purpose of the Federation, viz. promotion, protection and development of trade, commerce and industry in India, and were exempt from tax under s. 11(1)(a) r/w s. 2(15) .....*"

132. The Apex Court in Ahmedabad Rana Caste Association vs. CIT, (1971) 82 ITR 704 (SC) and CIT vs. Ahmedabad Rana Caste Association (1983) 140 ITR 1 (SC) pointed out that the law recognises no purpose as charitable unless it is for a public charity. That is to say, a purpose must, in order to be charitable, be directed to the benefit of the community or a section of the community. The expression "object of general public utility", however, is not restricted to the objects beneficial to the whole mankind. An object beneficial to a section of the public is an object of general public utility. The

section of the community sought to be benefited must undoubtedly be sufficiently defined and identifiable ..... quality of a public or impersonal nature.

133. The apex Court in the case of Kamla Town Trust (supra), after considering the facts of that case, viz., the trust deed and the rectification agreement, expressed an opinion as under :

> "*..... On the contrary it becomes clear on a close reading of relevant provisions of this clause that the objects are specific and charitable in nature. The beneficiaries are also clearly indicated. There is also no ambiguity about the trustees or the trust properties. Thus all the basic requirements for creation of a public charitable trust do exist on the express language of the relevant clauses of rectified deed. .....*"

134. We may also refer to and rely upon the decision of this Court in the case of ***Additional Commissioner of Income Tax, Gujarat vs. Ahmedabad, Millowners Association***, reported in *1977 (106) ITR 725*, wherein this Court held as under;

> *"22. We now proceed to consider whether an object which serves personal interest would fall within the scope of section 2(15) of the Act. There is no dispute that the charitable purposes of relief to poor and educational and medical relief have no relevance to the facts of the present case. It is, therefore, the fourth category of the charitable purpose, namely, the object of general public utility, with which we are concerned in this case. The expression "object of general public utility " appearing in section 2(15) would include only those objects which promote the welfare of general public and not the personal and individual interests of some persons. It is not uncommon to find the objects of general public utility being in conflict with the object of personal welfare of some specified individuals. It is true, as held by the Supreme Court in the case of Andhra Chamber of Commerce [1965] 55 ITR 722 (SC), that personal welfare*

*of specified individuals would be incidental or consequential to the main purpose of general public utility, but a converse of this proposition is not always true. Now, if we examine the objects contained in clauses (a), (b) and (c) from this point of view, it will be at once noticed that these objects seek to protect the interest of "millowners and users of motive power" and also of those concerned with them. Clause (b) contemplates the promotion of good relations between the persons and bodies using such powers and clause (c), which is consequential to clause (a) and (b), contemplates doing of those acts and things by which the objects covered by clause (a) and (b) may be attained. Thus, all these three clause aim at protecting personal interest and not public interests. If this is so, the respondent-association is bound to carry on its activity keeping in mind the narrower concept of promoting the personal and self-serving interests of individuals who are consider "millowners and users of motive power" even when their interest are in conflict with the interests of their own trade or industry. If and when this happens, how can it be said that the respondent-association has carried out an object of general public utility ? General public is undoubtedly interested in trade, commerce or industry conducted by individuals, but it is surely not interested in protecting the personal interests of these individuals if they are in conflict with the interests of trade, commerce and industry. Therefore, when an object seeks to promote or protect the interests of a particular trade or industry, that object becomes an object of public utility, but not so, if it seeks to promote the interests of those who conduct the said trade or industry.*

*23. This distinction between the protection of the interests of individuals and the protection of interests of an activity, which is of general public utility, goes to the root of the whole problem, and, hence, the Supreme Court has pointedly referred to this problem in Commissioner of Income-tax v. Andhra Chamber of Commerce [1965] 55 ITR 722 (SC) at page 727 of the report by observing as under :*

*"It may be remembered that promotion and protection of trade, commerce and industry cannot be equated with promotion and protection of activities and interests merely of persons engaged in trade, commerce and*

*industry."*

*24. In this case, the Supreme Court has pointed out that even an object beneficial to a section of the public is an object of public utility and that to serve a charitable purpose, it is not necessary that the object should be to benefit the whole mankind or person living in a particular country or province. But, while making these observations, the Supreme Court has been careful in pointing out the distinction between " a section of the public " and specified individuals. Even so far as "a section of the public" is concerned, the Supreme Court has been particular in identifying it in the following terms (page 729) :*

*"The section of the community sought to be benefited must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature : where there was no common quality uniting the potential beneficiaries into a class, it might not be regarded as valid."*

*25. These observations are repeated by the Supreme Court in the subsequent decision in Ahmedabad Rana Caste Association v. Commissioner of Income-tax [1971] 82 ITR 704 (SC).*

*26. These observations supply a complete answer to the contention of the learned Advocate-General that the category of persons covered by the expression "millowners and users of motive power" constitutes a section of the public, which can legitimately form the object of a charitable purpose. The observations make it clear that the section of the public which is to be benefited to make the purpose a charitable one should have a common quality of either a "public" nature or an "impersonal" nature. Can it be said that "millowners and users of motive power" have a common quality of a "public nature" ? If they have any common quality the same is obviously of a "private" nature, as each one of them is concerned with his own interest and shares nothing in common with the public. It was contended that their common quality is the fact that each one of them is either a millowner or a user of motive power. Granting that this is their common quality, it cannot be said that the said common quality possesses the attributes of a public or impersonal nature. If individuals, whose only common quality is their profession or vocation, can*

*legitimately be invested with the attributes of a public nature, then every partnership, company or an association of persons can be an object of charity, and the trusts created for the benefit of such partnerships, companies and associations would be charitable trusts earning exemption under section 11. Absurdity of such a situation cannot be over-emphasised.*

*27. What is the exact nature of "section of the public" which can legitimately become an object of a charity, is considered by Lord Greene M.R. in Powell v. Compton [1945] 1 Ch 123, 129 (CA). In that case a bequest was made for the education of a small number of individual relatives of a testatrix. The question which arose was whether these individuals formed a "section of the public" so as to make the trust a charitable trust. Lord Greene M. R. held that the trust was not a valid trust, making the following observations :*

*"No definition of what is meant by a section of the public has, so far as I am aware, been laid down, and I certainly do not propose to be the first to make the attempt to define it. In the case of many charitable gifts it is possible to identify the individuals who are to benefit, or who at any given moment constitute the class from which the beneficiaries are to be selected. This circumstance does not, however, deprive the gift of its public character. Thus, if there is a gift to relieve the poor inhabitants of a parish the class to benefit is readily ascertainable. But they do not enjoy the benefit, when they receive it, by virtue of their character as individuals but by virtue of their membership of the specified class. In such case the common quality which unites the potential beneficiaries into a class is essentially an impersonal one. It is definable by reference to what each has in common with the others, and that is something into which their status as individuals does not enter."*

*28. Our Supreme Court has approved of this principle in Ahmedabad Rana Caste Association's case [1971] 82 ITR 704 (SC) and has held that members of Rana caste has a relationship which was an impersonal one dependent upon their status a members of that caste. No such relationship of impersonal nature can be found amongst the millowners and users of motive power, and, hence, none of the objects mentioned in clause (a), (b) and (c) can be treated as objects of public utility.*

*29. We have already dealt with the object found in clause (d). So far as the object contained in clause (e) is concerned it consists of two parts. This first part contemplates establishment or the creation of funds to benefit employees of the association or the dependents of such persons while the second part contemplates subscriptions, donations or guarantees or "charitable or benevolent" purposes at the discretion of the association. Now, so far as the first part is concerned, it is covered by the decision in Oppenheim v. Tobacco Securities Trust Co. Ltd. [1951] AC 297 (HL), to which reference is made by the Supreme Court in Ahmedabad Rana Caste Association's case [1971] 82 ITR 704 (SC) at page 710 of the report. The facts of that English decision were that the trustees were directed to apply certain income in providing for the education of children of employees or "former employees" of a British limited company or any of its subsidiary or allied companies. The House of Lords held in this case by majority that though the group of persons indicated was numerous, the nexus between them was employment by particular employers and, accordingly, the trust did not satisfy the test of a public benefit requisite to establish it as charitable. This principle has been approved by our Supreme Court and, therefore, the first part of the object clause (e) is also not found to be for general public utility within the meaning of section of section 2(15) of the Act. So far as the second part is concerned, Shri Kaji's contention was that a benevolent purpose is not necessarily a charitable purpose but if this clause is constructed liberally, it may be said that it embodies within it the object of public utility. Now, proceeding to clause (f) it contemplates promotion of good relation between the employers and the employees. So far as this object is concerned, the matter is concluded by the decision of the Supreme Court in the above referred case of Commissioner of Income-tax v. Indian Sugar Mills Association [1974] 97 ITR 486 (SC), wherein the relevant clause which the court considered was "to promote good relations between the employers and the employees". This clause was exactly similar to clause (f) with which we are concerned in this reference. With regard to such a clause, the Supreme Court has observed that even assuming that in some remote and indirect manner such an object might be some public utility, it cannot be called a charitable purpose within the meaning of section 4(3)(i) of the*

*Indian Income-tax Act, 1922. In view of this decision, even the object mentioned in clause (f) cannot be considered as the object serving any public utility.*

*30. If we closely scrutinise the objects contained in rule 3, we find that a substantial part of these objects benefit the association's own members, those connected with them, and their employees. It is no doubt true that the beneficiaries of these objects are also who are non-members but who happen to be millowners or users of motive power. But that aspect of the matter does not detract from the fact all the members, and their employees, and "those who are connected" with members, from the substantial part of the recipients of the benefits contemplated by the objects. In Commissioner of Inland Revenue v. City of Glasgow Police Athletic Association [1953] 34 TC 76 (HL) Lord Cohen has summarised the legal position in such cases as under at page 105 of the report :*

*"(1) If the main purpose of the body of persons is charitable and the only elements in its constitution and operations which are non-charitable are merely incidental to that main purpose, that body of persons is a charity notwithstanding the presence of those elements - Royal College of Surgeons of England v. National Provincial Bank [1952] AC 631 (HL).*

*(2) If, however, a non-charitable object is itself one of the purposes of the body of persons and is not merely incidental to the charitable purposes, the body of persons is not a body of persons formed for charitable purposes only, within the meaning of the Income Tax Acts - Oxford Group v. Inland Revenue Commissioner [1949] 2 All ER 537; 31 TC 221 (CA).*

*(3) If a substantial part of the objects of the body of person is to benefit its own members, the body of persons is not established for charitable purposes only - Inland Revenue Commissioner v. Yorkshire Agricultural Society [1928] 1 KB 611 (CA)."*

135. In our opinion, the case on hand falls within the first category mentioned by Lord Cohent."

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.



138. The Delhi High Court in the case of ***Addl. Commissioner of Income Tax, Delhi vs. Delhi Brick Kiln Owners Association***, reported in *1981 (130) ITR 55.* In the said case, M/s. Delhi Brick Kiln Owners Association was the respondent assessee. The association had obtained a license from the Central Government for its registration under Section 26 of the Indian Companies Act, 1913. The following were the objects of the company;

> *"(a) To promote, develop and protect the brick kiln trade, commerce and industries.*
>
> *(b) To watch and protect the interest of brick kiln owners,*

*contractors, customers and brick dealers, members of the association and the interest of persons engaged in brick trade, commerce or industries legally, morally and socially.*

*(c) To consider all questions connected with brick trade, commerce and industries and to initiate or support necessary action in connection therewith.*

*(d) To protect the trade, with the co-operation of the Government through legislative representation to get the grievances and difficulties of Brick Kiln Association redressed."*

*139.* The High Court took notice of the fact that the other objects appeared to be incidental to the paramount objects and were in the nature of powers to carry out the primary purpose. The association derived its income from the admission fee, membership subscription and rent realized by it from the building belonging to it. The association asserted that its income was entitled to exemption from tax under Section 11(1)(a) of the I.T. Act, 1961 as it was formed for a charitable purpose, it objects being the advancement of general public utility. The ITO, however, disallowed the claim. The ITO took the view that as the assessment was confined to brick kiln owners, it could not be said to have been formed for the benefit of the general public and, therefore, was not entitled to exemption. On appeal, the AAC, relying on the main objects of the association, as laid down in the Memorandum of Association, held that the association was entitled to exemption. The AAC, relied on the decision of the Supreme Court in CIT vs. Andhra Chamber of Commerce (supra) and the decision of the Kerala High Court in ***CIT vs. Indian Chamber of Commerce***, *1971 80 ITR 645*. The AAC came to the conclusion that the association fulfilled the conditions as required under Section 11(1)(a) of the Act. The department

went up in appeal to the Income Tax Appellate Tribunal. It contended, on the basis of the decision of the Mysore High Court in ***CIT vs. Sole Trustee Loka Shikshana Trust***, *1970 77 ITR 61* and the decision of the Calcutta High Court in ***CIT vs. Indian Chamber of Commerce***, *1971 81 ITR 147* that the conclusions of the AAC were erroneous. On the other hand, the respondent association relied on the decision of the Keral High Court in ***CIT vs. Cochin Chamber of Commerce & Industry***, *1973 87 ITR 83*. It also contended that the decision of the Supreme Court in ***Andhra Chamber of Commerce***, 1965 55 ITR 722, despite the fact that it pertained to the provisions of the Indian I.T. Act, 1922, was still good law as there was no change in the substantive provisions relating to the exemption of income from a trust in the I.T. Act, 1961. The Tribunal dismissed the appeal of the department. The department, being dissatisfied, preferred an appeal before the High Court. The High Court took notice of the fact that the Tribunal did not consider the matter relating to the dominant intention but construed the words “not involving the carrying on of any activity for profit” which had been added by the 1961, Act to the definition of the term “charitable purpose”. The High Court also took notice of the fact that the Tribunal held that an activity for profit would imply that there should be a profit motive in the activities of the assessed. In other words, the activities should be commercial in nature. Further, the motive to make profit should be in the integrated activity of the buying and disposal. The High Court of Delhi, while dismissing the appeal of the department, held as under;

> “12. The question referred for our opinion is dependent on the construction and interpretation of "charitable purpose" as defined in s. 2(15) of the I. T. Act, 1961.

Section 2(15) reads :

"'Charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

13. It is well settled that the words "not involving the carrying on of any activity for profit" pertain only to the fourth limb of charitable purpose, i.e., the advancement of any other object of general public utility.

14. However, there has been a conflict of opinion with regard to the meaning of these words. This conflict appears to have been set at rest in view of a recent decision of the Supreme Court in Addl. CIT v. Surat Art Silk Cloth Manufacturing Association [1980] 121 ITR 1. The assessed therein was a company incorporated under the Indian Companies Act, 1913, and registered under s. 25 of the Companies Act, 1956; its objects were, inter alia, to promote commerce and trade, in art silk, raw silk, cotton yarn, art silk cloth, silk cloth and cotton and to carry on all and any business of art silk, etc., belonging to and on behalf of its members. The court held, inter alia, that where the main or primary objects are distributive, each and every one of the objects must be charitable in order that the trust or institution be upheld as a valid charity. But if the primary or dominant purpose of a trust or institution is charitable, another object, which by itself may not be charitable, but is merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or institution from being or valid charity.

15. The fact that the members of the assessed benefited was merely incidental to the carrying out of the main or primary purpose and if the primary purpose was charitable, the subsidiary objects would not militate against its charitable character not would it make the purpose any the less charitable.

16. The Supreme Court referring to its earlier decision in CIT v. Andhra Chamber of Commerce [1965] 55 ITR 722, observed that the court had held that the dominant or primary object of the Andhra Chamber of Commerce, which was to promote and protect trade, commerce and industry and to aid, stimulate and promote the development of trade, commerce and industry and to watch over and protect the general commercial interests of India or any part thereof was clearly an object of

general public utility. This was despite the fact that one of the objects included in the memorandum was the taking of steps to urge or oppose legislation affecting trade, commerce or manufacture, which by itself, might be considered non-charitable. However, as it was merely incidental to the dominant or primary object, it did not prevent the Andhra Chamber of Commerce from being a valid charity. Therefore, if the primary purpose was the advancement of an object of general public utility, it would remain charitable, even if an incidental entry into the political domain for achieving that purpose, such as promotion of or opposition to legislation concerning that purpose, was contemplated. Applying that very test, the Supreme Court held that the Surat Art Silk Cloth Manufacturers Association was also a valid charity.

17. The true meaning of the ten words "not involving the carrying on of any activity for profit" was held to be, that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility, and not its accomplishment or carrying out, which must not involve the carrying on of any activity for profit. So long as the purpose does not involve the carrying on of any activity for profit, the requirement of the definition would be met and it is immaterial how the monies for achieving or implementing such purpose are found, whether by carrying on an activity for profit or not. The decision of the Supreme Court in Indian Chamber of Commerce v. CIT [1975] 101 ITR 796 was overruled. It was observed that the decisions of the Kerala High Court in CIT v. Cochin Chamber of Commerce and Industry [1973] 87 ITR 83 and the Andhra Pradesh High Court in Andhra Pradesh State Road Transport Corporation v. CIT [1975] 100 ITR 392 laid down the correct interpretation.

18. Applying these principles, it is clear that the dominant intention of the assessed was to promote the brick kiln trade. This purpose did not involve the carrying on of any activity for profit, though its advancement might have. It is thus a valid charity. For the relevant years, however, it appears that even the advancement of the purpose did not involve the carrying on of any activity for profit. The assessed is clearly entitled to the exemption under s. 11(1)(a) of the Act. “

140. The Delhi High Court, in the case of ***India Trade Promotion Organization vs. Director General of Income Tax (Exemptions) & Ors***., *Writ Petition (C) No.1872 of 2013*,, decided on 22nd January, 2015, in context with Section 10(23C)(iv) of the Act vis-a-vis Section 2(15) of the Act, had observed as under;

> *"At this juncture, we may point out that we are in agreement with the argument advanced by Mr Syali that the proviso to Section 2(15) does not make any distinction between entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business on the one hand and genuine charitable organizations on the other. It must be remembered that we are construing the expression "charitable purpose" not in a vacuum, but in the specific context of Section 10(23C)(iv) of the said Act. As pointed out above, Section 10 deals with the incomes not included in total income. And, Section 10(23C)(iv) specifically deals with the income received by any person on behalf of, inter alia, an institution established for charitable purposes. We have to, therefore, examine the meaning of the expression "charitable purposes" in the context of Section 10(23C)(iv). Looking at the said expression from this stand point, it becomes clear that it has a reference to income. Because, it is only when such an institution has an income that the question of not including that income in its total income would arise. Therefore, merely because an institution, which otherwise is established for a charitable purpose, receives income would not make it any less a charitable institution. Whether that institution, which is established for charitable purposes, will get the exemption under Section 10(23C)(iv) would have to be determined by the prescribed authority having regard to the objects of the institution and its importance throughout India or throughout any State or States. There is no denying that having regard to the objects of the petitioner and its importance throughout India in the field of advancement of promotion of trade and commerce, the petitioner would be entitled to be regarded as an institution which would qualify for that exemption. The only thing that we have to examine is - whether the petitioner had been*

*established for charitable purposes? The fact that it derives income does not, in any way, detract from the position that it is an institution established for charitable purposes. Therefore, in our view, merely because the petitioner derives rental income, income out of sale of tickets and sale of publications or income out of leasing out food and beverages outlets in the exhibition grounds, does not, in any way, affect the nature of the petitioner as a charitable institution if it otherwise qualifies for such a character.*

*We have already noted that prior to the amendment being introduced with effect from 01.04.2009, the petitioner had been recognized as an institution established for charitable purpose and this had been done having regard to the objects of the institution and its importance throughout India. It is only because of this that the petitioner had been granted the exemption by the respondent for the period prior to assessment year 2009-10. Therefore, insofar as the receiving of income is concerned, that cannot be taken as an instance to deny the petitioner its status as an institution established for charitable purposes. Because, if that were to be so, then there would be no necessity to take recourse to Section 10(23C)(iv) for the benefit of an exemption. To put it plainly, if an institution established for charitable purposes did not receive an income at all, then what would be the need for taking any benefit under Section 10(23C)(iv) of the said Act. Therefore, if a meaning is given to the expression —charitable purpose so as to suggest that in case an institution, having an objective of advancement of general public utility, derives an income, it would be falling within the exception carved out in the first proviso to Section 2(15) of the said Act, then there would be no institution whatsoever which would qualify for the exemption under Section 10(23C)(iv) of the said Act. And, the said provision would be rendered redundant. This is so, because, if the institution had no income, recourse to Section 10(23C)(iv) would not be necessary. And, if such an institution had an income, it would not, on the interpretation sought to be given by the revenue, be qualified for being considered as an institution established for charitable purposes. So, either way, the provisions of Section 10(23C)(iv) would not be available, either because it is not necessary or because it*

*is blocked. The intention behind introducing the proviso to Section 2(15) of the said Act could certainly not have been to render the provisions of Section 10(23C)(iv) redundant.*

*With this in mind, it is to be seen as to what is meant by the expressions "trade", "commerce" or "business". The word "trade" was considered by the Supreme Court in its decision in the case of Khoday Distilleries Ltd and Others v. State of Karnataka and Others: 1995 (1) SCC 574, whereby the Supreme Court held that "the primary meaning of the word 'trade' is the exchange of goods for goods or goods for money". Furthermore, in State of Andhra Pradesh v. H. Abdul Bakhi and Bros: 1964 (5) STC 644 (SC), the Supreme Court held that —the word "business" was of indefinite import and in a taxing statute, it is used in the sense of an occupation, or profession which occupies time, attention or labour of a person, and is clearly associated with the object of making profit". This court, in ICAI (I) (supra) held that, while construing the term "business" as appearing in the proviso to Section 2(15), the object and purpose of the Section has to be kept in mind. It was observed therein that a very broad and extended definition of the term "business" was not intended for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act so as to include any transaction for a cess, fee or consideration. The Court specifically held that:-*

*—An activity would be considered 'business' if it is undertaken with a profit motive, but in some cases, this may not be determinative. Normally, the profit motive test should be satisfied, but in a given case activity may be regarded as a business even when profit motive cannot be established / proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business."*

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.

142. The Latin word utilis means 'useful, beneficial, equitable, available'. Chambers Dictionary of English defines 'utility' as useful: power to satisfy the wants of people in general: a useful thing, public utility: public service or a Association providing such public service. According to 'New Oxford Dictionary of English' (1998), as a Noun, utility is the status of being useful, profitable or beneficial.

143. The Corpus Juris Secundum Volume 73 page 990 elucidates the following legal position.

> "A public utility" has been described as a business organization which regularly supplies the public with some commodity or service, such as electricity, gas, water, transportation or telephone or telegraph service. While the term has not been exactly defined, and, as has been said, it would be difficult to construct a definition that would fit every conceivable case, the distinguishing characteristic of a public utility is the devotion of private property by the owner or person in control thereof to such a use that the public generally, or that part of the public which has been served and has accepted the service, has the right to demand that the use or service, s

> long as it is continued shall be conducted with reasonable efficiency and under proper charges. The term is sometimes used in an extended sense to include a great many matters of general welfare to the State and its communities. "

144. The words 'public utility' or 'general public utility' are not capable of a precise meaning. The question whether service is public utility or not has to be discharged in the context of different situations but it is, as considered infra, well settled that public utility means public purpose depending upon the context in which it is used in the statute or the Rules. Indeed, in some decisions, public utility is considered very similar to one for public purpose (Hunter v **A.G. 1909 AC 323**, Babu Bankya Thakur v State of Bombay AIR 1960 SC 1203 and Jhandu Lal v State of Punjab AIR 1961 SC 343).

145. In cases arising under the Income Tax Act, 1922 as well as 1961 Act, it is held that the expression 'object of general public utility' must be construed by applying the standard of customary law and common knowledge amongst the community to which the parties interested belong. This test, applied in the Trustees of the Tribune, seems to have influenced judicial thinking in the subsequent decisions as well. The object of general public utility would include all objects which promote the welfare of the general public even it includes taking up steps effecting trade, commerce or manufacture if the primary purpose is for advancement of objects of general public utility [Andhra Chamber of Commerce(supra)], even if in an insignificant manner the person makes some profit in carrying out the objects [Surat Art Silk (supra)]. In other words, any activity for the benefit of the

public or a section of the public, as distinguished from the benefit to an individual or a group of individuals, would be charitable purpose as the object is for advancement of general public utility. The expression includes all objects to promote the welfare of the public, and when an object is to promote or protect the interest of particular trade or industry that object becomes an object of public utility and would be charitable purpose (Gujarat Maritime Board (2007) 295 ITR 561 (SC) [see Commissioner of Income Tax vs. Agricultural Market Committee, (2011) 336 ITR 641 (AP)]

146. In our opinion, this could be termed as a charitable purpose which has as its motive advancement of an object of general public utility to which the exception carved out in the first proviso to Section 2(15) of the Act would not apply.

147. We may refer to and rely upon the decision of this Court in the case of ***Director of Income Tax (Exemption) vs. Sabarmati Ashram Gaushala Trust***, reported in *(2014) 44 taxmann.com 141 (Gujarat)*, wherein this Court was called upon to consider whether the activities of the respondent assessee-Sabarmati Ashram Gaushala Trust could be termed as charitable having regard to the object with which the trust was constituted. We may quote the relevant observations;



> *"What thus emerges from the statutory provisions, as explained in the speech of Finance Minister and the CBDT Circular, is that the activity of a trust would be excluded from the term 'charitable purpose' if it is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business for a cess, fee and/or any other consideration. It is not aimed at excluding the genuine charitable trusts of general*

*public utility but is aimed at excluding activities in the nature of trade, commerce or business which are masked as 'charitable purpose'.*

*Many activities of genuine charitable purposes which are not in the nature of trade, commerce or business may still generate marketable products. After setting off of the cost, for production of such marketable products from the sale consideration, the activity may leave a surplus. The law does not expect the Trust to dispose of its produce at any consideration less than the market value. If there is any surplus generated at the end of the year, that by itself would not be the sole consideration for judging whether any activity is trade, commerce or business particularly if generating 'surplus' is wholly incidental to the principal activities of the trust; which is otherwise for general public utility, and therefore, of charitable nature.*

*We are wholly in agreement with the view of the Tribunal. The objects of the Trust clearly establish that the same was for general public utility and where for charitable purposes. The main objectives of the trust are to breed the cattle and endeavour to improve the quality of the cows and oxen in view of the need of good oxen as India is prominent agricultural country; to produce and sale the cow milk; to hold and cultivate agricultural lands; to keep grazing lands for cattle keeping and breeding; to rehabilitate and assist Rabaris and Bharwads; to make necessary arrangements for getting informatics and scientific knowledge and to do scientific research with regard to keeping and breeding of the cattle, agriculture, use of milk and its various preparations, etc.; to establish other allied institutions like leather work and to recognize and help them in order to make the cow keeping economically viable; to publish study materials, books, periodicals, monthlies etc., in order to publicize the objects of the trust as also to open schools and hostels for imparting eduction in cow keeping and agriculture having regard to the trust objects.*

*All these were the objects of the general public utility and would squarely fall under section 2 (15) of the Act. Profit*

*making was neither the aim nor object of the Trust. It was not the principal activity. Merely because while carrying out the activities for the purpose of achieving the objects of the Trust, certain incidental surpluses were generated, would not render the activity in the nature of trade, commerce or business. As clarified by the CBDT in its Circular No. 11/2008 dated 19 th December 2008 the proviso aims to attract those activities which are truly in the nature of trade, commerce or business but are carried out under the guise of activities in the nature of 'public utility'. "*

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). 0n 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 vs. ITO, Delhi)

149. The Delhi High Court in the ***Institute of Chartered Accounts of India v. Director General of Income-tax (Exemptions),*** 2013 358 lTR 91/217 Taxman 152/35 taxmann.com 140 (Delhi) , observed, while disposing of a writ petition, that holding interviews for fees for the purpose of campus placements of its students does not amount to carrying on a business so as to deny exemption u/s 11 of the Act. It further observed that if the object or purpose of an institution is charitable, the fact that the institution collects certain charges does not alter the character of the institution. The Delhi High Court further observed in para 67 that “the purport of the first proviso to section 2(15) of the Act is not to exclude the entities which are essentially for charitable purpose, but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude the organizations which are carrying on regular business from the scope of "charitable purpose'". The High Court also noticed the purpose of introducing the proviso to section 2(15) of the Act from the Budget Speech of the Finance Minister while introducing the Finance Bill 2008 and reproduced the relevant extract to the Speech as under:'

> "*.....Charitable purpose" includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under "charitable purpose". Obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.”*

The expressions "business", "trade“ or “commerce" as

used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organization is charitable any incidental activity for furtherance of the object would not fall within the expressions " business". "trade" or "commerce".

**Question with regard to Section 11(1)(d) of the Act:**

150. So far as the question with regard to Section 11(1)(d) of the Act is concerned, we may only say that a charitable institution is entitled to exemption under Section 11 of the Income Tax Act. Such exemption is subject to the conditions prescribed therein. A reading of Section 11 shows that subject to the provisions of Sections 62 and 63 of the Act, the income enumerated therein shall not be included in the total income of the previous year of the person in receipt of the income. One of the source of income that is enumerated in clause (d) of sub-section (1) of Section 11 is the income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution. The fact that the donors had instructed that the interest earned shall be added to the corpus of the trust is not in dispute. If that be so, the interest earned on the contributions already made by the donors would also partake the character of income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust. If that be so, the conclusion is irresistible that the Tribunal has rightly held that the interest earned would qualify for exemption under Section 11(1)(d) of the Act.

151. In the aforesaid context, the findings of the Tribunal are as under;

*“55. On a perusal of the BCCI Infrastructure Subsidy*

*rules, we find that what is given to the assessee as infrastructure subsidy is reimbursement of 50% of costs in respect of certain expenditure on infrastructure which is inherently in the capital field. The mere fact that it is not a reimbursement to an outside party, such as a district cricket association, does not really matter. As long as the subsidy is relatable to a capital asset created by the assessee on his own or by an eligible district cricket association, as the present subsidy undisputedly is, it is outside the ambit of revenue receipt and taxable income. The very foundation of the stand of the Assessing Officer is thus devoid of legally sustainable merits. As such, there can hardly be an occasion, in principle, to hold such a subsidy as a revenue receipt or taxable income. There is not even a whisper of a discussion by the Assessing officer to the effect that infrastructure subsidy is revenue in nature. As a matter of fact, the claim is made for the subsidy only after the expenditure having been incurred. The authorities below have simply brushed aside the case and the submissions of the assessee and proceeded to hold it as an income. Looking to the nature of the subsidy, which is clearly relatable to the capital assets generated, we are unable to hold this receipt in the revenue field. We, therefore, uphold the plea of the assessee on this point as well and delete the addition of Rs 2,13,34,033/-."*

152. The Gujarat Cricket Association received corpus donation of Rs.20,69,60,338/- from the BCCI. The Assessing Officer held that it is not corpus donation and added the same to the income. Before the C.I.T (Appeals), the Association drew the attention to a letter addressed to the Officer dated 28th December, 2011 where two specific letters from the BCCI dated 12th October, .2001 and 13th October, 2001 respectively addressed to the Secretary of the Gujarat Cricket Association were produced. The letter dated 12th October, 2001 from the BCCI draws attention to the decision in the Annual General Meeting, and the resolution incorporating the said decision as follows

*"5. Chairman suggested that as already decided in working Committee henceforth the TV subsidies should be sent towards 'Corpus Fund' and this decision can also be approved by the members of this meeting. Thereafter the members unanimously approved that henceforth the TV subsidies should be sent by the Board to the Member Associations towards "Corpus Fund" instead of subsidy fund."*

153. The C.I.T.(Appeals), in his order, in para-18 noted that the above "donation of Rs.1,38,36,800/- was treated as the Corpus donation in the A.Y. 2002-03.". The aforesaid resolution mentioned in the letter of the BCCI dated 12th October, 2001, which used the word "henceforth", which means in future also, was not considered good enough by him as "a specific direction" as required by section 11(1)(d) and only on that reasoning, he held that It Is not the corpus donation. The Department did not file appeal against the said decision but the Association did file an appeal to the Tribunal against the finding of absence of specific direction in every year. The Tribunal, on page 242, para-49 reproduced from their order in A.Ys. 2004-05 to 2007-08 pointing out that the "similar amounts received in the earlier years had been treated all along as the corpus donation". 'Earlier Year' means A.Ys. 2002-03 and 2003-04. On page 245, the Tribunal reproduced para-15 of their order for the A.Ys. 2004-05 to 2007-08 as follows:



"*15. We find that, at pages 46 and 47 of the paperbook, the assessee has filed specific confirmations to the effect that these amounts were corpus donations. We have also perused the BCCI resolution no 5 dated 29th September 2001 which specifically states that the TV subsidies should henceforth be sent to the Member Associations towards "corpus funds". There is no dispute that the TV subsidy in question is sent under this resolution. On these facts, and In the light of the provisions of Section 11(1)(d) which only require the income to be "by way of*

*voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution", we are of the considered view that any payments made by the BCCI, without a legal obligation and with a specific direction that it shall be for corpus fund as admittedly the present receipt is, is required to be treated as corpus donation not includible in total income. We are unable to find any legal support for learned CIT(A)'s stand that each donation must be accompanied by a separate written document. The contribution has to be voluntary and it has to be with specific direction that it will form corpus of the trust'. These conditions are clearly satisfied. Any payment which the assessee is not under an obligation to make, whatever be the mode of its computation, is a voluntary payment, and, any payment which is with a specific direction that it for corpus fund is a corpus donation. In our considered view, even without the two specific confirmations filed by the assessee, in the light of the BCCI resolution under which the payment is made and in the light of the payment not being under any legal obligation, the conditions under section 11(1)(d) are satisfied. We, therefore, uphold the plea of the assessee. The Assessing Officer is accordingly directed to delete this addition of Rs.1,58,00,000."*

154. In the course of the hearing of these tax appeals, the learned counsel appearing for the respective assessee also submitted that the promotion of sports and games would fall within the ambit of the term "education" so as to fall in the first limb of the definition of the term charitable purpose. In this regard, our attention was drawn to the Circular No.395 dated 24th September, 1984 issued by the Central Government in its Finance Department. The circular reads thus;

**"CIRCULAR:NO.395 [F.NO.181(5)82/IT(A-I)-SECTION 2(15) OF THE INCOME-TAX ACT, 1961-CHARITABLE PURPOSE-WHETHER PROMOTION OF SPORTS AND GAMES CAN BE CONSIDERED TO BE CHARITABLE**

**PURPOSE.**

**SECTION 2(15) OF THE INCOME-TAX ACT, 1961-CHARITABLE PURPOSE-WHETHER PROMOTION OF SPORTS AND GAMES CAN BE CONSIDERED TO BE CHARITABLE PURPOSE**

Circular: No.395 [F.NO.181(5) 82/IT(A-I), DATED 24.9.1984.

> 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."

155. Mr. Bhatt raised a strong objection as regards the aforesaid issue. According to Mr. Bhatt, although the submission in this regard was canvassed before the ITAT, the ITAT thought fit not to touch the said issue for the reason assigned in para-41 of the impugned judgment. Para-41 reads thus;

> "*We have noted that all the learned representatives have advanced detailed arguments on the proposition that since the assessee cricket associations are engaged in educational activities, it is not really material whether or not the assessee has engaged itself in the activities in*

*the nature of trade, commerce or business. However, in the light of our categorical finding that the assessee cricket associations were not really engaged in the activities in the nature of trade, commerce or business, it is not really necessary to adjudicate on this plea. We leave the question open for adjudication in a flt case."*

*156..* In such circumstances, referred to above, Mr. Bhatt, the learned senior counsel, submitted that this Court may not go into the issue whether the activities of the Association could be termed as imparting education in sports. In other words, imparting training in sports whether could be termed as an educational activity falling within the ambit of Section 2(15) of the Act. In this regard, the submission canvassed on behalf of the assessees is that imparting training in sports is nothing but an education activity and, therefore, the assessees would fall in the first limb of the definition of "charitable purpose" as defined under Section 2(15) of the Act and not under the residual clause of "advancement of any other object of general public utility". The argument canvassed on behalf of the assessee is that if that be the situation, the Proviso to Section 2(15) would not apply at all. At this stage, we deem it appropriate to quote Section 260A(6) of the Act, 1961 which reads thus;

*"The High Court may determine any issue which-*

*(a) has not been determined by the Appellate Tribunal, or*

*(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section(1)."*

*157.* The plain reading of the aforesaid provision indicates that the High Court may determine any issue which has not been

determined by the Appellate Tribunal.

158. It is not in dispute that in none of the tax appeals, any substantial question of law as regards whether training in sports (game of cricket) would fall within the ambit of the term "education" so as to fall in the first limb of the definition of the term "charitable purpose" as defined under Section 2(15) of the Act. In the absence of any substantial question of law being formulated in this regard, whether we should go into this question and express any opinion of our own is something we should look into closely.

159. Clause (a) of sub-section (6) to Section 260A of the Act states that the High Court may decide an issue, which is not determined by the Appellate Tribunal. The word "determined" means that the issue is not dealt with, though it was raised before the Tribunal. The word "determined" presupposes an issue was raised or argued but there is failure of the Tribunal to decide or adjudicate the same. In a given case, a substantial question of law may arise because of the facts and findings recorded by the Tribunal, but the said issue/question is not determined. In such cases, an appeal under Section 260A of the Act can be entertained. This would depend upon the facts of each case and the reasoning and findings recorded by the Tribunal.



160. In the aforesaid context, we may refer to a decision of the Supreme Court in the case of ***M. Janardhana Rao vs. Joint Commissioner of Income Tax***, *2005 (273) ITR 50*, wherein the Supreme Court has observed as under;

"Under Section 260A(2)(c) the appeal under Section 260A

shall be (a) in the form of a memorandum of appeal and (b) precisely stating therein the substantial question of law involved. Under Section 260A(3) when the High Court is satisfied that a substantial question of law is involved in any case it shall formulate that question and under section 260A(4) the appeal is to be heard only on the question formulated under the preceding sub- section. It has to be noted that in terms of Section 260A(4) the respondent in the appeal is allowed to argue at the time of hearing of the appeal that the case does not involve a substantial question of law as formulated. However, proviso to Section 260A(4) specifically lays down that nothing in Section 260A(4) shall be deemed to take away the power of the High Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, in case it is satisfied that the case involves such question. Section 260A(5) provides that the High Court to decide the question of law as formulated and to deliver the judgment thereon containing grounds on which such decision is founded.

Sub-section (6) empowers the High Court to determine any such issue which has not been determined by the Appellate Tribunal or has been wrongly determined by the Appellate Tribunal by reasons of a decision of such question of law as is referred to in sub-section (1) It is important to note that appeal to the High Court lies only when a substantial question of law is involved. It is essential for the High Court to first formulate question of law and thereafter proceed in the matter.

Without insisting on the statement of substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Court is not empowered to generally decide the appeal under Section 260A without adhering to the procedure prescribed under Section 260A. Further, the High Court must make every effort to distinguish between a question of law and a substantial question of law. In exercise of powers under Section 260A, the findings of fact of the Tribunal cannot be disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in Section 260A must be strictly fulfilled before an appeal can be

maintained under Section 260A. Such appeal cannot be decided on merely equitable grounds.

An appeal under Section 260A can be only in respect of a `substantial question of law'. The expression `substantial question of law' has not been defined anywhere in the statute. But it has acquired a definite connotation through various judicial pronouncements. In Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning & Mfg. Co. Ltd., AIR (1962) SC 1314, this court laid down the following tests to determine whether a substantial question of law is involved. The tests are: (1) whether directly or indirectly it affects substantial rights of the parties, or (2) the question is of general public importance, or (3) whether it is an open question in the sense that issue is not settled by pronouncement of this Court or Privy Council or by the Federal Court, or (4) the issue is not free from difficulty, and (5) it calls for a discussion for alternative view. There is no scope for interference by the High Court with a finding recorded when such finding could be treated to be a finding of fact.

On reading of impugned judgment of the High Court it is clear that no substantial question of the law was formulated at the time of admission of the appeal. Obviously, the High Court has formulated questions subsequently after conclusion of arguments for the purpose of adjudication. That is clearly against the scheme of Section 260A. Additionally , grievance that certain points which were urged have not been dealt with by the High Court appears to be correct. "

161. The aforesaid decision of the Supreme Court has been exhaustively discussed by a Division Bench of the Gauhati High Court in the case of ***Meghalaya Steels Ltd. & Ors. vs. Commissioner of Income Tax***, *2013 (358) ITR 551*, wherein the following has been observed;

> *"It follows, therefore, that the satisfaction of the High Court that the appeal involves substantial question of law is sine qua non for the appeal to be admitted for hearing. This position of law will not remain in doubt, when we proceed to minutely examine the provisions embodied in section 260A.*

*Sub-section (2) of section 260A permits the Chief Commissioner or Commissioner as well as an assessee, who may feel aggrieved by the order passed by an appellate Tribunal, to appeal to the High Court provided that the appeal is filed within one hundred and twenty days from the date on which the order, appealed against, is received by the assessee or the Chief Commissioner or the Commissioner, as the case may be. This apart, as indicated above, the appeal has to be in the form of memorandum of appeal precisely stating therein the substantial question or questions of law involved.*

*Thus, apart from the period of limitation within which an appeal has to be preferred and the form in which the appeal has to be preferred, section 260A necessitates that the memorandum of appeal clearly states the substantial question or questions of law, which, according to the appellant, is, or are, involved in the appeal.*

*Sub-section (3) of section 260A shows that when an appeal is filed, as prescribed by sub-section (2), stating the substantial question or questions of law involved, this would not, automatically, make the appeal admissible in law inasmuch as sub-sections (1) and (3) of section 260A make it clear that if an appeal, preferred under section 260A, does not state the substantial question or questions of law involved, then, the appeal may not be admitted by the High Court.*

*Coupled with the above, sub-section (3) of section 260A lays down that where the High Court is satisfied that a substantial question of law is involved in an appeal, it shall formulate that question. Conversely speaking, if the High Court finds, on examination of a memorandum of appeal, that the appeal does not give rise to a substantial question of law, the High Court is duty bound to dismiss the appeal in limine. If, however, the High Court takes the view that appeal has given rise to substantial question or questions of law, then, the High Court is under legal obligation to formulate the substantial question or questions of law, which, according to the High Court, the appeal has raised, and, then, the High Court shall hear the appeal on the question or questions so formulated.*

*When an appeal is heard, in the light of sub-section (4) of section 260A on the substantial question or questions of law, which the court has formulated in the appeal, the*

*respondents shall be allowed to argue, at the time of hearing of the appeal, that no such substantial question or questions of law, as formulated by the High Court, has or have arisen for being answered in the appeal.*

*What further follows from a close reading, as a whole, of section 260A is that if the High Court decides to give notice to a respondent, in an appeal, before formulating the substantial question or questions of law, the respondent, in the appeal, shall have the right to satisfy the*

*High Court that the substantial question or questions of law, as contended by the appellant, is, or are, not really involved; or else, there would be no meaning and purpose in giving notice to the respondent, in the appeal, before the appeal is admitted by formulating the substantial question or questions of law on which, in the view of the High Court, the appeal needs to be heard.*

*In other words, if a respondent, in appeal, made under section 260A, is given notice before admission of the appeal, it necessarily follows that the respondent has been given an opportunity by the High Court to satisfy the High Court that no substantial question or questions of law, as contended by the appellant, has or have arisen for determination and it would be thereafter that the High Court would take a decision whether the appeal has or has not given rise to any substantial question of law and if the High Court finds that the substantial question or questions of law has or have arisen, it shall admit the appeal by formulating, for hearing, such substantial question or questions of law, which, according to the High Court, the appeal has given rise to for adjudication and, then, answer the question or questions, so formulated, by according opportunity of hearing to the parties concerned on the substantial question or questions of law, which the High Court may have formulated.*

*Logically extended, what the above scheme of hearing of the appeal conveys is that if the High Court, without admitting the appeal, chooses to issue, in a given appeal, notice to the respondent, in the appeal, to have the latter's say in the matter, the parties to the appeal would have the right to address the court. Necessarily, therefore, at the stage of admission, in such a situation, while the appellant can address the court to show as to*

*how a substantial question of law or more than one substantial question of law can be said to have arisen, for determination, in the appeal, the respondent would have equally good right to try to satisfy the court on merit that the substantial question or questions of law, which the appellant contends to have arisen, has or have not arisen. If, thereafter, the High Court is satisfied that a substantial question or questions of law is, or are, indeed, involved, notwithstanding the submissions made to the contrary by the respondent, then, the High Court has to formulate the substantial question or questions of law on which, according to the High Court, the appeal needs to be heard and it is only on the substantial question or questions of law, so formulated, that hearing of the appeal would take place and, on this hearing, both the parties to the appeal would have the right to place their arguments.*

*Obviously, while the appellant would try to show, at the time of hearing of the appeal, on its admission, that the substantial question or questions of law has or have arisen for determination and needs or need to be decided, the respondent would resist that substantial question of law (as suggested by the appellant and/or formulated by the High Court), does not really arise. In short, hearing of an appeal, under section 260A, can, in a given case, be in two different stages — once, before admission of the appeal, and, once again, after admission of the appeal.*

*We may, however, hasten to add that there is no impediment, on the part of the High Court, to admit an appeal without giving notice to the respondent; but if the High Court decides to give a notice before admitting the appeal and if it decides to hear the respondent on the admission of the appeal, the High Court cannot straight away allow the appeal on the basis of the substantial question or questions of law, which the appellant may have formulated inasmuch as section 260A provides 'that if the High Court finds that the appeal needs to be heard, the High Court is legally bound to formulate the substantial question or questions of law, which, according to the High Court, has or have arisen for determination. Put shortly, an appeal, under section 260A, can be heard subsequent to the formulation of the substantial question of questions of law, which, according to the High Court, has or have arisen for determination.*

*We may hastily add that the proviso to sub-section (4) of section 260A empowers the High Court to formulate any other substantial question of law if it is satisfied that the case involves such a question, though the appellant may not have raised such a substantial question of law.*

*Sub-section (5) of section 260A makes it crystal clear that the appeal can be decided only on the substantial question of law, which has been formulated by the High Court, and not on the basis of the substantial question or questions of law, which the appellant may have mentioned in the memorandum of appeal, and the High Court has to deliver the judgment not on the substantial question or questions of law which an appellant may have framed, but only on that substantial question of law or those substantial questions of law, which the High Court has already formulated.*

*It clearly follows, therefore, that no appeal can be heard, as already pointed out above, until the time the High Court is satisfied that the appeal involves a substantial question of law for determination and no appeal can be heard until the time the substantial question of law or questions of law, as the case may be, has or have been formulated by the High Court for the purpose of hearing of the appeal.*

*Incidentally, one may also point out that the High Court, under section 260A(6), has the power to determine an issue, which has not been determined by an appellate Tribunal or has been wrongly determined by the appellate Tribunal.*

*Sub-section (7) makes it further clear that the provisions, relating to second appeal, as embodied in section 100, CPC, shall, as far as may be, applied to the appeals under section 260A.*



*The Supreme Court has pointed out, at para 11, in **M. Janardana Rao v. Joint Commissioner of Income-tax**, (2005) 2 SCC 324, which Mr. Bhattacharjee, learned senior counsel, has relied upon, that under section 260A(c), the appeal, under section 260A, shall be — (a) in the form of memorandum of appeal, and (b) the memorandum of appeal must precisely state the substantial question or questions of law involved and section 260A(3) lays down that when the High Court is satisfied that a substantial question of law is involved, in a given appeal, it shall formulate that question and the*

*appeal, in terms of the provisions of section 260A(4), has to be heard only on the question formulated by the High Court and that in terms of section 260A(4), the respondent, in appeal, has to be allowed to argue, at the time of hearing of the appeal, (wherein the substantial question or questions of law-stands or stand already formulated by the High Court), that the appeal does not involve a substantial question or questions of law as has been, or have been, formulated by the High Court.*

*In M. Janardana Rao (supra), the Supreme Court has also clarified, at para 11, that the proviso to section 260A(4) lays down that nothing in section 260A(4) shall be deemed to take away the power of the High Court to hear, for reasons to be recorded, an appeal on any substantial question or questions of law not formulated by it provided that the High Court is satisfied that the case involves such a question. In no uncertain words, the Supreme Court has held, at para 11, in M. Janardana Rao (supra), that the High Court cannot, but decide the substantial question of law, as formulated by it under section 260A, and deliver judgment thereon containing the grounds on which its decision is founded. The observations, appearing at para 11, in' M. Janardana Rao (supra), read as under:*

*"11. Various essentials as culled out from the relevant provisions of the Act are as follows:*

*Under section 260A(2)(c) the appeal under section 260A shall be (a) in the form of a memorandum of appeal, and (b) precisely stating therein the substantial question of law involved. Under section 260A(3) when the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and under section 260A(4) the appeal is to be heard only on the question formulated under the preceding sub-section. It has to be noted that in terms of section 260A(4) the respondent in the appeal is allowed to argue at the time of hearing of the appeal that the case does not involve a substantial question of law as formulated. However, the proviso to section 260A(4) specifically lays down that nothing in section 260A(4) shall be deemed to take away the power of the High Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, in case it is satisfied that the case involves such question. Section 260A(5) provides*

*that the High Court is to decide the question of law as formulated and to deliver the judgment thereon containing grounds on which such decision is founded."*

*(Emphasis is added)*

*Leaving none in doubt, the Supreme Court, in M. Janardana Rao (supra), has laid down the scope of section 260A by observing, in clear terms, that it is essential for the High Court to, first, formulate a substantial question of law and, thereafter, proceed in the matter.*

*In other words, clarifying the scope of section 260A, the Supreme Court, in* ***M. Janardana Iiao v. Joint Commissioner of Income-tax****, (2005) 2 SCC 324, has pointed out, at para 13, thus:*

*"13. It is important to note that the appeal to the High Court lies only when a substantial question of law is involved. It is essential for the High Court to first formulate a question of law and thereafter proceed in the matter."*

*(emphasis is added)*

*The Supreme Court has pointed out, in M. Janardana Iiao (supra), that the conditions, mentioned in section 260A, must be strictly fulfilled before an appeal can be maintained under section 260A meaning thereby that if the appellant is unable to show that a substantial question of law has arisen for determination, there is no impediment, on the part of the High Court, to dismiss the appeal without even admitting the appeal. Logically extended, it would mean that if the respondent has been given notice before the High Court decides to admit an appeal, it would remain open to the respondent to show that no substantial question of law has arisen and in order to show that no substantial question of law has arisen, it would be, ordinarily, necessary for the respondent to make his submission on merit if the respondent seeks to satisfy the High Court that no substantial question of law for determination has arisen in the appeal. The relevant observations, appearing in this regard, in M. Janardana Iiao (supra), read as under:*

*"14. Without insisting on the statement of substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Court is not empowered to generally decide the appeal*

*under section 260A without adhering to the procedure prescribed under section 260A. Further, the High Court must make every effort to distinguish between a question of law and a substantial question of law. In exercise of powers under section 260A, the findings of fact of the Tribunal cannot be disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in section 260A must be strictly fulfilled before an appeal can be maintained under section 260A. Such appeal cannot be decided on merely equitable grounds."*

*(emphasis is added)*

*A three Judge Bench, in M. Janardana Rao (supra), culled out the test to determine as to what question can be treated as a substantial question of law. Having referred, in this regard, to the case of Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd., (AIR 1962 SC 1314), the Supreme Court has hold, at para 15, in M. Janardana Rao (supra), as under:*

*"15. An appeal under section 260 A can only be in respect of a "substantial question of law". The expression "substantial question oflaw" has not been defined anywhere in the statute. But it has acquired a definite connotation through various judicial pronouncements. In Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd., this court laid down the following tests to determine whether a substantial question of law is involved. The tests are: (1) whether directly or indirectly it affects substantial rights of the parties, or (2) the question is of general public importance, or (3) whether it is an open question in the sense that the issue is not settled by pronouncement of this court or Privy Council or by the Federal Court, or (4) the issue is not free from difficulty, and (5) it calls for a discussion for alternative view. There is no scope for interference by the High Court with a finding recorded when such finding could be treated to be a finding of fact."*

*(emphasis is added)*

*In M. Janardana Rao (supra), having found that the High Court had not formulated any substantial question of law at the time of admission of the appeal, but formulated,*

*for the purpose of adjudication of the appeal, the question subsequent to the conclusion of arguments, the Supreme Court took the view that the procedure, so adopted, is clearly against the scheme of section 260A.*

*In the face of the facts, as indicated above, the Supreme Court, in M. Janardana Rao, (supra) interfered with the order, which had been passed, in appeal, by the High Court.*

*In the case at hand, too, if this court finds, in the light of the clearly laid down position of law, in M. Janardana Rao (supra), that this court formulated the substantial question or questions of law for adjudication subsequent to the admission of the appeal, as is contended by the respondent-opposite party, then, such a breach by the High Court would make its judgment and order open to review if the power of review is, otherwise, found to be available to the High Court in a case of present nature. The relevant observations, appearing at para 1.6, in M. Janardana Rao (supra), read as under:*

*"16. On reading of the impugned judgment of the High Court it is clear that no substantial question of law was formulated at the time of admission of the appeal. Obviously, the High Court has formulated questions subsequently after conclusion of arguments for the purpose of adjudication. That is clearly against the scheme of section 260A. Additionally, grievance that certain points which were urged have not been dealt with by the High Court appears to be correct."*

*(emphasis is added)*

*Relying heavily on the case of* ***Kanan (dead) by Lrs. v. V.S Pandurangam (dead) by Lrs****., (2007) 15 SCC 157, Mr. Pathak, learned Additional Solicitor General, has submitted that the mere omission to frame substantial question of law before hearing of the appeal cannot be a reason for interfering with the impugned, judgement and order, dated 16.9.2010, unless prejudice is shown to have been caused.*

*In Kanan (Dead) (supra), the Supreme Court has held that when the parties, in appeal, go to appeal knowing fully well the issue, the order, which is finally passed in the second appeal, cannot be interfered with unless prejudice is shown to have been caused as a result of omission to frame a substantial question of law.*

*While considering the case of Kanan (supra), it may be noted that, while the decision, in Kanan (supra), has been rendered by a two-Judge Bench of the Supreme Court, the decision, in* ***M. Janardana Rao v. Joint Commissioner of Income-tax****, (2005) 2 SCC 324, has been rendered by a three-Judge Bench of the Supreme Court. In M. Janardana Rao (supra), the Supreme Court has emphasized, at para 13, that it is essential for the High Court to, first, formulate a question of law and, thereafter, proceed with the matter and, at para 14, the Supreme Court has held, in M. Janardana Rao (supra), that the conditions, mentioned in section 260A, must be strictly fulfilled and that such an appeal cannot be decided merely on equitable grounds. In fact, in M. Janardana Rao (supra), the Supreme Court interfered with the order, made in the appeal under section 260A, on the ground that no substantial question of law had been framed at the time of the admission of the appeal and that the High Court had formulated, for the purpose of adjudication, the questions subsequent to the conclusion of the arguments, which procedure is against the scheme, which section 260A propounds.*

*In the face of the decision, in M. Janardana Rao (supra), there can be no escape from the conclusion that disposal of an appeal without formulating the substantial questions of law and without hearing the parties, on such substantial questions of law, is illegal even if the High Court formulates the question, for the purpose of adjudication, subsequent to the conclusion of the arguments.*

*The question, therefore, of prejudice having been caused or not does not arise. This apart, in the case at hand, it is the grievance of the review petitioners that as substantial questions of law had not been formulated for the purpose of hearing of the appeal, the review petitioners could not make their submissions on the merit of the substantial questions of law, which the High Court has, subsequent to the admission hearing, ultimately, decided inasmuch as one of the issues in the appeal has been decided against the review petitioners without according them an opportunity to have their say after making it clear to them that the substantial questions of law, which the memorandum of appeal had mentioned, were the substantial questions of law, which, even according to the High Court, had arisen for determination*

*and these were the questions, which would be finally taken up for adjudication by the court.*

*Coupled with the above, the decisions, which have been referred to in* ***Kanan (dead) by Lrs. v. VS. Pandurangam (dead) by Lrs****., (2007) 15 SCC 157, are not on substantial questions of law, but on the question of issues. It is trite that even if an issue was not framed, it would not disable the court from refusing to interfere with a decree if the parties were, otherwise, well aware of the issues and if the omission to frame the issues has not caused any prejudice to either of the parties.*

*In the face of the fact that no substantial question of law was formulated by the High Court before the appeal was heard for the purpose of disposal and this court had not made it clear to the parties, in the appeal, that the appeal would be disposed of on hearing the parties concerned at the admission stage itself, it logically follows that the decision, rendered in the appeal, was contrary to, and in violation of, the mandatory requirements as regards the procedure to be followed in an appeal under section 260A. Consequently, the impugned judgment and order, dated 16.9.2010, cannot survive."*

*162.* In view of the aforesaid discussion, we are not going into the question whether the assessees could be said to be engaged in imparting education in the form of promoting the game of cricket.

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 assessees 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 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.

(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 assessees, is the object and the activities of the assessees 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.



**Discussion of case law:**

164. We shall now proceed to deal with the decisions, upon which, strong reliance has been placed on behalf of the

Revenue.

165. In the case of Truck Operators Association (supra), the assessee Truck Operators Association had filed an application in Form No.10A for registration of the Society under Section 12AA of the Act along with the certificate of registration granted by the Registrar of Societies and a copy of Memorandum and By-Laws of the Society. The Commissioner rejected the application holding that the Association was not formed for advancement of object of general public utility within the meaning of Section 2(15) of the Act. The Tribunal allowed the assessee's appeal and directed the Commissioner to grant the registration under Section12AA to the assessee-Society. The Revenue went in appeal before the High Court of Punjab & Haryana. The High Court thought fit to allow the appeal, observing as under;

> *"9. On examination of the objects and the purpose of the Association in the present case, it emerges that the respondent-Association is union of Truck Operators constituted for facilitating its members to carry on the trade of transportation and not to allow the outsider or non-member to undertake any business activity within the precincts of Hansi Town/village. The Association charges fees from its members before the transportation on the basis of the distance involved. The membership and payment of fees are mandatory and the element of voluntary contribution is missing. The association is vigorously pursuing transportation business by receiving freight charges on behalf of its members. The welfare activities adopted for the truck drivers, cleaners and mechanics of the truck owners are in the nature of staff welfare activities, as are common in other business organizations which cannot be termed for general public utility.*
>
> 17. *The assessee was a union of transport operators registered as a Trade Union under the* ***Indian Trade***

> ***Unions Act, 1926.*** *On analysis of the objects of the union for which it was constituted, it was discerned that the surplus funds of the trade union could be distributed among the members at the time of its dissolution. In other words, it was held that the rules and regulations do not impose a legal obligation on the assessee or its members to hold the income of the assessee only for charitable purposes and the element of private gain could not be excluded. The union was, thus, held not to be a Charitable Institution."*

*166.* Thus, on the facts of that case, the High Court took the view that the assessee was not carrying on the activities for charitable purposes and, therefore, was not entitled to the benefit of registration under Section 12AA of the Act. One important aspect which was noticed by the High Court was that the surplus funds of the Trade Union could be distributed among the members at the time of its dissolution. The High Court noticed that the rules and regulations did not impose a legal obligation on the assessee or its members to hold the income of the assessee only for charitable purposes and the element of private gain could not be excluded. This decision, in our opinion, is of no avail to the Revenue.

167. In National Institute of Aeronautical Engg. Educational Society (supra), the assessee was an educational society. It moved an application before the Commissioner for grant of registration under Section12AA of the Act. The Commissioner, after examining the record before him, concluded that the assessee was not carrying any charitable activity within the meaning of Section 2(15) as it was charging substantial fees from the students and making huge profits from that business. Consequently, the assessee's application was rejected. The Tribunal, however, allowed the appeal of the assessee. The Revenue went in appeal before the High Court of Uttarakhand.

The High Court, while allowing the appeal preferred by the Revenue, observed as under;

> *"10. Section 12AA of the Act provides the procedure for registration. Clause (a) of sub Section (1) of Section 12AA empowers the CIT to call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust or institution and may also make such inquiries, as he may deem necessary in this behalf. Said provision in Section 12AA makes it clear that CIT is not supposed to allow registration with blind eyes. In the present case, CIT has considered the relevant papers before him, which included the income and expenditure accounts of the previous years after the society got registered with the Assistant Registrar Firms, Societies and Chits. The CIT, after considering the record before him, has observed that the society (present respondent) is charging substantial fees from the students and making huge profits.*
>
> *11. After considering the submissions of the learned Counsel for the parties, we are of the view that mere imparting education for primary purpose of earning profits cannot be said to be a charitable activity. We are of the firm view that, in the expression 'charitable purpose', 'charity' is the soul of the expression. Mere trade or commerce in the name of education cannot be said to be a charitable purpose. And Commissioner Income Tax has to satisfy itself as provided under Section 12AA of the Act before allowing the registration. Question of law stands answered."*



*168.* Thus, in the aforesaid case, the High Court took the view that as the Society was charging substantial fees from the students and making huge profits, it could not be said that the assessee was carrying on any charitable activity. This decision also is of no avail to the Revenue.

169. In Hyderabad Race Club (supra), the assessee was a Society registered under the Societies Registration Act, 1860 and the objects, for which, the assessee was established were specified in Para No.3 of the Memorandum of Association. The objects were to encourage, promote the scientific breeding and training of horses, ponies and mules and to carry on the business of a race club in all its branches etc. The ITO rejected the assessee's claim that it was a charitable institution and that its income was exempt under Section 11 on the ground that the assessee was carrying on a business by conducting races which was an activity for profit. On appeal by the assessee, the Tribunal upheld the ITO's order. The matter was ultimately heard by a Full Bench of the High Court of Andhra Pradesh. While answering the substantial question of law in favour of the Revenue and against the assessee, the Full Bench observed as under;

> *"9. It would thus be seen that the scientific breeding and training of horses and the imparting of instructions relating to horse breeding in all its aspects, is shown as an incidental or ancillary object in the memorandum of association of the assessee-company which was established in April 1971. Learned counsel submits that in the memorandum of association constituting the assessee as a company in April, 1971, carrying on the business of a race club in all its branches had to be specified as the main object in order to meet the requirements of the company law, although in point of fact the main object for which the assessee-company was established, was what was stated as an incidental or ancillary object against sl. no. 4 referred to above. It is pointed out that for the purpose of incorporating a company, the business which the company carries on has to be specified as the main object and all other objects have to be specified as incidental or ancillary objects, and this classification for the limited purpose of the Companies Act should not, according to the learned counsel, be confused with the real object for which the*

*assessee-company was established. According to the learned counsel, the basic or dominant object for which the assessee was established, whether as a society prior to April, 1971, or as a company from April, 1971, was to encourage and promote the scientific breeding and training of horses and to impart instructions in and to diffuse useful and scientific knowledge of horse breeding and to encourage horse breeding in all its aspects which, according to the learned counsel, are objects of general public utility. The other objects specified, whether in the memorandum of association relating to the assessee as a society or in the memorandum of association relating to the assessee as a company, are all subservient to the main object of "scientific horse breeding". Consequently, the doctrine of dominant or primary object should be invoked in the present case in order to examine whether the dominant or primary object for which the assessee is established, is charitable in character.*

10. *We are unable to agree with the learned counsel that the dominant or primary object for which the assessee is established either as a society or as a company, is the scientific breeding of horses, and not for the purpose of carrying on business in conducting races. Referring to the memorandum of association of the assessee as a society under the Societies Registration Act, we see no ground to regard the object specified in clause (c) of para 3 as a power conferred on the society to carry on the business to advance and promote the so-called main object of scientific breeding and training of horses. In the first place, paragraph 3 specifically mention that carrying on the business of a race club is an object for which the society is established. It is not in the nature of a power conferred on the society. It is true that some of the objects specified in para 3 of the memorandum of association relate to powers conferred on the society and there is, to some extent, a mix-up of the objects and powers in pars. 3. We have, however, no difficulty in regarding the carrying on of the business by conducting races as being in the nature of an objects rather than a power. If any doubt in the above regard subsists as regards the memorandum of association of the society, that is clearly set at rest while setting out the objects for which the assessee was established as a company. As we have already referred to above, the memorandum of association of the assessee after its*

*incorporation in April, 1971, as a company clearly states that the main object to be pursued by the assessee-company on its incorporation, is to carry on the business of a race club in all its branches. Even when the assessee was a society, carrying on the business of a race club was obviously the main object although it was mixed up with other objects, as there was no statutory requirement that the main objects and ancillary objects should be separately specified in the case of society. We are unable to appreciate the learned counsel's contention that notwithstanding the memorandum of association specifying the carrying on of the business of a race club as the main object for which the assessee-company was incorporated, we should hold that the main object for the purpose of the Companies Act is the carrying on of the business of a race club, and the main object for the purpose of the I.T. Act is the scientific breeding of horses. We must reject the contention that the main objects for which the assessee was established should be regarded differently for the purpose of the companies Act and the I.T. Act. The provision contained in the memorandum of association is unlearned counsel. We have, therefore, no difficulty in coming to the conclusion that the main object for which the assessee was established whether as a society or as a company, was to carry on the business of a race club and all other objects are either incidental or ancillary to the above main object. Thus, even invoking the doctrine of dominant or primary object, we must hold that the assessee was established with the dominant or primary object of carrying on the business of a race club by conducting a races which, on the own admission of the learned counsel, is not charitable in character. This itself is sufficient to demolish the assessee's claim that it must be regarded as having been established for charitable purposes by invoking the doctrine of dominant or primary object."*



170. Thus, on the facts of that case, the Full Bench, ultimately, held that the assessee was established with the dominant or primary object of carrying on the business of a race club by conducting races which cannot be termed as charitable in character. This decision also is of no avail to the Revenue in

the case at hand.

171. In Dharmaposhanam Co. (supra), the objects of the assessee Company were to raise funds by conducting kuries with Company as foreman, receiving donations and subscriptions by lending money on interest and by such other means as the Company would deem fit to do the needful for the promotion of charity, industries etc. The appellant derived income from the property, money lending and business in kuries or chit funds held under the trust and claimed exemption from tax in respect of the said income under Section 11. The Tribunal held that the assessee was not entitled to exemption. The matter went right upto the Supreme Court. The Supreme Court, while dismissing the appeal of the assessee, observed as under;

> *"On a consideration of the rival contentions of the parties, the position appears to be this. The appellant can succeed in his claim to exemption under section 11 (1)(a) of the Act if the income from the business of conducting kuries and of money lending can be said to be income derived from property held under trust wholly for charitable purposes. It is well settled that business is "property" within the meaning of section 11(1)(e). C.I.T. v. Krishna Warrier, (1964) 53 ITR 176 (SC). That is also evident from the provisions of section 11 (4), and reference may be made also to section 13(1)(bb). Further, it is apparent from the terms of the Memorandum of Association and the Articles of Association that the business of conducting kuries and of money lending is held under trust. The question is : Is the business held under trust for charitable purposes ?*
>
> *There can be little doubt that when sub-clause (a) of clause 3 of the Memorandum says "To raise funds by conducting kuries, with company as foreman, receiving donations and subscriptions by lending money on interest and by such other means as the company deem fit". it refers to powers conferred on the appellant to raise*

*money in aid of, and for the purpose of accomplishing, the objects mentioned in sub-clause (b) of clause 3 of the Memorandum. Upto June 6, 1965 sub-clause (b) read :*

*"To do the needful for the promotion of charity, education, industries, etc. and public good".*

*Can all the purposes mentioned in sub-clause (b) be described as charitable purposes ? Section 2(15) of the Act defines the expression "charitable purpose" as including "relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit." Two objects in sub-clause (b) of clause (3) of the Memorandum need to be considered, "industries" and "public good". As regards the latter, the decision on what should be the "purposes of common good" was left to the general meeting by Article 58 of the Articles of Association. Having regard to the context in which these words appear in the Memorandum and the Articles, they must evidently be referred to the residue general head in the definition in section 2(15) of the Act, that is to say, "the advancement of any other object of general public utility..... But this head is qualified by the restrictive words "not involving the carrying on of any activity for profit." The operation of an industry ordinarily envisages a profit making activity, and so far as the advancement of public good is concerned, it is open to the appellant to pursue a profit making activity in the course of carrying out that purpose, which of course depends on the nature and purpose of the "public good. Nowhere do we find in the material before us any limiting provision that if the appellant carries on any activity in the course of actually carrying out those purposes of the trust it should refrain from adopting and pursuing a profit making activity. In Sole Trustee, Loka Shikshana Trust v. Commissioner of Income-Tax, Mysore, (1975) 101 ITR 234, 243 (SC), Khanna and Gupta, JJ., dealing with a case in which the assessee carried on a business in the course of the actual carrying out of a primary purpose of the trust, rejected the claim to exemption and declared :-*

*"The fact that the appellant trust is engaged in the business of printing and publication of newspaper and journals and the further fact that the aforesaid activity yields or is one likely to yield profit and there are no restrictions on the appellant-trust earning profits in the*

*course of its business would go to show that the purpose of the appellant- trust does not satisfy the requirement that it should be one 'not involving the carrying on of any activity for profit..... Ordinarily profit is a normal incident of business activity and if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the Court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity for profit."*

*Beg, J., in the same case, observed*

*"The deed puts no condition upon the conduct of the newspaper and publishing business from which we could infer that it was to be on "no profit and no loss" basis .... That character (i.e. of the deed) is determined far more certainly and convincingly by the absence of terms which could eliminate or prevent profit making from becoming the real or dominant purpose of the trust. It is what the provisions of the trust make possible or permit coupled with what had been actually done without any illegality in the ;Nay of profit making, in the case before us, under the cover of the provisions of the deed, which enable us to decipher the predominantly profit making character of the trust."*

*In a subsequent case, Commissioner of Income-Tax, Kerala v. Cochin Chamber of Commerce and Industry, (1975) 101 ITR 796 (SC), this Court extended the test to income derived from activities carried on in aid of, and incidental to, the primary object of the trust. We may note that no attempt has been made by the appellant before us to cast doubt on the validity of the observations made in those two cases, and we proceed on the footing that they convey the true content of the law.*

*It is, therefore, apparent that among the objects contained in the original unamended sub-clause (b) of clause (3) of the Memorandum are objects which, while referable to the residual general head in the definition of "charitable purpose" in section 2(15) of the Act, nonetheless do not satisfy the condition that they should not involve "the carrying on of any activity for profit." The result is that the objects "industries" and "common good"*

*cannot be described as "charitable purposes". What follows then is this, that the said sub-clause (b) can be said to contain some objects which are charitable and others which are non- charitable. They are all objects which appear to enjoy an equal status. It is open to the appellant, in its discretion, to apply the income derived from conducting kuries and from money lending, to any of the objects. No definite part of the business or of its income is related to charitable purposes only. Consequently, in view of Mohammed Ibrahim Raza v. Commissioner of Income-'Tax, (1930) LR 57 IA 260; AIR 1930 PC 226 and East India Industries (Madras) Private Limited v. Commissioner of Income-Tax, (1967) 65 ITR 611 (SC), , the entire claim to exemption must fail and it cannot be said that any part of the income under consideration is exempt from tax. That is the position in regard to the assessment years 1962-63 to 1965-66 before us"*

*172.* Thus, in the facts of that case, the Supreme Court, ultimately, held that the objects "industries" and "common good" could not be described as "charitable purposes". This decision also, in our opinion, is of no avail to the Revenue.

173. In the case of Sole Trustee Loka Shikshana Trust (supra), the appellant was the sole trusty of a trust. The object of the trust was to educate the people of India in general and of Karnataka in particular by (a) establishing, conducting and helping directly or indirectly institutions calculated to educate the people by spread of knowledge on all matters of general interest and welfare; (b) founding and running reading rooms and libraries and keeping and conducting printing houses and publishing or aiding the publication of books, booklets, leaflets, pamphlets, magazines etc., in Kannada and other languages, all these activities being started, conducted and carried on with the object of educating the people; (c) supplying the

Kannada speaking people with an organ or organs of educated public opinion and conducting journals in Kannada and other language for the dissemination of useful news and information and for the ventilation of public opinion on matters of general public utility; and (d) helping directly or indirectly societies and institutions which have all or any of the aforesaid objects in view. The High Court held that the income of the trust was not entitled to exemption under Section 11 read with Section 2(15) of the Act. The assessee, went in appeal before the Supreme Court. The Supreme Court, while dismissing the appeal of the assessee, observed as under;

> *"In addition to the power which the sole trustee had to collect donations and subscriptions for the trust. he had all the powers which the sole manager of a business may have in order to carry it on profitably. He had the power of transferring trust properties and funds if he thought "it expedient in the interest of the objects of the Trust, to transfer the assests and liabilities of this Trust to any other Charitable Trust or institution conducted by such Trust which in the opinion of the original Trustee or the Board of Trustee has objects similar to the objects of this Trust and is capable of carrying out the objects and purposes of this Trust either fully or partially" (Paragraph 17 of the Trust deed). Although, the "original trustee" was not "to take any remuneration" for discharging his duties as a trustee, yet, he was not precluded "from being paid out of the Trust fund such remuneration as may be deemed propellor carrying out any work and duty in connection with the conduct or management of institutions of the Trust, or with the business of printing, publishing or other activities carried on by the Trust". He was to be paid expenses incurred in travelling or otherwise in connection with his duties as a trustee (paragraph 16 of the Trust deed).*
>
> *The "original trustee" could invest trust monies and profits "in any investment authorised by law for the investment of Trust funds or in shares, or securities or debentures of Limited Companies in India or outside" (para 4 of the Trust deed). He had the "power to mortgage, sell, transfer and give on lease or to otherwise deal with the Trust*

*property or any portion thereof for the purpose of the Trust and to borrow monies or raise loans for the purpose of the Trust whenever he may deem it necessary to do so" (para 8 of the Trust deed). Furthermore, the Trustee had the "power and authority to spend and utilise the money and the property of the Trust for any of the purposes of this Trust in such manner as to him may appear proper".*

*It appears to us that, with this profit making background of the trust, its loosely stated objects the wide powers of the sole trustee, and the apparently profitable mode of conducting business, just like any commercial concern, disclosed not only by the terms of the trust but by the statement of total expenditure and income by the trustee it is very difficult to see what educational or other charitable purpose the trust was serving unless the dissemination of information and expression of opinions through the publications of the trust was in itself treated as the really educational and charitable purpose.*

*In the trust deed before us, as we have already indicated, the trustee had not only wide powers of utilisation of trust funds for purposes of the trust but could divert its assets as well as any of the funds of the Trust to other institutions whose objects are "similar to the objects" of the trust and of "carrying out the objects and purposes of this trust either fully or partially". The whole deed appears to me to be cleverly drafted so as to make the purpose of clause 2(c) resemble the one which was held to be protected from income-tax in the Tribune case (supra). Indeed the very language used by the Privy Council in the Tribune case (supra), for describing the objects of the Trust in that case, seems to have been kept in view by the draftsman of the trust deed before us. And, we find that the power of diverting the assets and income of the Trust although couched in language which seems designed to counsel their real effect is decisive on the question whether the trust is either wholly or predominantly for a charitable purpose or not. The trustees is given the power of deciding what 485 purpose is allowed to or like an object covered by the trust and how it is to be served by a diversion of trust properties and funds. If the trustee is given the power to determine the proportion of such diversion, as he is given here, the trust could not be said to be wholly charitable. He could divert as much as to make the charitable part or aspect, if any, purely illusory. Indeed, this was the law even before the qualifying words introduced by the 1961 Act. [See: East India Industries (Madras) Pvt. Ltd. v. Commissioner of Income-tax, Madras, (1967) 65 ITR 611 (SC), Commissioner of Income-tax, Madras v. Andhra*

*Chamber of Commerce, (1965) 55 ITR 722 (SC) and Md. Ibrahim Riza v. Commissioner of Income-tax, Nagpur, AIR 1930 PC 226. Such a "trust" would be of doubtful validity, but I refrain from further comment or any pronouncement upon the validity of such a trust as that was neither a question referred to the High Court in this case nor argued anywhere. "*

*174.* Thus, it appears that the Supreme Court looked into the trust deed of the trust in details and noticed that the sole trustee had not only wide powers of utilization of the trust funds for the purposes of the trust but he could divert its assets as well as any of the funds of the trust, to the other institutions whose objects were "similar to the objects" of the trust and of "carrying out the objects and purposes of such trust either fully or partially." The Supreme Court observed that the whole deed appeared to be very cleverly drafted so as to make the purpose of clause (2)(c) resemble the one which was held to be protected from income tax in the Tribune case (1939) 7 ITR 415. (PC). The Supreme Court observed that if the trustee is given the power to determine the proportion of such diversion, the trust could not be said to be wholly charitable. This decision also is of no avail to the Revenue in the case at hand.



175. In the case of Cricket Association of Bengal (supra), the assessee was an unregistered and unincorporated body. Its membership was open to the clubs, District Associations, Universities, Indian States, and subject to certain conditions, individuals. Its objects were roughly summarized as promotion of the game of cricket played in accordance with the highest standard. The Association received payments by way of subscriptions and donations. The ITO did not accept the plea of the assessee, seeking exemption. The ITO held that the object

of the Association was merely the promotion of a game and could not be termed as pursuing a charitable object. The order of the ITO was upheld by the AAC as well as the Tribunal. The matter went in appeal before the High Court of Calcutta. The High Court, while rejecting the appeal of the assessee, observed as under;

> "12. The question we have to consider is whether promotion of cricket as a general purpose or more particularly promotion of cricket in the form in which the Association professes to promote it can at all be a charitable purpose. In England, it has repeatedly been held that no gift or bequest made merely for the promotion of some game or pastime can be called a gift or bequest for a charitable purpose. An exception is to be found with respect to cases where provision is made for training in a game as a part of the education of youth. In those cases, the gift or bequest is regarded as charitable on the ground that it advances the cause of education. As instances of gifts or bequests for such purposes, I may refer to the case of In re, Mariette : Mariette v. Governing Body of Aldenham School, (1915) 2 Ch. 284, where a bequest was made to the Governing Body of a school for the purpose of building some squash racket courts and a further bequest was made to the Head Master for the time being upon trust to use the interest for providing a prize for some event in the school athletic sports every year. This bequest was upheld as charitable, because it was considered essential in a school of learning that there should be organised games as a part of the daily routine in order that the boys might not be left to themselves and that their bodily welfare might be promoted. Another instance is the case of Dupree's Deed Trusts, In re, Daley v. Lloyds Bank, Ltd., (1945) 114 LJ Ch L where a deed of gift, expressed to be for the encouragement of chess playing by holding an annual chess tournament limited to boys and, young-men under the age of 21 years resident in a particular area, was held to be a good gift for a charitable purpose. It appears that Vaisey, J. who decided the case had to struggle a good deal against his own inclinations in order to arrive at the conclusion which he ultimately reached, but he said that

in view of the evidence before him that chess was included in the school curriculum and that according to the experience of the members of the teaching profession the game promoted concentration, self-reliance and reasoning, he would not condemn the gift as bad. The learned Judge, however, expressed the difficulty he felt in the following words :

"One feels perhaps that one is on rather a slippery slope. It chess, why not draughts? if draughts, why not bezique? and so on, through to bridge, whist, and by another route, stamp collecting and the acquisition of birds' eggs?"

I need not, however, deal with this class of cases, because the gifts in them were not merely for the promotion of some game or sports, but they were for training of youth in some game of skill or in athletic sports as a part of their education. Where, however, a gift or bequest has been made solely for the promotion of a game or pastime, it has always been struck down as not charitable. To take the case of In re: Nottage: Jones v. Palmer, (1895) 2 Ch. 649 which is so often cited, the four Judges who decided it, one in the High Court and three in the Court of Appeal, all held that a bequest for the encouragement of yacht racing, although it might be beneficial to the public, could not be upheld as charitable, because it was a bequest for the encouragement of a mere sport. Lindley, L. J. in the Court of Appeal made an observation in the course of his judgment which is peculiarly appropriate to the present case, since it mentions encouragement of the game of cricket :

"Now, I should say", observed the learned Judge, "that every healthy sport is good for the nation--cricket, football, fencing, yachting, or any other healthy exercise and recreation; but if it had been the idea of lawyers that a gift for the encouragement of such exercises is therefore charitable, we should have heard of it before now."

It will be noticed that the learned Lord Justice included cricket among the games in the illustrations he gave. The case was decided in 1895 and it may be said that ideas have since changed and that cricket has grown so much in popularity and the general public have come to be

associated so much with the game that the observations made so long ago are no longer valid. Any such contention must be overruled because even the recentmost cases have not expressed any dissent from the view taken in the Nottage case(1895-2 Ch. 649). It has often been cited and very recently it was cited in the case of Baddeley v. Inland Revenue Commissioners, (1953) 1 Ch 504 in the Court of Appeal and in the same case, Baddeley v. Inland Revenue Commra., (1955) AC 572 in the House of Lords. "In re Nottage, 1895-2 Ch 649 was cited for the proposition" observed Jenkins L. J. in the Court of Appeal.

"that the encouragement of mere sport is not a charitable purpose. With regard to this authority, I need only say that in my view, neither of the trust here in question is a trust for the encouragement of mere sport".

It is noticeable that the learned Lord Justice did not dissent from the decision cited before him. A more elaborate reference to the case was made in the House of Lords and among the other Lords, Lord Reid made comments on it. Referring to the view taken in the Court of Appeal of the Nottage case, 1895-2 Ch 649, Lord Reid observed as follows :

"In re Nottage, 1895-2 Ch 649 is clearly distinguishable : money was bequeathed to provide annually a cup for yacht racing, so the only possible beneficiaries were yacht owners who would be somewhat strange objects of charity. But what the appellants found on is the reasoning in the Court of Appeal to the effect that encouragement of a mere sport or game is not charitable though the sport or game may be beneficial to the public. No doubt that is true in the main, but it cannot apply to the provision or support of playing fields: yacht racing is far removed from the kind of recreation which Parliament has declared to be charitable. And a charitable purpose such as education may well be achieved in part at least by promoting. sport or games. The emphasis is on mere sport or games, and I cannot suppose that any of the learned Judges had in mind the Acts of Parliament dealing-with recreation or would have denied that the encouragement of games, as a means to achieve a charitable purpose for those who took part in them, was quite a different matter."

It will thus be seen that while promotion of games as a

part of the education of those who participate in them may be a charitable purpose, the promotion of the practice of a game in general either for the entertainment of the public or for an advancement of. the game itself has never been held to be charitable. So far as cricket is concerned, I shall content myself with citing only one other case, In re Patten, Westminster Bank, Limited v. Carlyon, 1929-2 Ch. 276. A trust was created for the benefit of the Sussex County Cricket Club and in order to bring the trust within the statute of Elizabeth, it was said that the trust was "for the supportation aid and help of young tradesmen handicraftsmen and persons decayed". Really, however, it was a trust for the promotion of cricket among boys of the working and lower middle classes who might not be well off financially. Romer, J. who decided the case said that it might be that with the aid of the assistance provided from this trust, some boys would be enable to embark, upon life as professional cricketers, but he continued. to say : "It is, I think, reasonably clear that the object of the fund is the encouragement of the game of cricket and nothing else, and it has been held by authorities that are binding upon me that such a bequest is not charitable." He then proceeded to refer to the case of In re Nottage, 1895-2 Ch 649 as laying down the proposition to which he was giving effect.

13. I do not think I should multiply citations in order to illustrate the point that a gift or bequest merely for the promotion of a game has never been considered charitable : Clifford, In re : Mallam v. McFie, (1911) 81 LJ Ch 220 was a case of angling; Trustees of Warnher's Charitable Trust v. Commissioners of Inland Revenue, (1937) 21 Tax Cas 137, a case of playing fields. Scottish Flying Club, Ltd. v. Commissioners of Inland Revenue, (1936) 20 Tax. Cas 1, a case of an Aviation Club which held aerial pageants and charged fees for admission to the display and Inland Revenue Commissioners v. City of Glasgow Police Athletic Association, 1953 AC 380, a case of athletic sports of a police club. It is true that some of the decisions ultimately turned on the point that the beneficiary was not the public or a section of it, as understood in law, but incidentally observations were made in all of them as regards when promotion of a game can be a charitable purpose and when it cannot be.

14. The facts of the present case are that the assessee

Association merely held certain demonstration or exhibition matches. It does not provide any training in the game of cricket to novices or any advanced training for persons who are already practiced players. Its activities outside the holding of the exhibition matches is limited entirely to its own members. The only contact it has with the public is by way of having them as spectators, on payment of a fee, of matches arranged by it. I find it impossible to hold that any benefit or entertainment which is thus paid for and which is availed of by only such members of the public as can or wish to pay for it can in any sense be a purpose of a charity. It is true that charity in the income-tax sense need not have any eleemosynary element in it and that an object of general public utility is under the income-tax law a charitable object. Indeed, if the objects professed by the Association, are to be treated as charitable objects at all, they can be so treated only if they can be regarded as objects of general public utility. I find it impossible to hold that there is any general public utility, so as to amount to a charity, in arranging for cricket matches which the public can see on payment. How untenable must be a contention that such an object is an object of general public utility and, therefore, must be held to be charitable will appear if one considers certain parallel cases. Suppose a body of men bind themselves together into a club and collect annually some musicians from all parts of the country to give demonstrations for a number of days and suppose the public are admitted to such demonstrations on payment of a fee. If the contention of the Association in the present case is to be accepted, it must equally be held that the body of men in the hypothetical case I have mentioned who derive a large income by selling admission to the musical demonstrations organised by them, are also exercising themselves for a charitable purpose and that their earnings must be equally exempt from tax.



15. It was contended that the game of cricket had a place of its own among games and that it inculcated a spirit of fairness and an honourable conduct to such ah extent that the term 'cricket' had come to be a synonym for fairness and honour. That may be so, but I am unable to understand how fairness and honour can be inculcated by the game of cricket in any person other than those who actually take part in it. In the present case, we are not

concerned with the players who play at the matches arranged by the Association, for they are members of the visiting teams or it might be local teams, but so far as the Association is concerned they are mostly outsiders. The Association is claiming to be advancing a charitable purpose only by providing an opportunity to the public to witness the games arranged by it. It can by no means be said that any spirit of fairness and honour is inculcated in the spectators of a game of cricket or perhaps any other game, played not by individuals but by teams. Indeed, there is a school of opinion, now growing in volume, which thinks that games played by rival teams drawn from different parts of the country or different countries and witnessed by multitudes do not serve any beneficial purpose, but, on the other hand cause a deterioration of the mind by fostering fanatical partisanships or generating mass hatreds. This, however, is a matter of opinion. Whether this extreme view is right or wrong, I find it impossible to hold that any benefit of a public character is conferred on the society or a section of it merely by the arrangement of exhibition games of cricket or tournaments and the admission of the public thereto for a fee, on the basis of which the purpose of arranging for such matches can be said to be a charitable purpose.

16. There is another ground too upon which the Association's claim must fail. I have already hinted at it, but will now point it out specifically. Among the objects set out in the Rules is one which authorises the Association to carry out any other business or activity which may seem to the Association capable of being carried on in connection with the above. Section 4 (3) (i) (a) and (b) of the Act which I have already read contemplate either a business carried on in the course of the carrying out of a primary purpose of the Association or a business, the work in connection with which is mainly carried on by the beneficiaries. There is no question of the business of playing cricket here being carried on by the beneficiaries of the Association, because the games are mainly played by outsiders. But the authority which the Rules confer on the Association to carry out any other business "in connection with the above," that is to say, in connection with the promotion of the objects set out earlier, does not seem to me to come within the terms of Section 4 (3) (i) (a) which requires the business to be carried on in the course of

> carrying out one of the primary purposes of the Association. If so, it appears to me that even assuming that there is a property and even assuming that the purpose of promoting the game of cricket is a charitable purpose, the property is here held not wholly for that purpose but it is held for other purposes as well."

176. The High Court, in the aforesaid case, took notice of the fact that the Association merely held certain demonstration or exhibition matches. It did not provide any training in the game of cricket to novices or any advanced training for the persons who were already practiced players. The High Court further noticed that the activities of the Association, outside the holding of the exhibition matches, was limited entirely to its own members. The High Court also noticed that the only contact the Association had with the public was by way of having them as spectators on payment of a fee of matches arranged by it. Thus, having regard to what has been referred to above, the High Court, ultimately, took the view that the Association was engaged in any charitable objects. The facts in the case on hand are altogether different.

177. In the case of N.N. Desai Charitable Trust (supra), this Court ruled that howsoever laudable the objects of the trust may be, and such objects may lead one to believe that the activities of the trust are charitable in nature, but for the purpose of seeking exemption under Section 11 of the Act, the actual activities are to be seen and not just the objects. There need not be any debate on this proposition of law. In the case on hand, after a detailed scrutiny of the various activities, the tribunal has recorded a finding of fact that the activities, in fact, are charitable in nature.

178. In such circumstances, referred to above, we are of the view that the Tribunal could be said to have taken a reasonable view of the matter, and having recorded a finding of fact based on the material on record, we should not disturb such finding of fact.

*179.* In the result, all the tax appeals fail and are hereby dismissed. The substantial questions of law, formulated in all the tax appeals, are answered in favour of the assessees and against the Revenue.

**(J. B. PARDIWALA, J)**

**(A. C. RAO, J)**



Vahid