**आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़**

**IN THE INCOME TAX APPELLATE TRIBUNAL DIVISION BENCH, 'B', CHANDIGARH**

**श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं./ **ITA No. 427/CHD/2017**

निर्धारण वर्ष / Assessment Year : 2010-11

| | | |
|---|---|---|
| Punjab Cricket Association,<br>Sector 63,<br>Mohali | बनाम | The ACIT, Circle 6(1),<br>Mohali |
| स्थायी लेखा सं./PAN NO: AAATP3502C | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by : S/Sh. Ajay Vohra, Sr. Counsel &
Shri Rajesh Marwah, CA

राजस्व की ओर से/ Revenue by : Sh. Manjit Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 14. 06.2019
उदघोषणा की तारीख/Date of Pronouncement : 12.09.2019

**आदेश/Order**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 07.12.2016 of the Commissioner of Income Tax (Appeals)-2, Chandigarh [hereinafter referred to as CIT(A)].

2. The assessee in this appeal has taken following grounds of appeal:-

*i) That the Ld. Commissioner of Income-tax (Appeals) has erred in facts and law in confirming the conclusion drawn by the Ld. AO that the rendering of services in respect of Indian Premier League cricket (IPL) by the appellant is a business activity*

*and hence not eligible for exemption u/s 11 & 12 as it is hit by the first proviso to section 2(15) of the Income Tax Act, 1961. The Ld. Commissioner of Income-tax (Appeals) as well as Ld. AO has failed to appreciate the arrangement of conducting Indian Premier League cricket (IPL) matches agreed between BCCI and Kings XI Punjab and the role of appellant therein. Therefore, the conclusions drawn are not sustainable.*

*ii) That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on the facts in not following the ratio laid down by the Apex Court in the case of Addl. CIT V. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 / [1979] 2 Taxmann 501, which is still applicable to the appellants case even after the insertion of first proviso to section 2(15) of the Income Tax Act, 1961 from the A.Y. 2009-10.*

*iii) That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on the facts in not following the ratio laid down by the Hon'ble ITAT, Bench "A" judgment in the case of M/s Tamil Nadu Cricket Association V.DDIT (Exemption) Chennai ITA No.1535, 1536 & 1537/Mds/2014 dated 14/08/2015, on similar set of facts.*

*iv) That the Ld. Commissioner of Income-tax (Appeals) erred on facts and in law in upholding the action of the assessing officer in denying exemption under sections 11/12 of the Income Tax Act, 1961.*

3. The brief facts relating to the issue are that the assessee cricket association is a society registered under the Societies Registration Act 1860. It was earlier granted registration u/s 12A of the Act which was cancelled by Commissioner of Income Tax vide order dated 31.03.2009

and the cancellation was made from assessment year 2009-10 onwards in view of the amended provisions of section 2(15) of the Income Tax Act (in short 'The Act'). On appeal by the assessee, the co-ordinate Chandigarh Bench of the Tribunal set aside the order of the Commissioner of Income Tax, against which the appeal of the Department is pending before Hon'ble Punjab and Haryana High Court.

4. During the assessment proceedings for the year under consideration, the Assessing officer noted that assessee for the relevant assessment year had reported the following income:

| ***Nature of Income*** | ***Amount*** |
|---|---|
| *Tournament Subsidy-others* | *4,75,000/-* |
| *Reimbursement / subsidy-BCCI* | *1,86,64,990/-* |
| *Share of TV Subsidy from BCCI* | *18,00,76,452/-* |
| *IPL-Subvention from BCCI* | *8,10,43,200/-* |
| *Service charges IPL (NET)* | *6,41,100/-* |
| *Income from Member by way of contribution and use of Facilities* | *1,29,03,416/-* |
| *Income from International Matches (Net)* | *2,66,10,382/-* |
| *Interest from banks* | *4,27,58,0311/-* |
| *Other Income* | *8,91,949/-* |
| ***Total*** | ***36,40,64,500/-*** |

5. On being asked to explain about the nature and source of income, the assessee vide its reply dated 25.09.2012 submitted as under:

i) ***"Tournament Subsidy - Others:-*** *Received from M/s Prokam International as Subsidy for the inter school tournament and claims were reimbursed to the districts on account of expenses incurred for the same for hosting these matches.*

ii) ***Re-imbursement/subsidy from BCCI:-*** *Amount received towards expenses incurred by PCA for its participation in domestic interstate BCCI Tournaments.*

iii) ***Share of TV Subsidy & IPL Subvention from BCCI:*** *The amount received by the PCA, like other Associations, is an amount received for the development of the game of Cricket and infrastructure in their respective areas.*

*Above all, it may be pertinent to mention here that BCCI being An Apex Body of the State Associations, grants TV Subsidy and IPL subvention to its units for the development of game and infrastructure in their respective areas. The amount of Subsidy/subvention is also being granted to those Associations who do not participate. The system of subsidy paid to the State Associations BCCI to control the budget.*

iv) ***Service Charges for IPL (Net):-*** *Net income after meeting the expenses of Indian premier league during the year.*

v) ***Income from Members by way of contribution and use and facilities:-*** *Received from members towards annual subscription and use of facilities like Swimming, Lawn Tennis, Billiard/Pool, Health Centre, Booking of hall & lawn etc.*

vi) ***Income from International Match (Net):-*** *Net Income after meeting out the expenses of international matches during the year.*

vii) ***Interest from Bank:-*** *Interest received from various banks on FDRs and saving accounts.*

***viii) <u>Other Income:-</u>*** *Received from members towards Guest charges, Penalties, Sale of application forms, District affiliation fees and Protest fees etc."*

The assessee further submitted to the assessing officer that as per the Memorandum and Articles of Association of the assessee Association, the main object of the assessee society *inter alia* was to create, foster and maintain friendly relation with and amongst the population of the area under its control through sports tournaments and competition connected therewith and to create healthy spirit of sportsmanship, to run a club house, banquet hall with catering facilities and to instill keenness for the game and to instill and spirit of the sportsmanship. That, therefore, the object of assessee would fall under the limb 'advancement of any other object of general public utility" and thus included in the definition of 'charitable purposes' as per the provisions of section 2(15) of the Act and thus the income of the assessee was exempt from taxation u/s 11 of the Act.

6. The assessing officer, considering the reply of the assessee, however, observed that the assessee was engaged in various activities from which the above stated income was generated. He observed that the income of the assessee was inclusive of an amount of Rs. 8,10,43,200/- from IPL-Subvention from BCCI and Rs. 6,41,100/- as service charges for IPL (NET). The Assessing officer observed that IPL event was a highly commercial event and assessee had generated income from the

same by hosting matches of Punjab franchisee 'King, XI, Punjab' during the Indian Premier League through TV rights subsidy, service charges from IPL and IPL subvention etc. Similarly, assessee had earned income from the facilities of swimming pool, banquet hall, PCA chamber etc. That the assessee hosted these facilities for the purpose of recreation or one time booking for parties, functions etc. and these were commercial activities in nature as the assessee was charging fees for providing these facilities to its members. That assessee had also received income from M/s Silver Services who provided catering services to Punjab Cricket Club and its restaurant and this again was a commercial activity as the assessee was earning income from the running of the restaurant which was not related to the aims and objectives of the society. The Assessing Officer found that in view of the amendment to section 2(15) of the Act, the activities of the assessee were not for the charitable purpose and, therefore, he disallowed claim of exemption u/s 11(2) of the Act and brought to tax the income of the assessee and made addition of Rs. 30,13,91,457/-.

7. Aggrieved by the above order of the Assessing Officer, the assessee preferred appeal before the CIT(A) and made the following submissions, as reproduced in para 5.2 of the impugned order of the CIT(A) :-

> *"5.2 Appellant made submission as under:-*
>
> *i) The appellant was eligible for deduction u/s 11 as it was duly granted registration u/s 12A. This registration was withdrawn by the CIT-II,*

*Chandigarh vide his order dated 31.03.2009 from the A.Y. 2009-10 onwards on the ground that with the amendment of section 2(15) by the Finance Act, 2008 the appellant cannot be regarded as Charitable organization. Here it is pertinent to mention that the said order was quashed by the Hon'ble Bench "B" of ITAT, Chandigarh vide their order dated 27.08.2009 and the registration u/s 12A was restored. This fact is evident from the observation of the Ld. A.O at the page No. 2, Para No. 3 of the assessment order. Therefore, it becomes very clear that the order of the ITAT, Chandigarh dated 27.08.2009 restoring the registration u/s 12A was fully effective on the date of passing of the assessment order and the reliance of the Ld. AO on the order of the CIT-II, Chandigarh that the appellant is not enjoying exemption u/s 12 is contrary to the facts stated above.*

*ii) The registration u/s 12A was again cancelled by the Commissioner of Income Tax-ll, Chandigarh vide his order dated 21.06.2012 from A.Y. 2009-10 onwards on the ground that appellant is earning huge profit from business and training activities according it is not falling under the category of Charitable organization and with the amendment of section 2(15) by the Finance Act, 2008 the appellant has lost the right to be regarded as Charitable organization. Appellant filed copy of the order of the Hon'ble ITAT, Chandigarh dated 19.10.2015 (ITA No. 834/Chd./2012) through which the said order dated - 21.06.2012 of the CIT-II, Chandigarh has been quashed and the registration u/s 12A has been restored and submitted that the addition made on account of withdrawal of registration u/s 12A needs to be deleted.*

*iii) It was submitted that object of the appellant society is to promote the game of cricket in the state of Punjab and the objects of the appellant are covered under the clause 'advancement of any other object of general public utility' of section 2(15) of the Act as clarified by CBDT vide circular No. 395 dated 24.09.1984.*

*iv) Regarding activities of holding IPL, it was submitted that cricket matches including IPL are being organized and conducted by the BCCI and appellant being the member of BCCI hosts the matches which are conducted by the BCCI for the purpose of meeting its expenditure the BCCI allocates funds from the revenue its collect from advertisement and other sources. For holding of IPL matches the appellant only provides its stadium and other related facilities to the BCCI. All the tickets of the IPL matches are being sold by either BCCI or Franchisee Team. The state associations have no roll in this. Therefore, it cannot be concluded that the appellant is engaged in any business activity. Appellant placed reliance on the decision of ITAT, Chennai Bench in the case of M/s Tamilnadu Cricket Association*

*v) It was submitted that the club facilities are being run for the benefits of members and cricketers as per the objects of the society on the principle of mutuality. During the relevant year revenue of Rs. 123.03 lacs was generated from these facilities and this includes a sum of Rs. 14.97 lacs from caterer as a share from catering services. All the above facilities e.g. Gym, Lawn Tennis, Swimming pool etc. are interconnected and interwoven with the objects of the appellant i.e. promotion of sport and cannot be viewed separately. Without prejudice to above the appellant is maintaining separate books of accounts in respect of all above club activities. Moreover these facilities are being provided on the principle of mutuality. Accordingly these cannot be termed as trade, commerce or business activity.*

*vi) During the year under consideration appellant received Rs. 15,74,147/- from M/s Silver Services as share for providing catering services in the restaurant of the appellant. This share is charged from the caterer on account of maintenance, wear and tear, electricity expenses etc. of the restaurant as all the above expenses are borne by the appellant. It was submitted that the receipts from the caterer for providing catering service during the matches is intrinsically linked with the activity of organizing matches and tournaments for the*

*promotion of cricket. Accordingly this cannot be considered as business even there is some surplus. Appellant placed reliance or the decision of Hon'ble Supreme Court in the case of M/s Surat Art Silk Cloth Manufacturer Association (supra) in this regard. It was submitted that the appellant is running club on the principle of mutuality and only members are allowed to use the facility. Appellant also placed reliance on the decision of Hon'ble Bombay High Court in the case of Lai Lajpatrai Memorial Trust (supra).”*

8. The Ld. CIT(A), however, did not get satisfied with the above submissions of the assessee and dismissed the appeal of the assessee observing as under:-

“5.3 I have carefully considered the submission of the appellant, assessment order and perused the material available on record. It is seen that the assessee society was registered u/s 12A of the Act on 27.03.1998. This registration granted u/s 12A was cancelled by Commissioner of Income Tax, Chandigarh vide his order dated 31.03.2009 on the ground that the activities of the assessee are hit by the proviso inserted to section 2(15) of the Act with effect from assessment year 2009-10. Hon'ble ITAT, Chandigarh Bench vide its order dated 27.08.2009 in ITA 538/Chandi/2009 set aside the order of the Commissioner of Income Tax cancelling the registration on the ground that Commissioner of Income Tax is not having power to cancel registration granted at any time under section 12A. The appeal of the department against the said order of ITAT is pending in Hon'ble Punjab & Haryana High Court. Commissioner of Income Tax, Chandigarh again vide his order dated 20.06.2012 cancelled the registration granted to the appellant u/s 12A and this order of the Commissioner of Income Tax cancelling the registration was set aside by ITAT vide its order dated 19.10.2015(ITA 834/Chd./2012) on the ground that section 12AA (3) was amended by finance Act, 2010, gives power to CIT to cancel registration granted u/s 12A but from assessment year 2011-12 only. Thus it is clear from the sequence of facts narrated above that the registration

granted u/s 12A which was cancelled by Commissioner of Income tax was restored to the appellant by ITAT on 27.08.2009 and the assessment order in this case was passed on 29.09.2012 and therefore, on the date of assessment order appellant was having the status of a registered society u/s 12A and therefore, the contention of the assessing officer that the registration u/s 12A has already been cancelled is not factually correct and hence, the exemption claimed by the appellant u/s 11(2) of the Act cannot be disallowed on this ground only.

5.3.1 Hon'ble ITAT, Chandigarh Bench in its order dated 19.10.2015 relied upon the propositions laid down by ITAT, Amritsar Bench in deciding the issue of cancellation of registration in the case of appellant and held as under:-

> *"(v). In order that the benefits under section 11 are declined to the assessee on the ground that it is engaged in such activities as may be hit by the first proviso to section 2(15) not only the assessee must be engaged in carrying out such activities as may hit the first proviso to section 2(15) but also the receipts of the assessee from such activities must exceed a specified limit. The second limb of this disability clause needs to be satisfied with respect to each assessment year. Obviously, therefore, this aspect of the matter cannot be examined at the stage of the grant or withdrawal of registration since the registration exercise is a onetime exercise and not something which must be done for each assessment year separately. That is precisely the reason, as noted in the Explanatory Memorandum, as to why the remedy for the activities being hit by the first proviso to section 2(15) lies not in grant, decline or withdrawal of registration but in declining the benefits of exemption u/s 11 on that count, on year to year basis, notwithstanding the status of registration.*
>
> *(vi) The disentitlement for exemption u/s 11, as a result of the activities of a assessee being held to be not for charitable purposes under section 2(15) read with provisos thereto, is in respect of*

*entire income of the assessee trust or institution but only for the assessment year in respect of which the first proviso to section 2(15) is triggered. "*

*5.3.2 From the above proposition, it is clear that the activities of the assessee society whether being hit by first proviso to section 2(15) is to be seen on year to year basis to decide the exemption benefit u/s 11 of the Act. It cannot be disputed that Indian Premier League matches is a highly commercialized event in which huge revenue is generated through TV rights, gate collection money, merchandizing and other promotions. The franchisees have been sold to corporate and individuals and in this process appellant has received huge income of Rs. 8,10,43,200/- for IPL-subvention from BCCI, service charges (Net) of Rs. 6,41,100/- and reimbursement of Rs. 1,86,64,990/- from BCCI. The argument of the appellant that all the tickets of the IPL matches are sold by BCCI or Franchisee Team and IPL players are sold in public auction for a huge amount, but this all is done by the BCCI and the appellant has no role in conducting these matches cannot be accepted. The fact remains that the huge revenue is generated in this commercial activity and whether it was done by BCCI or by the appellant, the share of the income so generated has been passed on to the appellant. The appellant has relied on the decision of the Hon'ble ITAT, Chennai Bench in the case of Tamilnadu Cricket Association (supra) wherein it has been held that the assessee has received funds from BCCI for meeting the expenditure being the host and therefore, it cannot be said that the assessee is conducting any business activity and hence, proviso to section 2(15) is not applicable. I would like to differ respectfully from the conclusions drawn by Hon'ble ITAT, Chennai Bench as in the case of appellant it is not only the reimbursement of expenses but over and above that huge amount have been passed on to the appellant and the income generated by business activity whether undertaken by BCCI or by the appellant is purely a business activity of which assessee is a beneficiary. In my considered opinion the appellant has rendered services in relation to the business activity and therefore, is hit by the first proviso to section 2(15) of the Act. Decisions relied upon by the appellant on the principal of mutuality are distinguishable from the facts in the case*

*of the appellant, as the appellant has not generated the income from its facilities in pursuance of its dominant object of the activity. Therefore, the assessee society ceases to be for charitable purpose and the benefits of deduction u/s 11(2) are not available to the assessee. Assessing Officer has given reasoned finding in the assessment order and the same are upheld. Grounds of appeal taken by the appellant are dismissed."*

9. Aggrieved by the above order of the CIT(A), the assessee has come in appeal before us.

9.1 Shri Ajay Vohra, Ld. Sr. Counsel for the assessee has addressed orally, besides that written submissions have also been filed on behalf of the assessee. It has been submitted that the Registration of the assessee Cricket Association as a 'Charitable Organization' u/s 12 of the Income Tax Act, 1961 (in short 'the Act') has been restored.' Inviting our attention to the Memorandum of Association / objects of the assessee association, the Ld. counsel has submitted that the assessee is basically a body for promotion of cricket and that the activities and objects of the assessee are concentrated for advancement of its objects of 'general public utility' and, thus, squarely covered within the definition of 'Charitable Purposes' as defined u/s 2(15) of the I.T. Act.

9.2 Mr. Vohra, the Ld. Counsel for the appellant/assessee, has further submitted that BCCI is the Apex body of different cricket associations and is registered under the 'The Tamil Nadu Societies Registration Act, 1975' at Madras having its head office at Mumbai. He has further submitted that the Indian Premier League (in short 'IPL') is a baby of

the BCCI and that the assessee is not involved in any manner in organizing or commercially exploiting the IPL matches. The commercial exploitation, if any, of the IPL matches is done by the BCCI. That the assessee i.e. Punjab Cricket Association (PCA) is a distinct and separate entity from the BCCI. Inviting our attention to the copy of the sample 'tripartite agreement' / 'stadium agreement' entered into between the Assessee, BCCI and KPH Dream Cricket Pvt Ltd**.** (franchisee/ owner of Kings XI cricket team), the Ld. Sr. Counsel has submitted that the only activity on the part of the assessee is the renting out its stadium to BCCI for holding of IPL matches. That 'T-20' or to say 'IPL' is also a form of popular cricket. That since the main object of the assessee is for the promotion of the game of cricket, hence, considering the popularity of the IPL matches, the renting out of the stadium for the purpose of holding of IPL matches by the BCCI for a short period of 30 days in an year, is an activity towards advancement of the objects of the assessee association of promotion of the game. In lieu of the providing stadium, the assessee gets the rental income for a short period and that the renting out the stadium is not a regular business of the assessee. Inviting our attention to the above reproduced table of income, the Ld. Counsel has submitted that the grant received from the BCCI during the year under consideration in the form of share of TV Subsidy of Rs. 18,00,76,452/- and IPL Subvention of Rs. 8,10,43,200/- is part of the largesse distributed by BCCI to its member associations at its discretion for promotion of the sport of cricket. That even as per the rules and

regulations of the BCCI, the BCCI is not obliged to distribute the earning generated by it to State Cricket Associations and no such association, can claim, as an integral right, share in the earning of the BCCI.

9.3 To apprise us about the nature, quantum and manner of the grants given by the BCCI to member State Associations, Mr. Vohra, the Ld. Sr. Counsel has drawn our attention to the page 77 of the paper book, which is the copy of minutes of 79th Annual General Meeting of the BCCI held on 27.9.2008, to submit that as per the said document, the TV subsidy to members association of BCCI was payable as under:-

*"1. Staging Test & ODI - Rs. 18,59,47,343/-*

*2. Staging Test - Rs. 16,82,38,072/-*

*3. Staging ODI - Rs. 14,97,23,835/-*

*4. Non Staging - Rs. 13,81,32,312/-*

*The total TV subsidy amount payable to Associations for the year 2007-08 is Rs. 371,89,46,858/-."*

9.4 Mr. Vohra, has further contended that even if a Member State Associations does not provide any assistance in holding of the IPL matches or when the IPL match is not hosted or organized at the stadium of an association, still the member cricket association gets grant out of the TV subsidy. That in the year 2009, when the IPL matches were played entirely in South Africa, still all the member associations including the assessee received uniform subsidy of Rs. 8,10,43,200/-

from the BCCI. However, if a match is staged or hosted at the ground of an association, the amount of subsidy is increased. That as per the sample agreement, the assessee has been paid Rs. 30 lacs + service tax in respect of the each day on which the match is staged in whole or in part at the stadium of the assessee. That for the financial year 2017-18, the BCCI has not distributed any grant out of its earning from IPL to the State Cricket Associations and even though substantial income was generated.

9.5 It has, therefore, been submitted by the ld. Counsel for the assessee/appellant that that whatever is/has been received from the BCCI on account of IPL subvention is voluntary, unilateral donation given by BCCI to various Cricket Associations including the assessee to be expended for the charitable objects of promotion of game of Cricket and not in lieu of carrying out any activity for conducting of IPL. That though the assessee is a full time member of the BCCI and entitled to have representation on the Board of BCCI, however, notwithstanding the above position, the assessee has no locus with respect to the promotion and conduct of IPL, except of the limited extent of providing its stadium and other allied services of holding of the matches. That whether the conduct of IPL is a commercial activity or not that question may be relevant from BCCI's standpoint, but not to the case of the assessee.

9.6 The Ld. Counsel, alternatively, has submitted that even if the assessee is not held to be a charitable trust / organization, then the income received by the assessee in the shape of grants will not fall in the definition of income as per section 2(24) of the Act as the grant received by 'Charitable Institution' only has been included in the definition of income. That otherwise there is no provision in the Income Tax Act (as in force for the year under consideration) to tax the grants received by a non-charitable trust or organization and that the same would fall within the definition of the capital receipt. That the capital receipts, even otherwise, are not taxable except specially provided under the Act such as gifts u/s 56 of the Act. That as per the provisions of section 2(24) (iia) of the Act, the voluntary contribution received by a trust created wholly or partly for charitable / religious purpose has been included in the definition of income. That in such circumstances, grants, voluntarily contribution received by a non-charitable institution would fall in the definition of capital receipt not exigible to tax.

9.7 The Ld. Counsel has further submitted that whatever is the income of the assessee, including grants received from BCCI, that is applied for attainment of objects of the assessee society i.e. mainly for promotion of the game of cricket. That to achieve it objects, the assessee is running a Regional Coaching Centre, wherein, gaming equipment / material is also provided such as cricket balls, cricket nets etc. The assessee also distributes grants to the District Cricket Associations attached with it

for the purpose of laying and maintenance of grounds, purchase of equipment etc. and as well as for holding of matches and for the purpose of promotion of game of cricket by the District Cricket Association. The assessee conducts various tournaments for the member District Cricket Associations. On the basis of the inter District tournaments, players are selected for Punjab team, who undergo various coaching camps and thereafter the teams are selected to participle in the national tournaments of different age groups. In addition, financial assistance has also been provided to the Ex-Punjab players in the shape of monthly grants. That the assessee is also maintaining International Cricket Stadium namely 'I.S. Bindra Stadium' at Mohali, which gives needed practice and exposure to the cricketers. Even other sports facilities like swimming pool, billiards, lawn tennis etc. are provided to the members as well as to the cricketers which activity is also towards the achievement of objects of the assessee society. The assessee is in the course of construction of a new stadium at the cost of over Rs. 250/- crores, out of which Rs. 100 crores including land has been expended till date with modern training and coaching facilities for players. That the assessee has been spending substantial amount towards development of game at grass root level and also for the development and promotion of game by holding international matches. The Ld. Counsel, therefore, has submitted that the assessee is only conducting activities in pursuance of the objects i.e. the promotion of the game of cricket in India and that merely because some Revenue has been generated in

pursuance of such activities, the same is not hit by the proviso to section 2(15) of the Act. The Ld. counsel in this respect has relied upon the decision of the Hon'ble Supreme Court in the case of **'CIT vs Distributors (Baroda) (P.) Ltd' 83 ITR 377 (SC)** and submitted that the Hon'ble Supreme Court has held in the said decision that "business" refers to real, substantial organized course of activity for earning profits, as "profit motive' is an essential requisite for conducting business. The Ld. counsel has further relied upon the decision of the Hon'ble Delhi High Court in the case of **'India Trade Promotion Organization vs DIT(E)'** 371 ITR 333 (Delhi) and has submitted that the Hon'ble Delhi High Court reading down the scope of the proviso to section 2(15) has held that an assessee could be said to be engaged in business, trade or commerce only where earning of profit was the predominant motive, purpose and object of the assessee and that mere surplus from incidental or ancillary activities did not disentitle claim of exemption under section 11 of the Act. The Ld. counsel has further relied upon the composite decision of the Hon'ble Punjab & Haryana High Court in the cases **of 'The Tribune Trust vs CIT' &, CIT (Exemptions) vs Improvement Trust, Moga'** [2017] 390 ITR 547 (P&H) and has submitted that the Hon'ble High Court has approved the predominant object theory that is, if the predominate motive or act of the trust is to achieve its charitable objects, then merely because some incidental income is being generated, that will not disentitle the trust to claim exemption u/s 11 read with section

2(15) of the Act. That all the incidental income/surplus so earned by the assessee in the course of advancement of its objects of promotion of game of cricket has been ploughed back for charitable purposes. That, profit making is not the motive of the assessee and the only object of the assessee is to promote the game of cricket. That the Hon'ble P&H High Court in the case of 'Moga Improvement Trust' (supra) has held that if the trust is not set up with a motive of making profits but during carrying on of its activities according to the objects, if any surplus is generated which is again ploughed back for the activities of the trust exemption u/s 11 can not be denied. That the Assessing officer while framing the assessment has only to see that the assessee trust has carried out the activities in accordance with its objects and 85% of the total receipts have been spent towards the objects of the trust to which the assessee has complied with as per the relevant provisions of section 11 of the Act. Apart from that, the Ld. Counsel to further support his contention has also relied upon the following case laws:

*i) BJP vs DCIT : 258 ITR 1 (SB) (AT)*

*ii) Ram Swaroop vs Janki Dass Jai Kumar : AIR 1976 Del 219*

*iii) CIT vs Andhra Chamber of Commerce : 55 ITR 722 (SC)*

*iv) CIT vs Federation of Indian Chambers of Commerce and Industries, 130 ITR 186 (SC)*

v) *Delhi & District Cricket Association vs DIT(Exemptions) : 168 TTJ 425(Del – Trib)*

vi) *Tamil Nadu Cricket Association vs DDIT (Exemptions) [2015] 70 SOT 242 (Chennai Trib.)*

vii) *Rajasthan Cricket Association vs ACIT [2017] 164 ITD 212 Jaipur Trib.)*

10. The Ld. counsel lastly has relied upon the decision of the Co-ordinate Ahmedabad Bench of the Tribunal in the case of '**Gujarat Cricket Association vs JCIT (Exemptions)**' [2010] 101 taxmann.com 453 (Ahmedabad Trib.) and has submitted that under similar facts and circumstances, the Coordinate Bench of the Tribunal has held that the proviso to section 2(15) of the Act was not applicable when the objects of the assessee trust clearly demonstrate that it exists and operate purely for the purpose of promotion of cricket and that the exemption for taxation u/s 11 of the Act has been allowed in that case. The Ld. Counsel, therefore, has submitted that applying the same ratio, the appeal of the assessee also deserves to be allowed. The above oral submissions by the Ld. Counsel have been further reiterated through written submissions also.

11. The Department has put a strong defense against the contentions raised by the counsel for the assessee through oral as well as written submissions made by Sh. Manjit Singh, CIT (DR) the Ld. Departmental Representative (in short D.R.). Since lengthy written submissions have been submitted by the Ld. DR raising

various issues, hence we deem it appropriate to reproduce the relevant part of the same hereunder:

**" I)** …..

**II)** The relevant section 2(15) is reproduced below for the sake of convenience:

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

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

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

**III) <u>CIRCULAR NO. 11/2008, DATED 19/12/2008</u>**

The definition and rationale of 'Charitable purpose 'u/s 2(15) of the Income Tax Act has been elaborately explained vide the above circular.

The circular basically re-iterates with requisite clarity the position of law that it shall apply only to the fourth limb of the section, i.e. the advancement of any other object of general public utility, if such entity 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.

The circular pointedly states that if an 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.

The circular goes on to caution and advise the assessees who claim their object to be 'charitable purpose' within the meaning of

section 2(15) to eschew any activity which is in the nature of trade, commerce or business or rendering of any service in relation to any trade, commerce or business. The above Circular is strongly pressed in for the defense of the Department's case. The assessee's case needs to be strictly examined from the view point of amended section 2(15) as suitably explained by the Circular No. 11/2008 dated 19/12/2008.

The twin aspects which are required to be adjudicated upon are ***firstly***, whether the BCCI-IPL matches are charitable activity and ***secondly***, whether there is any involvement of the assessee i.e. Punjab Cricket Association, in BCCI-IPL matches.

## IV) BCCI-IPL MATCHES ARE NOT CHARITABLE ACTIVITIES.

### A. 79th Annual Report of BCCI (Approved at Working Committee Meeting held on 23/08/2008 at Mumbai)

During the course of hearing before the Hon'ble ITAT on 25/05/2018 a copy of the 79th Annual Report of BCCI was submitted in the Court. The document vividly reveals the true commercial character of IPL matches. The relevant pages were highlighted from pages 15 to 19. The Annual Report of BCCI unhesitatingly proclaims the glamorous world of India Premier League being the brain child of Lalit Kumar Modi. It is dubbed as best ever reality TV shows. **The concept of IPL is described as merger of sport and business.** The report highlights that it is for the first time that any Indian sport has adopted a franchisee model and conducted a Players' auction.

It mentions at page 15 that BCCI went about looking for potential buyers to BUY a franchise in the league. **"**Presentations were made to corporate houses, film stars and the likes to inform them about the Business of Sports and how this could well turn out to be a lucrative investment option with good ROI, given the passion for cricket in India post the presentations of, affair and transparent bidding process saw Shah Rukh Khan, Preity Zinta, RIL Pvt. Ltd., GMR Holdings, UB Group, Indian Cements Ltd., Deccan Chronicle and Emerging Media pick up the eight franchise of offer in the inaugural addition of the DLF Indian Premier League. The rights for the Mumbai franchise were won by RIL Pvt. Ltd. with a bid of US $ 111.9 million, which was also the highest.**"**

At page 16 of the report it is mentioned- **"**Next on the BCCI's agenda was the Title Sponsor. DLF Ltd., India's leading real estate company, stepped bagged the Title Sponsorship rights. They won the rights through a fair and transparent open-bid process, with a bid of Rs. 40 crore per annum. The deal gave DLF Ltd. exclusive rights for period of five years, valuing the Title Sponsorship in excess of Rs. 200 crore.**"**

The report goes on to state that the DLF Indian Premier League's next step was to rope in multiple co-sponsors disclosing

names of Hero Honda, Pepsico, Kingfisher Airelines, ITC, Vodafone and Anil Dhiru Bhai Ambani Gourp.

At page 16 of the report it is mentioned- **"** With the business end of DLF Indian Premier League all tied up, attention now turned to the on-field action, the objective being to provide the global cricket lover with some memorable high-octane action, which would keep him coming back for more.**"**

At page 17 of the report it is mentioned- **"**The BCCI-IPL team then organized the first ever Players auction to be held in professional support in India. Each franchise was given total team cap minimum cap of US $ 3.5 million and Maximum cap of US $ 5.00 million within which the needed to purchase their respective team. The Players were then grouped into Batsmen, Bowlers, all rounder's etc. with each player having a list price.**"**

At page 17 itself the report states-"At the first Players' Auction, India's T20 World Cup winning team captain MS. Dhoni proved to be the hottest property, going for a whopping $ 1.5 million (Rs. 60 million) to 'Chennai Super Kings', which was owned by India Cements Ltd."

The leading sports broadcaster SONY Max and World Sport group bagged global media rights of US Dollar $ 1.026 billion as per the report. The IPL events drew unprecedented TV viewership leaving the soap serials far behind. The TRP rating touched unprecedented heights.

The above activities which are mentioned in great detail in the 79th Annual Report of BCCI show that the entire IPL show is a huge money spinner and has been rightly termed as **CRICKETAINMENT** by the BCCI. There is not a whisper of any charitable activity whatsoever in this huge entertainment industry inviting global star players commanding huge price. It may be highlighted here that Ld. Counsel for the assessee did not make any argument either to establish that the activities of the BCCI-IPL are charitable in nature.

## B. 38TH REPORT OF STANDING COMMITTEE ON FINANCE-15TH LOK SABHA

The 38th Report of Standing Committee on Finance was presented to Lok Sabha on 2nd August, 2011. The subject matter of 38th Report was Tax assessment/Exemptions and related matters concerning IPL/BCCI. During the examination of the subject by the Standing Committee the following important issues were discussed (page 9 of the Report).

i) Formation of IPL teams;
ii) Funding pattern of the IPL and the franchisees;
iii) Violations of Income tax Laws, Prevention of Money Laundering Act, Foreign Exchange

Management Act (FEMA) and Companies Act by the IPL franchisees and their associates;

iv) Tax exemptions granted of BCCI;

v) Tax assessment of IPL;

vi) Award of Media rights;

vii) Decision making process in the BCCI/IPL etc.

The Report at page 31 mentions that auction for IPL-1 which took place on 24.01.2008 went on to fetch $ 723.59 million against the base price of $ 400 million. It further, highlights the huge amount of investments made by various entities that made successful biddings for the IPL (page 31-32 of the Report).

The Report clearly mentions (page 34) that the income derived from Media Rights and Sponsorships are shared with the Franchisees as envisaged in the franchise agreement. **The Franchisees have to pay the BCCI an annual franchisee fee which BCCI distributes to the Associations as subvention.**

The Committee (page 43 of Report) has highlighted the break-up of Gross Revenue earned by BCCI-IPL during financial year 2008-09 amounting to 661.79 Crores. The Report (page 49) mentions the awarding of Media Rights which reveals that thousands of Crores worth of Media Rights were awarded for the IPL show.

The Report suitably highlights (pages 52-54) the violation of FEMA Rules including cases of Hawala Transactions and Round Tripping.

The Report (pages 56 to 60, para d) further highlights that IPL-2 was held in April to May 2009 in South Africa. Funds were transferred to Cricket South Africa (CSA) and expenses were incurred by Cricket South Africa. It has been seen from the Ministry's replies that the BCCI had not taken permission from the Reserve Bank of India and Income Tax Department for opening or/and operating Foreign Currency account in South Africa. It has been observed that Reserve Bank of India has not given any permission to BCCI to open a foreign currency account with a bank in South Africa for the IPL-2 session. Therefore, the opening and maintenance of a foreign currency account with a bank in South Africa by the BCCI without the approval of the Reserve Bank would be a violation of Notification No. FEMA 10/2000-RB dated May 03, 2000.

During evidence of the representative of BCCI/IPL, (pages 70 & 71) the Committee drew the attention of the witnesses to the fact that IPL was not creating a good social impact, particularly on the younger generation. It was also alleged that the facilities provided to a class of spectators during the matches were of Five Star nature with luxurious facilities of food and beverages. The Committee sought to know whether such facilities were provided within the ticket amount and whether receipts for providing such facilities have been accounted for in the income. The Ministry of Finance (Department of Revenue) in their written replies submitted as under:-

"The tickets sold for the IPL matches were of various denominations ranging from Rs. 200, 300, 500 etc. upt Rs. 10,000, 20,000 and Rs. 1,00,000/- depending upon the City in which the matches were held and the importance of matches. In some matches, luxurious facilities of food and beverages were also provided to the spectators. The franchisee teams have submitted that no donations/ on-money etc. were collected for tickets with such luxurious facilities of foods and beverages. The high denomination ticket prices are stated to include provision for food and beverages. The IPL franchisees are stated to have included these ticket receipts in their total income. Some of the companies who were allotted a large bulk of tickets are the various State Circket associations, Nike, Idea, Cellular, Coca Cola, United Spirits Limited, Kingfisher, Jaiprakash Associates, Apollo Hospitals etc."

The Standing Committee of Lok Sabha took cognizance of various irregularities in award of media rights and commercial contracts executed in the course of the IPL (page 80 & 81). It was observed that the IPL Governing Council allowed itself to be relegated to the position of a mere rubber stamp of the then Chairman, IPL. The then treasurer Sh. N. Srinivasan admitted before the committee the various irregularities and pleaded sorry while stating **"** ……. The powers given to him were like that and that is how he acted. It is no defense for me to say that some of us objected to it. What defense? No defense in front of you. So, I am not pleading that at all. We just put our heads down**"**.

The 38th Report of the Standing Committee on Finance is submitted before the Hon'ble ITAT Chandigarh, as judicial notice of the same can be taken under Section 57 (4) of the Evidence Act and it is admissible under Section 74 of the said Act. The position of law in this regard stands approved by the recent judgment of the **Constitution Bench in the case of Kalpana Mehta & Others Versus UOI WP (Civil) No 558 of 2012 dated 09/05/2018**.

The purpose of citing the above report is to highlight the crass commercial character of IPL, the notice of which was taken by the Standing Committee of the Lok Sabha. The funding pattern of the IPL and its franchisee: violation of Income Tax Law PMLA, FEMA, Company Act by the IPL franchisee: award of Media Rights: decision making process in BCCI/IPL all cumulatively establish that no charitable activity was being promoted in organizing the commercial venture called BCCI-IPL.

## C. <u>THE SUPREME COURT COMMITTEE REPORT (LODHA COMMITTEE)</u>

As per the judgment of Hon'ble Supreme Court dated 22th January 2015 the Supreme Court committee was to i) Determine the punishment to be awarded to Mr. Gurunath Meiyappan, Mr. Raj Kundra, and there franchises ii) Examine the role of Mr. Sundar Raman, and if found guilty impose a suitable punishment, and iii)

Recommend reforms in the practices and procedures of the BCCI and also amendments in the MOA and Rules & Regulations.

The Supreme Court Committee of Justice R. M. Lodha (former CJI), Justice Ashok Bhan and Justice R. V. Ravindran submitted its Report dated 18/12/2015 on the 3rd issue mentioned above highlighting various areas of concern for the cricket administration.

The Supreme Court Committee at chapter 4 (page 136) of its Report on IPL states: **"**The phrase **'cash cow'** has been employed to describe the T-20 league that has captured the imagination of a generation. Big money, Bollywood stars, expatriate cheerleaders, blaring music and a global audience came together to create this grand carnival in 2008, which looks set to continue unabated as it readies to enter its ninth season. True to its name, it has become a premier league. The fact that the IPL is the single largest revenue generator for the BCCI cannot be lost sight of. Without the IPL, much of the media attention and international interest would be lost…**"**

The Committee at Chapter 2 (page 121) of its Report highlighted the Governance issue wherein at last para of the page 121 its states **"There seems to be no collective interest in the game being promoted, and cricket stands without a custodian for its protection and propagation in its most passionately followed nation."** At page 124 para (f) it is stated that no representation to women has been accorded by the BCCI. At page 132 it termed it as an unfortunate fact that Indian women cricket team had last played a test match 8 years ago. The committee also lamented at page 133 that there has been no suggestion in the BCCI for any promotion or association with cricket for the differently-abled.

The Supreme Court Committee at chapter 9 of its report has highlighted the unhealthy practices of match fixing and betting. The above report clearly highlights the undisputable fact that there is absolutely no charitable work which is undertaken by the BCCI or its constituents while organizing the cricket especially IPL whereas the entire spectacle of Cricketainment is glamorous money spinner on which ironically no taxes are paid.

**JUSTICE MUDGAL IPL PROBE COMMITTEE**

The 3- Member Probe Committee was appointed by the Supreme Court of India pursuant to an order dated 30th July, 2013 in SLP No. 26633/2013 arising out of the judgment and order in PIL No. 55/2013 of Hon'ble High Court of Judicature at Bombay. The Probe committee comprised of Mr. Justice Mukul Mudgal (Retd. Chief Justice Punjab & Haryana High Court) as Chairman, Mr. L. Nageswara Rao, Sr. Advocate & ASG and Mr. Nilay Dutta, Sr. Advocate as Members.

The Committee probed allegations of Betting and Spot fixing against the Principal of Chennai Super Kings and team owner of IPL franchisee Rajasthan Royals. It further looked into the conflict of interest between the BCCI President and the owner of Chennai Super Kings.

The committee in its report at pages 236 to 237 has highlighted the allegation of match/spot fixing against players. It further found that the measures undertaken by the BCCI in combating sporting fraud are ineffective and insufficient (pages 243 to 244). The Report at page 246 to 247 mentions that surreptitious amendment to Rule 6.4.2 enabled BCCI official to own IPL team which finally led to conflict of interest.

The report is cited to demonstrate that no charitable activity was undertaken in various matches conducted by BCCI-IPL. The report highlights the commercial character of the BCCI-IPL venture sans any trace of charitable activity. It rather exposes the evils of Betting and Spot fixing which crept in the game of cricket.

The Hon'ble ITAT, Chandigarh in its recent order dated 23-02-2018 in the case of I K Gujral Punjab Technical University Vs CIT(Exemption), ITA No. 910/Chd/2017 had duly taken cognizance of various controversies which marred the functioning of the assessee. At para 13 (2nd paragraph) page 16 of its order the Bench states: **"**We can not close our eyes to the frequent news items in this respect including the registration of an FIR against the Ex. Vice Chancellor of the University on corruption charges. Though mere registration of an FIR against the Vice Chancellor or the news items we come across, may not be enough to drive to the conclusion about the genuineness or otherwise of the activities of the assessee, however, at this stage, these factors coupled with other facts as discussed can not be totally ignored.**"**

**BOMBAY HIGH COURT JUDGEMENT DATED 30/01/2018**

The Bombay High Court in the concluding para of its Judgment dated **30/01/2018** in the case of Lalit Kumar Modi vs Special Director in WP No. 2803 of 2015 held as under:-

> **"**47. Before parting, we must indicate that it is because of the acts and deeds of the BCCI in relation to a tournament styled as IPL that all these proceedings had to be initiated and now conducted in accordance with the FEMA. If IPL has led to serious breaches and violations of the FEMA, then, it is high time the organizers realize that after 10 years of holding such tournaments what we have achieved can be termed as a gain or advantage or benefit for they are outweighed completely by the resultant illegalities and breaches of law, which are projected in several courts consuming a lot of precious judicial time. **If the IPL has resulted in all of us being acquainted and familiar with phrases such as "Betting",**

**"fixing of matches", then, the RBI and the Central Government should at least now consider whether holding such tournaments serves the interest of a budding cricketer, the sport, the game itself.** There is a auction and buying and selling of young cricket players by business houses and clubs. Apart from huge money involved, the tournament has brought with it crimes and casualties in the form of ban on clubs and players allegedly involved in wrong doing and breaching of rules and regulations. Now the worrying trend is that such events are being organized even by those in-charge of other sports/games such as Football, Hockey and Badminton. Therefore, it is for the Central Government and the administrators to take a call on all this. We say nothing more**.**

**(SMT. BHARATI H. DANGRE, J) (S.C. DHARMADHIKARI, J) "**

**(A copy of the judgement is enclosed).**

**Conclusion-** A perusal of the above cited documents and judgment of Bombay High Court leads to an inevitable conclusion that the entire IPL venture is a huge commercial cricket entertainment which has attracted the attention of the entire world. It needs to be highlighted at this juncture that there is no such claim advanced even by the BCCI itself that it is running a charitable show in the name of IPL. Rather, as per 79th annual report of the BCCI immense satisfaction has been derived that the IPL as a commercial venture has been huge success wherein terms like **CRICKETAINMENT and 'Manoranjan Ka Baap'** have been used.

Not only the IPL matches are epitome of crass commercialization but they have brought in the evils of betting, match fixing etc., which have done more harm than good to the cause of cricket as a National Sport. This is well illustrated by the Supreme Court Committee report (popularly known as Lodha Committee Report) and recent judgment of Bombay High Court mentioned above in the case of Lalit Kumar Modi vs Special Director dated 30/01/2018. Moreover, the IPL probe committee appointed by the Hon'ble Supreme Court of India comprising of Mr. Justice Mukul Mudgal in its report 09/02/2014 has probed the allegations of betting and spot fixing. The Justice Mudgal IPL probe committee also highlighted the issue of conflict of interest between the BCCI President and the owner of Franchisee team. Therefore, it can be safely concluded that IPL matches are outrightly commercial activity and significantly without any claim or pretension of undertaking any charitable activity.

**V) 'INVOLVEMENT' OF PUNJAB CRICKET ASSOCIATION IN BCCI-IPL MATCHES**

The **involvement** of the Punjab Cricket Association in carrying on of activity in the nature of trade, commerce or business needs to be examined from the mandate of the amended proviso to section 2(15) which states:

> **"**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*----"

**A.** The involvement of Punjab Cricket Association in hosting the IPL matches is absolute primarily by virtue of it being a Full Member of BCCI. As highlighted by the 38th Report of the Standing Committee on Finance, the IPL is not a separate legal entity. It is part of BCCI and is managed and controlled by a separate committee known as IPL Governing Council (page 30 of the Report). The entire expenses of running the IPL Tournament are met by BCCI (page 33 of Report). The Franchisees are responsible for meeting the expenses of the players in the team (travel, marketing and all costs) associated with the staging costs for the matches. The income derived from Media Rights and Sponsorships are shared with the Franchisees as envisaged in the Franchisee Agreement.

The Standing Committee at page 34 of the Report has clearly mentioned that the **franchisees have to pay the BCCI an annual franchisee fee which BCCI distributes to the Associations as subvention**. It is thus, clear that the payments received by the BCCI from the franchisee as annual franchisee fee is distributed by the BCCI as subvention fee to the State Associations like Punjab Cricket Association.

**B.** The involvement of Punjab Cricket Association in the BCCI-IPL matches stands adequately formalized and established in view of the minutes of 80th Annual General Meeting of BCCI held on 24/09/2009 **and** the Tripartite Agreement/Stadium Agreement, both the documents submitted as Additional Evidence by the assessee before the ITAT, Chandigarh.

During the course of hearing the Ld. Counsel for the assessee made an attempt to establish that although the assessee i.e. the Punjab Cricket Association is organizing IPL matches at the directions of BCCI on its own grounds at Mohali, yet it is not involved in the activities of IPL. A very convenient line of argument was taken by

stating that apart from granting access to stadium for the IPL matches the assessee has nothing to do with IPL matches. In order to buttress its claim to this effect the assessee filed copy of Tripartite agreement/stadium agreement between the assessee, BCCI and KPH Dream Cricket (P) Ltd (on sample basis) as additional evidence. A close examination of the agreement, however, would reveal that the claim of the assessee is devoid of any substance. It rather establishes/reiterates the Department's stance that the assessee is intrinsically and intimately involved in organizing the commercial extravaganza of the IPL.

The salient features of the agreement delineated below reveal the extent and depth of the involvement of PCA in organizing the BCCI mandated IPL matches:-

1. Parties to Tripartite Stadium Agreement.

   i) The Tripartite Agreement itself is primary evidence of PCA's involvement in the BCCI-IPL matches. The Stadium agreement is executed between PCA mentioned as the State Association. It is an unambiguous assertion that PCA is the State Association of BCCI i.e. the Federal constituent of the Central body (BCCI).

   ii) The IPL is a separate sub-committee unit of BCCI, its Central Body.

   iii) The BCCI-IPL is an owner of League whereas the PCA being the federal constituent of BCCI is the owner and operator of the stadium. It means that the federal constituent of the Apex Body is the owner of the stadium and is organizing the IPL matches in the stadium on the direction of BCCI.

2. Grant of Right (Articles 2.1 to 2.4).

   (i) The agreement states the BCCI – IPL(the central unit) wishes to be granted a right from the state association for the use of the stadium. It is inconceivable that the PCA could have refused granting the right of use of stadium to its central body.

   (ii) The Supreme Court Committee at chapter 2 (page 121) of its report (copy submitted to Hon'ble ITAT on the last date of hearting i.e. 25/05/2018) has highlighted the governance structure of the BCCI. At page 122 of its report mentioned the extent of concentration of power has been revealed - "From overall superintendence of the Board and its affairs to taking action against players and even approving the composition of the team chosen by the Selectors, the President is all-powerful. In practice, this power was even abused with the exercise of veto over the

changes in captaincy and selection of ICCV representatives. Incumbents were also known to turn a blind eye when issue of corruption and mismanagement were brought to their notice, even going as far as permitting retrospective amendments to the bye-laws to favour particular interests.''

(iii) Articles 2.2 to 2.4 of the agreement bring out the involvement of the PCA, being State Association, in ensuring the organizing of the IPL matches in while being consistent with grant of exclusive right to use the stadium to the BCCI-IPL.

3. State Association Right/Obligations(Article 3.1 to 3.8)

(i) Article 3.1 and 3.2 reveal the duties of PCA which shall bound it to **provide all the necessary cooperation and support to the BCCI-IPL** and the franchisee.

(ii) Article 3.4 mandates the PCA to carry out upgradation of the stadium **at its own cost**. Similarly, article 3.6 mandates the PCA to ensure that the stadium adheres to the BCCI-IPL medical guidelines at its **own cost**. Further, article 3.8 mandates the PCA to provide adequate sufficiently skilled and trained personnel to BCCI-IPL at its **own cost**.

4. Media Related (3.9 to 3.13).

(i) Article 3.9 of the agreement mandates the PCA to ensure TV production of each match and of entertainment activity on the day of match. It states that PCA **shall cooperate such third party producers.** The PCA is duty bound to ensure that such production takes place at the stadium according to the requirement of such TV producers.

(ii) Article 3.13 of the agreement mandates the PCA to erect and install all desired facility, structure and equipment required in connection with exploitation of media right at its **own cost**.

5. License Related (3.14 to 3.18).

(i) Article 3.14 makes it mandatory for the PCA to make the stadium available free from any commercial obligation or advertising etc., which it may enter into with any entity. This demonstrates that the PCA's involvement in organizing /arranging the IPL matches is at the cost of staging of its own matches or other events at the stadium.

**(ii)** Article 3.18 mandates the PCA to take all reasonable steps to prevent the exercise of any right by any third party. It further mandates that the PCA shall use its best endeavor to make

**areas surrounding the stadium** available for **exploitation of the commercial rights.**

6. Intellectual Property Rights (Article 3.19).

(i) As per article 3.19 of the agreement the PCA as the State Association **agrees to cooperate fully** with BCCI-IPL **and assist** BCCI-IPL to take such action as are reasonably requested by BCCI-IPL to prevent infringement of commercial rights etc., in relation to any of the same.

In the same article the **PCA agrees to assist BCCI-IPL with local trading standard department, Police, private security arrangements,** with a view to minimizing or eliminating certain exigencies pertaining to matches, advertising/promotions, unauthorized sale of tickets etc..

(ii) As per article 3.21 the PCA has waved **in perpetuity** all copy rights in respect of each match, all rights to incorporate any action, architectural feature etc., in stadium in any form of audio visual etc., in connection with matches or as publicity thereof, all rights to exploit any coverage and the commercial right.

(iii) As per article 3.22 the PCA has undertaken that it shall not do or permit to be done any act or thing which may in any way harm, bring into disrepute, devalue, denigrate, impair or otherwise adversely affect the league, the league marks and franchisee marks or the right and interest of BCCI-IPL etc..

7. Ticket Related (Article 3.24 to 3.27).

(i) As per article 3.24 the PCA agreed not to sell or provide any tickets, carry out any ticket promotions, produce/stock pile/distribute/sell any merchandise in respect of any match.

**(ii)** As per article 3.25 he PCA will assist with reasonable requests of BCCI-IPL/or franchisee in the promotion of the match **and will provide BCCI-IPL and franchisee with access to database of ticket holders or corporate contacts.**

**(iii)** The article 3.27 mandates that unless provided to the contrary all of the costs related to provision by the State Association of the services to be provided **under this agreement shall be borne by the State Association.**

8. Consideration (Article 5.1 to 5.4).

(i) As per article 5.2 in consideration of making the stadium available to BCCI-IPL/franchisee, in accordance with terms of the agreement the franchisee will pay to the PCA i.e. **State**

**Association an amount of Rs. 30 lacs plus service tax** as applicable in respect of each day on which match is staged.

This arrangement of receiving Rs. 30 lacs in lieu of certain facilities by the PCA brings it directly in the ambit of proviso to Section 2(15) of Income Tax Act, 1961. It may be reiterated here that the section unambiguously states that in such instances '*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,…'*

**Conclusion-** The Ld. Counsel had made a self-serving statement before the Hon'ble Bench that the assessee Punjab Cricket Association is not **involved** (as mandated by proviso to section 2(15)) in the BCCI-IPL matches. However, the analysis of various articles of the Tripartite Agreement reveals the extent and depth of the involvement of PCA in the BCCI-IPL matches. The various articles highlighted above amply demonstrate that the PCA being the federal constituent and Full Member of BCCI had taken various steps/initiative at its **own cost** to ensure that the BCCI-mandated IPL matches are organized smoothly and are huge commercial success. The Tripartite Agreement and Schedules 1 & 2 annexed to it are clinching documentary evidences of the full-fledged involvement of PCA in BCCI-IPL matches.

Moreover, the arrangement of receiving Rs. 30 lacs in lieu of certain facilities by the PCA including providing Stadium alongwith other facilities brings it directly in the ambit of proviso to Section 2(15) of Income Tax Act, 1961

The Tripartite Agreement, thus, clearly demonstrates that the assessee was **involved** in BCCI-IPL matches in a much more comprehensive manner than being a mere stadium provider as claimed. In fact, the BCCI-IPL matches would have not been possible in the first place without the stadiums owned by the Full Members /Federal Constituents of BCCI. (Pages 81 to 107 of assessee's paper book).

## VI) LEGAL ISSUES-

**a) Misplaced Reliance on the judgment of -Addl. Commissioner of Income Tax Vs Surat Art Silk Cloth Manufacturers Association 121 ITR 01 (SC)- by the assessee.**

During the course of hearing the Ld. Counsel placed heavy reliance on the case law of Addl. Commissioner of Income Tax Vs Surat Art Silk Cloth Manufacturers Association 121 ITR 01 (SC). The Hon'ble Supreme Court in this land mark case had held that the primary dominant purpose of the trust has to be examined to

determine whether the said trust/institution was involved in carrying out any activity for profit.

In the case of Punjab Cricket Association the Ld. Counsel could not cite a single fact/reason/argument to claim that the BCCI-IPL matches are charitable activities. In fact no claim/argument was made by the Ld. Counsel that the BCCI-IPL activities are charitable in nature. Whereas the **involvement** of the Punjab Cricket Association in the commercial and profit oriented object of BCCI-IPL is absolute and complete. In absence of the basic claim and distinguishable facts of the case no benefit of legal proposition available in Surat Art Silk can be derived by the assessee.

The bald claim to avail the ratio of the case of Surat Art Silk case is a desperate attempt to somehow get shelter of the case of Surat Art Silk without any parity of facts. The Hon'ble Apex Court has discouraged such attempts in CIT Vs Sun Engineering Works Pvt. Ltd. 198 ITR 297. **"**It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this court. A decision of this court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this court, to support their reasonings.**"**

Reliance is further placed on Padmasundara Rao (Decd.) and Others Vs State of Tamil Nadu and Others 255 ITR 147. **"**Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morrin in Herrington v. British Railways Board [1972] 2 WLR 537 (HL). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.**"**

**b)** In view of the fact that the involvement of the Punjab Cricket Association in hosting the commercial venture of BCCI-IPL is not for charitable purpose and is predominantly a profit earning venture the ratio of Tribune Trust Vs CIT, Chandigarh (P & H) can safely be invoked. On the basis of facts of that case the Hon'ble High Court found that the case of Tribune Trust is hit by proviso to section 2(15). The Hon'ble Court held that the activities of Tribune Trust were carried on with predominant motive of making a profit. The Hon'ble Court at para 57 of its order also explored the possibility as to whether

the subsequent use of the profits for purposes of the trust would save the assessee from the rigors of proviso of section 2(15).

**c) Institute of Chartered Accountants of India Vs Director General (Exemption), Delhi -347 ITR 99 (Delhi High Court).**

The Hon'ble Delhi High Court in para 13 of its order states:

**"**Reliance place by the petitioners on Addl. CIT Vs Surat Silk Court Mfrs. Association [1972] 2 Taxmann 501/[1980] 121 ITR 1 (SC) may not be fully appropriate after introduction of the first proviso as the statutory requirements were then different. Utilization of the funds or income earned whether for charitable purpose or otherwise is not relevant now in view of the first proviso and cannot be a determining factor for deciding whether the petitioner institute is covered by section 2(15) of the Act.**"**

The position of law as expounded by the Hon'ble Delhi High Court explains the latter part of the amended proviso which states 'irrespective of the nature of use or application, or retention, of the income from such activity'. Therefore the involvement of the Punjab Cricket Association in commercial activities renders it ineligible for exemption u/s 11 of the Act. This is irrespective of the nature of use or application, or attention of the income from such activity for which an unsubstantiated argument was made by the Ld. Counsel during the hearing.

**c) The case laws as relied upon by Ld. Counsel.**

The Ld. Counsel had relied upon certain case laws of Tribunals and High Courts. A perusal of these case laws reveal that the Hon'ble Courts therein were not presented with Public documents/Standing Committee Reports/Facts wherefrom judicial notice could be taken as per Evidence Act. The Public documents/Reports presented before ITAT, Chandigarh unambiguously and indisputably demonstrate that the BCCI-IPL matches are purely business/commercial venture with profit earning as its sole objective. The agreements between BCCI-IPL and Franchisee and Punjab Cricket Association further reveal/demonstrate the extent and depth of the involvement of the assessee in the Business/Commercial venture of BCCI-IPL. The case of the assessee requires adjudication on the basis of its peculiar facts as presented by the Department alongwith the relevant and legally admissible documents.

**Conclusion-** The primary and dominant purpose of the BCCI-IPL matches is **'**to merge Sport and Business**'** as clearly mentioned in the 79th Annual Report of BCCI. The various reports including 38th Report of Standing Committee; Lodha Committee's Report; Justice Mudgal Report IPL Probe Committee Report have clearly brought out the predominant commercial character of BCCI-IPL matches. In fact

> the assessee has not even claimed that BCCI-IPL matches are charitable activities. Moreover, in view of **absolute involvement** of the assessee in the BCCI-IPL venture as evidenced by Tripartite Agreements no benefit of the ratio enunciated in the case of Surat Art Silk can be obtained by the assessee and is suitably covered by the amended provisions of section 2(15) of the Act."

12. The crux of the arguments of the Ld. Senior Counsel for the assessee is that though the IPL may be the commercial activity of the BCCI, however, the assessee is not involved in any commercial exploitation of the IPL match. All the rights including the commercial rights such as media rights, selling of tickets etc. belong to the BCCI. Whatever grants have been received by the assessee in the shape of TV subsidy, IPL subvention etc. is in the nature of voluntary, unilateral grant / donation by the BCCI for the advancement of the objects of the assessee society for the promotion of game of cricket. That whatever is the income of the assessee including the aforesaid grants from the BCCI, that is applied for the promotion of game of cricket and hence sans profit motive, therefore, the activities of the assessee/appellant fall in the definition of charitable purposes as defined under section 2(15) of the Act.

On the other hand, the crux of the contentions raised by Sh. Manjit Singh, the Ld. DR, is that the assessee being a Member of the BCCI is actively involved in the conduct and commercial exploitation of the IPL matches.

13. Since it is the main plea of the Ld. Counsel for the assessee that the amounts received from the BCCI are in the nature of grants, so as to ascertain these facts, it was deemed fit to summon the concerned officials of the BCCI along with relevant record and also to apprise us about the stand of the BCCI in this respect as to what is the treatment given by the BCCI to the amounts granted to the various cricket associations including the assessee. Hence, the concerned official of the BCCI was summoned to clarify the position. The BCCI has clarified its position vide letter dated 3.10.2018, contents of which are reproduced as under:-

*"Date : 03 October, 2018*

*To,*
*The Assistant Registrar*
*Income Tax Appellate Tribunal*
*Ministry of Law & Justice,*
*Department of Legal Affairs*
*Kendriya Sadan, Sector 9-A, Chandigarh - 160009*

***Subject : Summons under section 131 read with section 255(6) of the Income-tax Act, 1961, in the case of Punjab Cricket Association, Mohali vs ACIT, C-6(l) for Assessment Year 2010-11***

***Ref: ITA No. 427/Chandi/2017 AY 2010-11 of the appeal by the Punjab Cricket Association, Mohali vs ACIT, C-6(l), Mohali pending adjudication before the Chandigarh bench***

*Dear Sir,*

*We refer to the hearing held on 11th September, 2018, in front of Hon'ble Chandigarh ITAT Bench, wherein we have been asked to provide the documents as per attached statement for the period AY 2008-09 to AY 2015-16.*

*During the course of hearing we have been given to understand that the major issue in the appeal by the Punjab Cricket Association (PCA) is pending before your honours is in regard to the taxability of payments made by the BCCI to State associations.*

*The stand of the BCCI will be clear from the submissions made before the assessing officer during the course of BCCI tax assessments as well as the submissions made along with copies of BCCI audited accounts and assessment order for the period AY 2010-11 before the Hon'ble Chandigarh ITAT Bench during the course of hearing held on 11 September, 2018.*

***Status of the BCCI***

*It is the BCCI's case that it is registered under section 12A of the Income Tax act 1961, and the said registration subsists to date. It is therefore entitled to an exemption under section 11. The grant of exemption is being denied by the tax authorities and the dispute is pending adjudication before various authorities.*

***Payments by the BCCI to the State associations.***

*The payments made by the BCCI fall into two categories the first being payments towards participation subsidy, matching and staging subsidies. These are in the nature of reimbursements of expenditure which the State associations have to incur for conduct of matches. The second category of payments is in regard to a share in the media rights income earned by the BCCI. The entire claim of payments to the State associations is being disputed by the tax authorities in the assessments of the BCCI.*

*The claim of the BCCI is that the said payments are application of income for the purpose of computation of income under section 11.*

*Since the tax authorities are denying the exemption under section 11* ***strictly in the alternative and without prejudice to its contention that the entire sum is allowable*** *as* ***an application,*** *the BCCI has contended that the payments are allowable as a deduction under section 37(1). However we bring to your honours' attention that the above ground also is denied by the CIT(A) orders.*

*We trust that a perusal of the records being placed before your honour will make the stand of the BCCI clear.*

*Kindly take the above information on record. Thanking You.*

*Yours faithfully,*

*For The Board of control for Cricket in India*
*Sd/-*
*Santosh Rangnekar,*
*Chief Financial Officer*

*CC : The CIT(D.R.) ITAT, Chandigarh"*

14. Voluminous documents such as the copies of the relevant accounts of the BCCI, the stand/submissions of the BCCI before the tax authorities in its cases, assessment orders and appellate orders for different years in the cases of the BCCI have been furnished by the BCCI to apprise and clarify its position in the matter.

15. We have perused the relevant evidences summoned from the BCCI for the purpose of ascertaining the stand and treatment given by the BCCI to the different amounts or to say the alleged grants to State Associations. A perusal of the accounts of the BCCI reveals that the BCCI has booked the aforesaid payments to the State Associations as expenditure out of the gross receipts. The BCCI has taken a clear and strong stand before the tax authorities including appellate authorities that the payment to the State Associations is not at all appropriation of profits. In fact, it is the plea of the BCCI that its registration u/s 12 of the Act has been wrongly cancelled and that the appeal against the order dated 30.03 2012 of the Mumbai Bench of the Tribunal confirming the cancellation of registration is pending before the hon'ble Bombay High Court. The BCCI still continue to claim that the payments made to the

Member State Associations is application of the income as per provisions of section 11 of the Act. This stand of the BCCI is in anticipation of the decision of the hon'ble Bombay High court in its favour. The BCCI in the alternative has claimed that the payment made to the Member State Associations earned from IPL are clearly in the nature of expenditure allowable under section 37 (1). This has been consistently pleaded by the BCCI to the Income Tax Authorities in the cases of the BCCI for different assessment years. For the sake of reference, the relevant part of the contents from letter dated 30.1.2018 addressed to CIT(A)-54, Mumbai is reproduced as under:

> "……During the year, BCCI has paid amounts to the state associations under the head "TV subvention". This represents payment of 70% of revenue from sale of media rights to state associations. These payments were made out of the gross revenue from media right and not out of the surplus. Therefore it cannot be considered as distribution of profit. Further it is important to note that even if there would be losses in any year, TV subvention and subsidy would be payable to state association and therefore considering it as distribution of profit is vague".,…….
>
> … "Assuming without admitting that if the income of the appellant is assessed by denying exemption available under section 11 and treating it as an AOP carrying on business, then the expenditure incurred has to be treated as for the activities of BCCI and has to be allowed as an expenditure under section 37 of the Income Tax Act since the expenses are incurred wholly and exclusively for the purposes of business". …..
>
> "……. the state association is not holding the amount received as subsidies on behalf of BCCI and therefore the appellant should not be held liable on the examination of actual usage of such expenditure by state association. Any amount paid which is not specifically disallowed under the provision of income tax and the same is considered as income

of the recipient should be allowed as expenditure in the hands of payer in the course of carrying out its activities." ....

... "BCCI had undertaken development of the sport through itself and the state associations. BCCI in its objects has agreed to encourage the promotion of Cricket associations **and in turn to generate the revenue from conducting the matches in various states which is not possible without the support of various cricket associations.**

**The arrangement is under:**

The state associations are the members of 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." .....

..... "BCCI has created a very strong infrastructure in India for the cricketers as well as spectators through the state cricket associations. It has provided funds to the state associations to run coaching camps, academies, tournaments, and various leagues and to build infrastructure in the world. The stadiums are modern and the largest in the world. There are vibrant interstate tournaments, inter-zone tournaments, city leagues, inter-university matches and so on.

Whenever a foreign team visits India, the international matches such as Test and ODI are allotted by BCCI to the state cricket associations by a rotation policy. The matches are conducted and managed by the respective state associations. It is not possible for BCCI to conduct all these matches with its own limited personnel.

**It is dependent on the state associations, their office-bearers, their employees and their network and resources at the local center to conduct the matches.**

The association manages the entire match right from provision of security to players, spectators in coordination with

respective state police personnel, taking other security measures like fire prevention etc. The association incurs a good chunk of expenditure in conducting an International Test/ODI/T20/IPL/CLT20 Matches.

**In order to have fair and equitable sharing of the revenues, arrangements have evolved over time, about the respective responsibilities, rights, shares of revenue etc. of BCCI and the state associations.** The state association is entitled to the ticket revenue and ground sponsorship revenues. Expenses on account of security for players and spectators, temporary stands, operation of floodlights, Score Boards, management of crowd, Insurance for the match, electricity charges, catering etc. are met by the state associations. On the other hand expenditure on transportation of players and other match officials, boarding and lodging, expenses on food for players and officials, tour fee. match fee, etc. are met by BCCI and revenues from sponsorship belong to BCCI.

**In respect of revenues from sale of media rights, and arrangements has evolved over time.** Until 1991-92, the income from media rights was meager. With the growth in income from media rights, it became necessary to optimize the arrangement for sale of media rights. **For a Test series or ODI series conducted in multiple centers and organized by BCCI and multiple state associations, it was found that if each state association were to negotiate the sale of rights to events in its center, it negotiating strength would be low. It was, therefore, agreed that BCCI would negotiate the sale of media rights for the entire country to optimize the income under this head. It was further decided that out of the receipts from the sale of media rights, 70% of the gross revenue less production cost would belong to the state associations.** Every year, BCCI has paid out 70% of its receipts from media rights (less production cost) to the state associations. This amount has been utilized by the respective associations to build infrastructure and promote cricket, making the game more popular, nurturing and encouraging cricket talent, and leading to higher revenues from media rights.

Even in the event that exemption under section 11 is denied, the payments to state associations must be allowed as a deduction, as expenditure laid out or expended wholly and exclusively for the purpose of earning such income.

**It must be appreciated that in order to earn revenues, BCCI was and continues to be highly dependent on the state associations. BCCI does not have the infrastructure and the resources to conduct the matches by itself and is dependent on the state associations to conduct the matches. The income from media rights is dependent on the efforts of the state associations in conducting the matches from which the media rights accrue. The division of revenues and expenditure is a matter of arrangement between the parties.** Certain incomes such as sale of ticket revenues belong to the state associations, who meet the expenditure on the matches such as security for players and spectators temporary stands, operation of floodlights, Score Boards, management of crowd, Insurance for the match, electricity charges, catering etc. **Whereas with regard to the income from sale of media rights, the arrangement between BCCI and the state associations has been that 70% of the revenue would belong to the state associations. As shown, this has been the arrangement between the parties for twenty years. The state associations are entitled by virtue of established practice to 70% of the media right fee. It is in expectation of this revenue that the various state associations take an active part and co-operate in the conduct of the matches. This payment is, therefore, made only with a view to earn the income from media rights.**

**These payments do not represent distribution of profits to members, since the payment is at a percentage of the gross revenues and had been paid even in those years where BCCI had incurred a loss; besides, the amount was not paid to all members but only to the state associations. In other words, the payment is not made to the three private clubs or the government institutions, but only to state associations.** Distribution of profits would always be to all the members and the fact that these other members have acquiesced in these payments demonstrates that the payments are not distribution of profits.

**In the books of accounts of state association, any amount received as TV subvention and subsidies received from BCCI are treated as income of the state association. Therefore any surplus left out of the expenditure made by association is submitted to tax in the hands of state association.**

In order to establish whether the expenditure incurred for cricketing activities depends on the nature of services provided by the state association to BCCI. It is well established fact that, state associations are providing all the infrastructure and assistance in carrying out cricketing activities in the state. Therefore any payment for services provided by state association is a legitimate expenditure allowable under income tax.

By seeing the fact of the circumstances, assets held by the appellant are not capable of generating entire income which it is receiving through media right. Therefore when the appellant is carrying out cricketing activities by utilizing the facilities of the state association proportion of income must be shared with the state association. Therefore all the payment as TV subvention and subsidy are to carry out the cricketing activities and allowable as expenditure.

To reiterate we wish to submit that when the learned AC concluded that the activities of the appellant is business activities, then expenditure incurred in carrying out of such activities should be allowed as business expenditure. Without such expenditure business of the appellant will never prosper. When department accepted that assessee is carrying out business then it how much expenditure made for carrying out the business should be left on the appellant., .....

..... "What is to be seen is whether purposes of increasing revenue and promoting the game of cricket are achieved by making these payments. **We have by citing examples of the most recent match clearly pointed out that if it were not for the support of the appellant and the spending of monies, the purpose of "business", namely expansion and augmenting of revenues never have been achieved.** If the state associations did not upgrade their facilities international tournaments would never again held in this country. **Further if media facilities were not made available by the associations in that case also the game could not have been popularized to the extent that it has.** Therefore there is a clear case for allowance of the expenditure under section 37(1)." .....

**(emphasis supplied by us)**

16. In view of the above consistent stand of the BCCI relating to the various payments made to the State Associations including the IPL subvention and TV subsidy, the Ld. Representatives of the parties were again given opportunity to put their respective submissions on this point.

Sh. Vohra, the Ld. Sr counsel for the appellant reiterated his submissions by stating that the primary plea/stand of the BCCI is that the payments/grants made by it to the State associations is application of income, hence it is only the voluntary grant given by the BCCI to the State Associations including the assessee for the purpose of the promotion of the game of cricket, hence, it can not be treated as income of the assessee from IPL matches. That the alternate stand of the BCCI that the payments to the State associations be treated as expenditure in the hands of the BCCI is opposite and mutually destructive to the primary stand of the BCCI and thus can not made basis to decide the nature of receipts from BCCI in the hands of the assessee. The Ld. Counsel has further submitted that the revenue authorities, even otherwise, have consistently rejected the aforesaid alternate contention of the BCCI and the entire receipts from the IPL have been taxed in the hands of the BCCI. That even otherwise, without prejudice to the primary contentions of the appellant, if the BCCI is treated as an Association of Persons (AOP) as per the plea of the revenue, still, once the entire income from IPL has been taxed at the hands of AOP, the

further payment by the BCCI to its Member Associations can not be taxed as it will amount to double taxation of the same amount.

17. On the other hand, Sh. Manjit Singh, the Ld. DR, has made the following further written submissions:

1. **"Brief overview of the Cricket Structure**

The International Cricket Council (ICC) is the Governing Body for cricket in the world. It was founded as Imperial Cricket Conference in 1909. It was renamed as International Cricket Conference in 1965 and took up its current name in 1989. The independent ICC was funded initially by commercial exploitation of rights to world cup of One Day International Cricket. As not all member countries had double tax agreement with United Kingdom, to protect cricket's revenue a company namely ICC Development (International) Pvt. Ltd. was created. This was established in January 1994 in Monaco. The ICC had earlier requested the British Govt. to be given special exemption from paying UK Corp. Tax on its commercial income. As the British Govt. was unwilling, the ICC eventually settled in Dubai. The ICC is registered in British Virgin Island. The ICC has 12 full Members, which includes India and 93 Associate Members (Source-Wikipedia, Copy Enclosed, Page No. ).

The ICC in its Memorandum of Association at sub article (D) of Article 2.4 states that each member must:

"(D) manage its affairs autonomously and ensure that there is no Government (or other public or quais-public body) interference in its governance, regulation and/or administration of Cricket in its Cricket Playing Country (including in operational matters, in the selection and management of teams, and in the appointment of coaches or support personnel)" (Memorandum of Associations enclosed. Source-Internet Page No. ).

The Board of Control for Cricket in India (BCCI) headquartered at Mumbai is the national governing body for cricket in India. The Board was formed in the year 1929 with the object of promotion and development of cricket in India and is a society registered under Tamil Nadu Societies Registration Act, 1975. BCCI is a full fledged Member of International Cricket Council (ICC) which is the Governing Body for cricket in the world. As a member of the ICC, it

has the authority to select players, umpires and officials to participate in international events and exercises control over them. Without its recognition, no competitive cricket involving BCCI-contracted Indian players can be hosted within or outside the country (Source-38th Report of Standing Committee on Finance- 15th Lok Sabha).

BCCI has 30 members out of whom 25 are State Cricket Association, 2 are private clubs and 3 are Central Government institutions. BCCI does not own or manage the infrastructure and facilities that are required for cricket. (Source-CIT(A)'s order in case of BCCI for A.Y. 2010-11). The Punjab Cricket Association is registered under the Societies Registration Act 1860 and is one of the State Associations which is a Full Member of BCCI.

**2. <u>Involvement of PCA in commercial venture of BCCI-IPL matches is Absolute</u>**

In the written submissions filed in the Departmental paper book earlier, detailed submissions have been made wherein on the basis of 79th Annual Report of the BCCI, the extent of the commercial venture of IPL has been highlighted. The 38th Report of the Standing Committee on Finance- XVth Lok Sabha has also been submitted wherein commercial character of IPL has been highlighted. In this regard the judgment of BCCI vs. Cricket Association of Bihar dated 22.01.2015 was also highlighted, wherein (relevant portion from Pages 106 to 112) the Hon'ble Apex Court at Para-91 has mentioned the submission of Sh. Kapil Sibal, Ld. Counsel of the BCCI, that IPL was conceived as a commercial enterprises. In these pages the business structure of the IPL stands duly explained. In this judgment the Hon'ble Supreme Court at Page-127 has formed a committee under the Chairmanship of Hon'ble Mr. Justice R.N. Lodha, former CJI. Subsequent to this judgment the Justice Lodha Committee gave its report highlighting that IPL is the single largest revenue generator for the BCCI. The report has been duly submitted in the earlier paper book. Further, the report of the Probe Committee under the Chairmanship of Mr. Justice Mukul Mudgil has also been submitted, which highlights the allegations and investigations conducted for betting and spot fixing in the IPL matches. The various documents mentioned above clearly bring out the gross commercial character of the BCCI-IPL venture sans any trace of charitable activity.

In the backdrop of the undisputed commercial character of the IPL venture the role of Punjab Cricket Association is clear- it is

absolutely involved the commercial venture of IPL. It is pertinent to mention here that as BCCI does not own any cricket stadium, the involvement of various State Associations including PCA is sine qua non for the success of the IPL format. In this regard the tripartite agreement/stadium agreement submitted as additional evidence by the assessee before the Hon'ble ITAT Chandigarh is itself an evidence of the complete involvement of PCA in the commercial venture of IPL. The BCCI's stand qua the State Associations finds mentioned in its submission dated 21.01.2013 before its AO in Mumbai, wherein during assessment BCCI has explained that '**BCCI does not have the infrastructure and the resources to conduct the matches by itself and is dependent on the state associations to conduct the matches. The income from media rights is dependent on the efforts of the state associations in conducting the matches from which the media rights accrue'.** The BCCI has further stated that '**The State Associations are entitled by virtue of established practice to 70% of the media right fee. It is in expectation of this revenue that the various state associations take an active part and cooperate in the conduct of the matches. This payment is therefore made only with a view to earn the income from media rights'.** Therefore, it is clear that transaction between the BCCI and the PCA is purely commercial in nature and the income/receipts received by the PCA are in lieu of its services rendered to BCCI and while further ensuring the future IPL matches. In fact as per Article 3.21 of the Tripartite Agreement, the PCA has waived in perpetuity all copy rights in respect of each match, all rights to incorporate any action, architectural feature etc., in stadium in any form of audio visual etc., in connection with matches or as publicity thereof all rights to exploit any coverage and the commercial right. Such clauses & articles have been duly highlighted in the written submissions filed earlier by the Department in its paper book.

**3. <u>Payment to PCA is not a grant :</u>**

**A**. The Ld. Counsel of the assessee has taken a plea that the payments made by BCCI are in the form of a grant while stating that the BCCI distributes 70% of the revenue from sale of media rights to the State Associations for promotion of sports. The counsel further stated that there is no quid pro quo involved. It was further asserted that in this assessment year although the IPL was held in South Africa yet a grant was given to State Associations.

The argument taken by the Ld. Counsel is contrary to the facts of the case. A perusal of the franchise agreement (submitted by the assessee- Page 131 to 198) between BCCI and KPH Dream Cricket Pvt.

Ltd. (the franchisee) (Clause 7) reveals that the franchisee shall be initially paying to BCCI-IPL franchise consideration for a period of nearly nine years i.e. from 2008 to 2017. In this period the franchisee shall be paying a fixed league deposit amounting to Rs. 9.12 cr. on or before 2nd January of each such year. It further provided that an amount equivalent to Rs. 21.28 cr. shall be paid by the franchisee on the date of 1st match in the league in each year. In fact after the period of nine years i.e. from the year 2018 onwards the franchisee shall be paying an amount equal to 20% of its income received in respect of such year.

It is pertinent to highlight that the franchisee is making payments to a body i.e. BCCI which does not owns any stadium. As per clause 2 of the agreement (supra), the BCCI grants the franchisee a right to be the only team in the league whose home stadium is located in the territory during a period of not less than the first three sessions. As per its sub clause-c, the BCCI shall be providing the franchisee a stadium to stage its home league matches at cost. This is to be done by way of an agreement between BCCI-IPL and the owner of the stadium which is the Punjab Cricket Association in this case.

At sub clause 2.3 of the agreement mentioned supra, the BCCI-IPL agrees to stage the league in each year. It is interesting to state here that in this very clause it is mentioned that in case the league is not staged at all then the obligation of the franchisee to pay the franchisee consideration and those of the franchisee's obligation in respect of staging of matches shall be suspended until such time as the league is staged once more. This makes it amply clear that staging of league matches is a matter of utmost importance for the financial health of BCCI-IPL. As non staging of the league shall constrain it to forgo the hefty annual league deposit equivalent to Rs. 9.12 crores and Rs.21.28 crores which is to be paid by the franchisee on the date of first match in the league in such year.

In view of the clauses of the franchisee agreement it was imperative for the BCCI-IPL league to ensure conducting the matches even if it was to be hosted in South Africa. As otherwise a huge commercial loss was an imminent possibility.

The argument of the Ld. Counsel that even though the matches were not held in the instant year in the stadium owned by PCA yet it was granted 70% of the franchisee fee as the same was nothing but a grant devoid of any quid pro quo is equally misleading. As mentioned above, clause 7 of the Franchise Agreement stipulates a period of nearly 9 years i.e. 2008-2017 and still further from 2018 onwards. The schedule of

franchisee payments mentioned at Clause-7 is for all such years. Similarly, the Central Rights Income has been scheduled to be allocated for the period of 2008-2012, 2013-2017 and 2018 onwards as per Clause-8 of the agreement. These clauses unambiguously prove that the BCCI-IPL in order to ensure a hassle free and smooth running of IPL matches had to make such payments to various State Associations as a consequence of which a hefty receipt from the franchisees could flow without any problem. In fact these payments are nothing but a quid pro quo as the BCCI-IPL Body does not owns any cricket stadium at all and has admittedly limited infrastructure. In fact, in absence of its own cricket stadium it was all the more necessary and imperative upon BCCI to keep the State Associations in good humor.

In the case of Gujarat Cricket Association vs. JCIT (Exemptions), Ahmadabad -101 Taxmann.com-453 dated 24.01.2019, the BCCI's stand during its assessment proceedings has been quoted. The BCCI vide its submission dated 03.12.2012 to it's A.O. has explained its relationship with the State Cricket Associations as follows:

> "1. BCCI is society registered under the Tamil Nadu Societies Registration Act. It was formed in the year 1929 with the object of promotion and development of cricket in India and is a member of the International Cricket Council (ICC) the regulatory body for world cricket. As a member of ICC, BCCI represents India in bilateral tours between member countries and in ICC tournaments such as the World Cup.
>
> 2. BCCI has 30 members out of whom 25 are state cricket associations, 2 are private clubs and 3 are Central Government Institutions. BCCI does not own or manage the infrastructure and facilities that are required for cricket. It encourages and oversees the various state associations to promote the game, build the required infrastructure organize tournaments, leagues, coaching camps etc. in their respective states. Whenever a foreign team visits India, the international matches such as Test and ODI are allotted by BCCI to the State Cricket Associations by a rotation policy. The matches are conducted and managed by the respective state associations and over time, arrangements have evolved about the respective responsibilities, rights, shares of revenue etc. These have evolved in order to promote co-operation and unity among the member associations and by applying the principles of equity and fairness, for which the sport of cricket is renowned."
>
> 9.7.3 The BCCI in its submission dated 21/1/2013 earned subsidy paid to SCAs and TV Subvention as stated as follows:—
>
> "13.2 PAYMENTS TO STATE ASSOCIATIONS

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Even in the event that exemption under section 11 is denied, the payments to state associations must be allowed as a deduction, as expenditure laid out or expended wholly and exclusively for the purpose of earning such income, **it must be appreciated that in order to earn revenues, BCCI was and continues to be highly dependent on the state associations. BCCI does not have the infrastructure and the resources to conduct the matches by itself and is dependent on the state associations to conduct the matches. The income from media rights is dependent on the efforts of the state associations in conducting the matches from which the media rights accrue**. The division of revenues and expenditure is a matter of arrangement between the parties. Certain incomes such as sale of ticket revenues belong to the state associations, who meet the expenditure on the matches such as security for players and spectators temporary stands, operation of floodlights, Score Boards, management of crowd, insurance for the match, electricity charges, catering etc. Whereas with regard to the income from sale of media rights, the arrangement between BCCI and the State Associations has been that 70% of the revenue would belong to the State Associations. As shown, this has been the arrangement between the parties for the twenty years. **The State Associations are entitled by virtue of established practice to 70% of the media right fee. It is in expectation of this revenue that the various state associations take an active part and cooperate in the conduct of the matches. This payment is therefore made only with a view to earn the income from media rights."**

The stand of BCCI mentioned above confirms the fact that the payments received by the PCA from the BCCI cannot be termed as grant at all. As the BCCI itself has mentioned that '**It is in expectation of this revenue that the various state associations take an active part and cooperate in the conduct of the matches**'. It is further pertinent to mention that in absence of any cricket stadium the BCCI remains dependent on State Associations. Therefore, the various payments made by the BCCI ensures that the State Associations are ever ready with their stadium and other infrastructure to ensure smooth execution of IPL matches.

**B.** It is pertinent to point out that in the aftermath of Justice Lodha Committee's report many structural changes were ordered by the

Hon'ble Supreme Court. Unhappy with such changes the ousted high profile BCCI and State Associations officials attempted preventing matches from being held in the stadiums. As the cricket stadiums are owned by the State Associations, by not allowing matches to be played these State Associations made their intentions clear of with holding the usage of cricket stadiums by the BCCI (Newspaper report dated 07.01.2017 enclosed Page No. ). Similarly, earlier in wake of bitter experience of shifting cricket matches to alternate venues at the last moment the BCCI was reported to be planning building of its own stadiums. As per media reports the BCCI plans to buy land and build the cricket stadiums, which will be owned and administered by them and does not belong to any State Association (Newspaper report dated 29.06.2016 enclosed Page No. ). Such developments further confirm that the payments made to various State Associations by the BCCI can by no stretch of imagination be termed as grant. These are payments made in order to ensure that the State Associations like PCA ensure and execute smooth functioning of IPL matches for coming number of years.

**C.** It is in the above background that the tripartite agreement between PCA, BCCI and KPH Dreams Pvt. Ltd. needs to be perused. In this tripartite agreement the obligations and duties expected of the Punjab Cricket Association have been mentioned in minute details. This amply demonstrates that the payments made by the BCCI to PCA cannot be termed as mere grant given by the BCCI to the PCA. The detailed clause-wise comments in this regard have been submitted at Pages 12 to 18 of the written submissions filed earlier.

**4. <u>Reliance by the Ld. Counsel on the order of Gujarat Cricket Association vs. JCIT (Exemptions), Ahmedabad -101 Taxmann.com-453 :</u>**

The Ld. Counsel of the assessee has placed strong reliance on the above case law to support his case. The reasoning and the decision of the Hon'ble ITAT, Ahmadabad can be safely observed from Para-35 of its order. In order to appreciate the reasoning behind its adjudication the Para-35 of the above order by the Hon'ble ITAT, Ahmadabad is quoted as below:

> "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 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." (emphasis supplied).

A careful perusal of the above para clearly brings out the fact that the Hon'ble ITAT has substituted the word **'involves'** as mentioned in Sec. 2(15) of the I.T.Act, 1961 by the word **'organized'**. The legislation has deliberately used the term **'involves'** in Sec. 2(15), and not the word **'organized'**. I take this opportunity in quoting from the authority on the subject i.e. Principles of Statutory Interpretation by Justice G.P. Singh. The primary guiding principle in this regard has been that the language of the statute should be read as it is. It is worth quoting from Page-64 of the book:

" **Avoiding addition or substitution of words**

> As stated by the Privy Council: We cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there. "It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so." Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute. Speaking briefly the court cannot reframe the legislation for the very good reason that it has no power to legislate. "

It is humbly submitted that the above order of the Hon'ble ITAT, Ahmadabad Bench is a clear case of substitution of the word **'involves'** as mentioned in the Income Tax Act by the word **'organized'**, which has no legislative mandate. This casual substitution of legally mandated word effectively renders the whole judgment ***Per incuriam.***

The dictionary meaning of the word 'involve' is : "to envelop; to entangle; to include; to contain; to imply" (See the Shorter Oxford English Dictionary, III edition, page 1042), whereas the term 'organized' would mean: to form with suitable organs to incorporate; establish; create; form. Give orderly structure; systematize; bring into working order (The Law Lexicon by P. Ramanatha Aiyar, 3rd Edition 2012). The legislature deliberately used the word 'involves' i.e. where mere involvement with 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 nature of use or application, or retention, of the income from such activity shall bring it under the ambit of Sec. 2(15). For falling under the said section an assessee need not **organize** itself any such activity as mentioned in the Section. Rather its mere involvement i.e. it being enveloped by, entangled to, even included in or even contained by it or merely by implication would bring it under the ambit of Sec. 2(15). The substitution of word 'involves' with the word 'organize' clearly defeats the legislature's letter and intent, which is not permissible in law. The undisputed guiding principle is that the language of the statute should be read as it is and the Courts should avoid addition or substitution of words.

In view of the above the order of the Hon'ble ITAT Ahmadabad may not be the correct judicial precedence to be followed.

**5. <u>Chandigarh Lawn Tennis Association vs. ITO (Exemptions), Chandigarh- 95 Taxmann.com-308</u>**

The Hon'ble ITAT Ahmadabad has relied on and referred to various judgments including the latest judgment from the Hon'ble Pb. & Haryana High Court in the case of Tribune Trust vs. CIT -390 ITR 547. However, the Hon'ble ITAT Chandigarh in the case of Chandigarh Lawn Tennis Association vs. ITO (Exemptions), Chandigarh- 95 Taxmann.com-308 has rendered a landmark judgment interpreting Sec. 2(15) after painstakingly delineating the legislature history behind Section 2(15). The Hon'ble ITAT, Chandigarh has carefully analyzed the legal history of the section right from its earlier avtar as Sec. 4(3) of the I.T.Act, 1922 and its interpretation by the Privy Council in the case of Trustees of The Tribune Press vs. CIT- 7 ITR-415. It further discusses threadbare the introduction of Sec. 2(15) in Income Tax Act, 1961. After taking due note of the Hon'ble Supreme Court judgments in the cases of Sole Trustee, Lok Shikshana Trust vs. CIT – 101 ITR 234 and Indian Chamber of Commerce vs. CIT – 101 ITR 796, it highlights the over ruling of these judicial precedence by the larger bench judgment in the case of Addl.CIT vs. Surat Art Silk Cloth Mfg. – 121 ITR 1; wherein the theory of predominant object was laid down. The Hon'ble ITAT, Chandigarh in its path breaking judgment has taken due cognizance of introduction of 2nd Proviso to Sec. 2(15) of the Act inserted with retrospective effect from 01.04.2009. The Hon'ble ITAT, Chandigarh respectfully analyzed the latest judgment of Hon'ble P & H High Court in the case of Tribune Trust vs. CIT -390 ITR 547 and observed that there is no discussion in it about the effect of introduction of 2nd Proviso to Sec. 2(15), amendments in Sec. 10(23C), Sec. 13 and Sec. 143 of the Act. In my humble opinion the Hon'ble ITAT, Chandigarh has correctly interpreted Sec. 2(15) alongwith amendments/ introduction of 2nd Proviso in the Section and in other Sections of the Act. Moreover, being the latest judgment on the issue and unturned by any superior Court hitherto it has a binding value as on date.

Therefore, in view of the gross <u>commercial character of the IPL</u> venture and <u>direct involvement of Punjab Cricket Association</u> the case of Chandigarh Lawn Tennis Association vs. ITO (Exemptions), Chandigarh- 95 Taxmann.com-308 is directly applicable in the case of assessee.

O/o CIT (DR) ITAT, Chandigarh"

18. Before proceeding further, firstly we have to understand the relation between the State Associations and BCCI and further how they

are constituted. What is emerging from the facts brought before us is that BCCI is a constituent of the State Associations. The representatives of the State Associations are at the helm of the affairs of the BCCI. The status of the BCCI under the circumstances is nothing but of an Association of Persons (in short 'AOP') of which State Associations including the assessee are the members. Though, the BCCI has got itself registered separately as a 'Society' under the 'Tamil Nadu Societies Registration Act' but with the mere registration of the BCCI as a society, in our view, does not change its nature of being an 'AOP' of the State Associations. The matter does not end here. There is a complete federal structure starting from lower level i.e. District Cricket Associations to the International Cricket Council. District Cricket Associations collectively form State Cricket Associations. State Cricket Associations collectively form the National Body named as BCCI. The similarly existing National Cricket Boards/associations of different countries including BCCI collectively constitute International Cricket Council (in short 'ICC'). There is no rebuttal to the submissions of the Ld. DR that ICC commercially exploit the International Cricket matches. However, to be sure enough about the activities of the ICC, we have gone through the website of the ICC "Icc-cricket.com". It is gathered that the International Cricket Council (ICC) is the global governing body for international cricket. There are 12 **Full Members** and 92 **Associate Members who** are the governing bodies for cricket of a country recognised by the ICC. BCCI is a full member of the ICC

representing India. ICC earlier had its office at Lord's (UK). However, for better tax planning, it established a company at Monaco. The ICC had earlier requested the British Govt. to be given special exemption from paying UK Corporation Tax on its commercial income. As the British Govt. was unwilling, the ICC eventually settled in tax efficient country 'Dubai'. The ICC is registered in British Virgin Island. There is no denial that ICC is commercially exploiting the game of cricket. In an overview of its partners, it has been mentioned, " The ICC Commercial programme aims to optimize revenues for the benefit of the game by delivering exciting, engaging global events that attract new and diverse fans and by building long-term successful commercial partnerships." It is clearly stated that apart from promotion and controlling the game of cricket, ICC has clear cut objective of Business of Cricket. In its annual reports for the year 2003-04 & 2004-05 it is stated as : "**Business of Cricket** : Objective: Whilst preserving the core values of the game, optimise revenue creation through effective management and exploitation of commercial rights, marketing strategies, product development and intellectual property." Further in the Annual report for 2009-10, it is stated : "***The ICC Mission*** : As the international governing body for cricket, the International Cricket Council will lead by: • Promoting and protecting the game, and its unique spirit • Delivering outstanding, memorable events • Providing excellent service to Members and stakeholders •***Optimising its commercial rights and properties for the benefit of its Members."*** The ICC generates income

from the tournaments it organises, primarily the Cricket World Cup, and it distributes the majority of that income to its members. In its financial statements, it has been mentioned, "***n) Payments due to Members***: Payments due to Members represent those amounts that are determined by the Board of Directors as due for distribution to Members at the conclusion of a cricketing event. These payments are treated as expenses within the accounts and are deducted in arriving at the profit/(loss) before tax." It is pertinent to mention here that Sh. Shashank Manohar, representative of the BCCI is the present Chairman of the ICC.

19. IPL organized by BCCI is the domestic form of international cricket T-20, however, it is not limited to domestic players but players from other countries are also purchased by private investors/franchise through auction involving huge money. There is no denial by the appellant that IPL is a commercial venture of BCCI which is a mixture of sports, entertainment and business. That high stakes are involved and huge investments of the private business houses have been attracted with sole motive of maximum exploitation of the popularity of the cricket for generating and augmentation of the Revenue which is shared as per the arrangements of the BCCI with its constituent members and as well as third parties / franchise holders of the teams.

20. Though, apparently, there appears no doubt that IPL is a commercial venture of the BCCI, however BCCI before the tax authorities has claimed itself to be a charitable institution. We have

been told that the appeal of the BCCI against its cancellation of registration as a charitable institution is pending before the hon'ble Bombay High Court. It has been further claimed by the BCCI that the amount given by it to the State Associations is application of income. In the alternative it has been pleaded that the aforesaid payments to the State Associations is the deductible expenditure of the BCCI out of the gross receipts.

Before proceeding further, we at this stage deem it appropriate to firstly consider as to whether the primary plea of the BCCI that the payments made to the State Associations is application of income towards the advancement of the charitable object of promotion of cricket is antagonistic to the alternate plea of the BCCI that these payments are towards the expenditure solely incurred for earning of the income from IPL. We are conscious of the fact that we are not adjudicating the case of the BCCI and hence we restrain ourselves at this stage to give any finding as to which of the plea out of the both is correct. However, the issue before us is as to whether both the above stated pleas of the BCCI are opposite and mutually destructive and as to what is the effect of plea of the BCCI on the case of the assessee?

After examination of the accounts of the BCCI, we are of the view that the above pleas of the BCCI are not inconsistent, contrary or mutually destructive from the point of view of the BCCI and as per the treatment given to the said payments in its accounts. The BCCI, as

noted above, has booked these payments to the associations as expenditure set off against the gross receipts. However, the primary plea of the BCCI is that it is an application of income as per the provisions of section 11 of the Act. Now the question arises that if the income of a person is the net receipt i.e. gross receipts minus expenditure then, can the expenditure incurred from gross receipts be said to be the 'application of income'. If we go strictly by the provisions of the Act, since the BCCI in its books of accounts has booked the payments to the State Associations as expenditure, it is thus payment out of its gross receipts and not out of income and thus it should not qualify as application of income. However, as most of the charitable institutes do, the expenditure is generally booked as application of income e.g. educational institutions claiming charitable status, generally claim the salary to teachers as application of income whereas in the books of accounts, the same is treated as expenditure and hence under the circumstances, in our view, the claim of the BCCI in this respect is not an exception. In view of this, the alternate plea of the BCCI is not opposite or destructive to its primary plea. However, the question that whether the expenditure can be considered as application of income for the purpose of claiming exemption as per the provisions of section 11 of the Act is left open to be decided in appropriate case.

21. Now the question arises that when the donor that is BCCI in its books of account has not treated the payments to State Associations as

voluntary grants or largesse, can the donnee/recipient claim the same to be so. The answer to this question, in our view, is 'no'.

The BCCI in its consistent plea before the tax authorities has claimed that the payments made to the State Associations is under an arrangement of sharing of revenues with the State Associations. That the State Associations are entitled by virtue of established practice to 70% of the media right fee. That if each state association were to negotiate the sale of rights to events in its center, its negotiating strength would be low, hence, it was agreed that BCCI would negotiate the sale of media rights for the entire country to optimize the income and that out of the receipts from the sale of media rights, 70% of the gross revenue less production cost would belong to the state associations. By saying so, BCCI has pleaded that it has just acted as a facilitator for sale of media rights collectively on behalf of the State Associations for the purpose of maximizing the profits, for which it retains 30% of the profits and rest 70% belong to the State associations. And that is why the payment out of media rights had been paid even in those years where BCCI had incurred a loss. That the BCCI has 30 members out of whom 25 are State Cricket Association, 2 are private clubs and 3 are Central Government institutions, however the payment out of Media Rights is paid only to State Associations and not to the three private clubs or the government institutions. It has also been pleaded that in the books of accounts of state association, any amount

received as TV subvention and subsidies received from BCCI are treated as income of the state association. Therefore, any surplus left out of the expenditure made by association is submitted to tax in the hands of state association. Thus, when the payer i.e. BCCI in this case has not recognized the payments made by it to State Associations as voluntary grants or donations, rather the BCCI has stressed the payments have been made to the State Associations under an arrangement arrived with State Associations for sharing of the revenues from International matches and IPL, then under the circumstances, the payee or to say recipient Associations cannot claim the receipts as voluntary grants or donations at discretion from the BCCI.

22. However, the fact on the file is that the claim of the BCCI to treat the aforesaid payments as expenditure incurred for earning of the income has been declined by the income Tax Authorities and the payments/grants given to the Member State Associations has been treated as distributions of profits. The registration of the BCCI under section 12 read with section 2(15) of the Act since stood cancelled on the date, hence the payments made by it to the State Associations has not been treated as application of income for the purpose of section 11 of the Act. Hence, as per legal status of BCCI as on today, the BCCI is being treated by the tax authorities as an 'AOP' only and the payments made to the State Associations as distribution of profits. Under the circumstances, these payments by the BCCI to the State Associations

including the appellant, having already been taxed at the hands of BCCI can not be now taxed in the hands of the member of the AOP i.e. the appellant State Association as it will amount to double taxation of the same amount.

23. However, interestingly, the assessee PCA has denied that BCCI is its AOP, rather the plea of the assessee is that it is a charitable institution and that the amount received by it from BCCI is grant, hence would fall in the definition of its income u/s 2(24)(iia) of the Act and further exempt u/s 11 of the Act. To examine this plea of the appellant, firstly, we will have to examine whether the activities of the assessee fall within the scope of the term "charitable purposes" as defined u/s 2(15) of the Act for claiming exemption u/s 11 of the Act. The BCCI, though registered separately as a society under the 'The Tamil Nadu Societies Registration Act, 1975', however, admittedly is the Apex body of different cricket associations and the appellant society is also its member. As discussed above, the legal status of the BCCI as on today is that of an AOP and it is held to be involved in large scale commercial venture named 'IPL'.

24. However, the plea of the appellant Punjab Cricket Association is that the IPL may be the commercial venture of the BCCI but not of the appellant. That the appellant is a separate entity. It is a classic case where the payer ( BCCI) is pleading that what has been paid by it to the payee (PCA) is out of the consideration for the services rendered by the

payee and the payments is made as per the arrangements arrived at with the payee for sharing of the revenue out of the proceeds of a common venture , however, at the same time, the payee (PCA) is claiming that the payments received by it is not as a consideration for its services, rather, the same is a voluntary, discretionary grant or to say largesse by the payer to the payee. More interestingly is the fact that there the payer is a collective constituent of, as well as, apex body of the payees (State Associations).

25. More surprisingly, the State Associations in their individual capacity are pleading that the IPL may be the commercial venture of their constituent & apex body i.e.' BCCI' but they are not involved in conduct of IPL. But the fact is that these Associations have collectively formed this apex Association named 'BCCI', get it registered under the Tamil Nadu Societies Registration Act, and thereby collectively engage in operation and conduct of the IPL through their representatives in the name of 'BCCI'. It is pertinent to mention here that it is an admitted fact that assessee 'PCA' is a full member of the BCCI. The assessee 'PCA' individually is taking totally opposite stand to the stand it has taken collectively with other Associations under the umbrella named and styled as 'BCCI'.

26. Another noticeable fact is that though, the BCCI has its headquarters at Mumbai from where its entire operations are run, however, it has been registered under the State Act i.e. 'Tamil Nadu

Societies Registration Act'. The Ld. DR in this respect has raised a question that as to how the Tamil Nadu State Govt. authorities will be able to regulate and monitor or verify as to if the activities of the BCCI are done as per the aims and objects under which it has been registered and that there is no violation of rules and regulations of the state Societies Registration Act, as all the activity being done by the BCCI is from the head office which is situated outside the State of Tamil Nadu. The Ld. DR has submitted that though there is no bar for a society to extend its activities out of a state where it has been registered, however, in the case of the BCCI, the entire operations of the BCCI are from a place out of the jurisdiction of the State Authorities with whom it has been registered as a Society. The Ld. DR in this respect has submitted that the facts, itself, speak that the BCCI has shielded itself under the veil of registration under the Tamil Nadu Societies Registration Act just to plead that it is a separate entity from the State Associations, whereas, in fact, it is nothing more than an 'AOP' of the State Associations and being so, if the BCCI is involved in commercial venture, the State Associations cannot claim that they have nothing to do with the activity of the BCCI. It has been submitted that what is done by the BCCI is the act of the State Associations collectively done under the umbrella named as 'BCCI' which is nothing but constituent of the State Associations. Further the ICC is a constituent of National Associations including BCCI, which admittedly is commercially exploiting the international matches in collaboration with BCCI and other member Associations.

27. To buttress his contention that the BCCI has just tried to shield it behind veil of the registration under the state Societies Registration Act, otherwise it is nothing but an AOP of the State Associations, Sh. Manjit Singh, the Ld. DR, has placed reliance upon the following provisions of the Tamil Nadu Societies Registration Act :-

**" THE TAMIL NADU SOCIETIES REGISTRATION ACT, 1975"**

" An Act to provide for the registration of literary, scientific, religious, charitable and other societies **in the State of Tamil Nadu."**

**…….**

1. (1) This Act may be called the Tamil Nadu Societies Short title, Registration Act, 1975.

(2) **It extends to the whole of the State of Tamil Nadu.**

(3) It shall come into force on such date as the Government may, by notification, appoint and **different dates may be appointed for different areas and for different provisions of this Act:**

Provided that any reference in any such provision to the **commencement of this Act shall, in relation to any area,** be construed as a reference to the coming into force of that provision in such area.

……..

CONSTITUTION AND REGISTRATION.

3. (1) Subject to the provisions of sub-section (2), any societies which society which has for its object the promotion of education, may be literature, science, religion, charity, social reform, art, registered, crafts, cottage industries, athletics, sports (including indoor games) recreation, public health, social service, cultural activities, the diffusion of useful knowledge or such other useful object **with respect to which the State Legislature has power to make laws for the State, which may be prescribed, may be registered under this Act.**

(2) Notwithstanding anything contained in subsection (1), no association which has for its object the improvement of the economic condition of workmen, no club where games of chance providing prizes

for winners are played and no society which does not consist of at least seven persons shall be registered under this Act.

MANAGEMENT AND ADMINISTRATION.

13. Every registered society shall—

(1) have a registered office to which all communications and notices may be addressed and shall file with the Registrar notice of situation of such office and of any change thereof within such period as may be prescribed after the date of the registration of the society or after the date of change, as, the case may be ;

(2) keep displayed on the outside of its registered office its name in a conspicuous position, in legible characters and, **if the characters employed therefor are not those of Tamil, also in the characters of Tamil."**

(emphasis supplied by us)

28. The Ld. DR has further placed reliance on the following rules and Regulations of the BCCI.

2. **HEADQUARTERS**:

The Headquarters of the Board shall be located at Mumbai."

14. **ADMINISTRATION** :

i) Mumbai shall be the administrative headquarters where the office of the Board shall be permanently situated. It shall be Central Secretariat of the Board."

29. Apparently, there seems force in the contentions raised by the Ld. DR that the Tamil Nadu Societies Registration Act, primarily, has been enacted for registration and regulating the societies in the State of Tamil Nadu. The BCCI though, having itself registered with the Tamil Nadu Societies Registration Act, yet, does not operate in Tamil Nadu rather all its operations and functions are conducted from Mumbai and

its highly doubtful that the Registrar of the Tamil Nadu Societies could exercise any jurisdictional power over the BCCI. Under the circumstances, it appears that BCCI has shielded itself behind veil of registration under the Tamil Nadu Societies Registration Act , whereas the entire activity of the BCCI is being run out of the State of Tamil Nadu.

30. The Ld. DR has further placed reliance on the following sections of the Tamil Nadu Societies Registration Act to contend that even as per the provisions of the said Act, all the property of the BCCI vests in its members i.e. State Associations;

> 2. In this Act, unless the context otherwise requires—
>
> (a) " committee" means the governing body of a registered society to whom the management of its affairs is entrusted ;
>
> 18. All property, movable and immovable, belonging to a registered society, whether acquired before or after its registration, **if not vested in trustees, shall vest in the committee** ; and any such property may in any legal proceeding, be referred to as the property of the committee."

31. Even the following clause of the Memorandum of Association of the BCCI is enough to gather that the BCCI is a commercial venture of the State Associations :-

> **"MEMORANDUM OF ASSOCIATION**
>
> **(k) To carry on any other activity which may seem to the Board capable of being conveniently carried on in connection with the above, or calculated directly or indirectly to enhance the value of, or render profitable any of the properties or rights of the Board;"**

32. It is settled law that what cannot be done directly, that cannot be done indirectly also. If an institution claiming charitable status being constituted for the advancement of other objects of public utility, as per the provisions of law, is barred from involving in any commerce or business, it cannot do so indirectly also by forming a partnership firm or

an AOP or a society with some other persons and indulge in commercial activity. Any contrary construction of such provisions of law in this respect would defeat the very purpose of its enactment. The assessee in this case is a member of the BCCI and the status of the BCCI as on date is that of an AOP and it has been held to be actively involved in a large scale commercial venture by way of organizing IPL matches, hence under the circumstances, the appellant as per the position as on date, can be said to have been involved in commercial venture as a Member of the BCCI irrespective of the fact that it receives any payment from the BCCI or not or whether such receipts are applied for objects of the appellant society or not. However, once the income is taxed at the hands of the AOP, the receipt of share out of the income of the AOP cannot be taxed in the hands of the member of the AOP. Which means that though, for the sake of ease of taxation, the AOP has been recognized as a separate entity, however actually its status cannot be held to be entirely distinct and separate from its members. Had it been so, then the receipt of the share by a member from the income of its AOP will constitute taxable income at the hands of the member; however, actually it is not so.

33. Even from the facts and evidences brought before us, it is apparent that the appellant, herein, is involved in commercial activity in a systemic and regular manner not only by offering its Stadium and other services for conduct of IPL matches but by actively involving in the

conduct of matches and exploiting its rights commercially in an arrangement arrived at with the BCCI. Even there is no denial or rebuttal by the appellant to the contention that the IPL is purely a large scale commercial venture involving huge stakes, hefty investments by the franchisees, auction of players for huge amounts, exploiting to the maximum the popularity of the game and the love and craze of the people in India for the cricket matches. From the discussion made above and also considering the stand of the BCCI and further from analysis of the Tripartite Agreement, it is clearly revealed that the assessee/appellant is systematically involved in the conduct of IPL matches. It is not a simple case of offering of its stadium on rent to BCCI for conduct of the matches. The assessee association not only being the member of the BCCI which is the AOP of the assessee along with other members, but also, is individually involved in a systematic and regular manner in commercial exploitation of the popularity of cricket matches and its infrastructure.

The appellant has pleaded that it is in the course of construction of a new stadium at the cost of over Rs. 250/- crores at Mohali, out of which Rs. 100 crores including land has been expended till date. However, the stand of the BCCI is that since the BCCI does not have its own infrastructure for conduct of matches, the participation of the State associations is necessary for generation of revenue by exploiting commercially the conduct of matches in their stadia. We find force in

the contention of the Ld. DR that despite the Appellant already having an international stadium at Mohali, the appellant realizing the need of a bigger infrastructure to accommodate the huge crowds at a centrally located place and for the purpose of augmentation of the revenue has started to construct a second international stadium in the same city. The facts itself speak that this huge investment is made by the appellant not with the predominant object of promotion of the sport of cricket rather the main object is the augmentation of the revenue. The BCCI in clear terms has pleaded that without the involvement of State Associations, the conduct of the IPL matches and huge revenue generation from the same is not possible. The appellant being party to the Tripartite Agreement is itself an evidence of the appellant being commercially involved in BCCI-IPL matches.

34. The Ld. DR at this stage has submitted that apart from assessee involving in commercial venture, the objects of the assessee, otherwise are not entirely for the promotion of the game of cricket. One of the main objects of the appellant, as that of the BCCI also, is to control the cricket under its area and this conduct of the assessee is not in the interest or promotion of cricket rather to establish its monopoly and dominance in the field. The Ld. DR in this respect has invited our attention to the objects of the assessee society which inter alia include the following:-

> " (c) To regulate and control the game and general sports……

> (j) To add, alter, maintain and enforce Rules and Regulations for the control and governance of the game in area under control of the Association and to maintain discipline amongst players, officials, clubs and institutions."

The Ld. DR has further submitted that the assessee has been in hand in glove with the BCCI and in the name of controlling and regulating the cricket, they are actively involved in firmly suppressing any efforts by any other party to establish an alternate body concerned with cricket, especially in the economic sphere of the game. That the main interest of the BCCI is to control and monopolise cricket in India and other organisations having similar objects are not allowed to function in a fair and competitive atmosphere. It has banned players in the past who were associated with other similar organisations. For instance, Indian Cricket League (ICL), a private cricket league funded by parties outside the realm of the assessee was started in 2007. However, it was not recognized by the BCCI and its member State Associations including the assessee. The State Associations refused to provide its stadiums for holding of ICL matches under the directions of the BCCI. Had the assessee's interest been of renting out its stadium for the holding of matches for the purpose of promotion of game, it would have promptly offered its stadium for conduct of ICL matches also. That, if the assessee intended to promote and develop the game itself, it would have taken steps to encourage and support other Associations to promote the game of cricket by holding and conducting the matches

irrespective of their affiliation to the assessee. Rather the BCCI and its member associations have controlled and maintained the exclusive domain over the game, to the exclusion of others. The BCCI and its member associations chose to suppress the rival body against the better interest of the game of cricket. Faced by the threat of diversion of playing talent and associated cricketing revenue, they took repressive steps like imposing a ban on players who were associated with ICL from participating in domestic and international cricket matches, not providing the stadiums which were under the control of various State Cricket Associations for the ICL matches, which eventually thwarted attempts of creating a level playing field by a potential competitor. The Ld. DR has further invited our attention to the Assessment order passed in the case of the BCCI wherein the Assessing officer has reproduced some of the rules and regulations of the BCCI , which read as under:

> (a) "No Club affiliated to a member or any other organization shall conduct or organize any tournament or any match/matches in which players/ teams from the region within the jurisdiction of a member are participating or are likely to participate without the previous permission of the member affiliated to the Board....
>
> (b) Permission for conducting or organizing any tournament or match / matches will be accorded only to the members of the Board and will be in accordance with the rules framed by the Board in this regard from time to time
>
> BAN ON PARTICIPATION IN UNAPPROVED TOURNAMENTS:

(c) No member; Associate Member or Affiliate Member shall participate, or extend help of any kind an unapproved tournament.

(d) No player (Junior & senior) registered with the BCCI or its members, Associate Member of Affiliate Member shall participate in any unapproved tournament.

(e) No Umpire, Scorer on the BCCI Panel shall, associate with an approved tournament.

(f) Any individual deriving financial or any other benefit shall not associate himself with an unapproved tournament; The Working Committee would take appropriate action including suspension and stoppage of financial benefits and any other action against in individuals/members contravening these rule."

The Ld. AO has further observed:

" The above provisions are restrictive and anti-competitive and deal more with controlling and regulating rather than promotion of the game. The assessee is clearly interested in controlling cricket to the exclusion of other organizations who are also interested in promotion of the game of cricket in India. The rules are very stringent and regimented and there is a blanket ban on any unapproved tournament, which is clearly against the spirit of competition essential for the holistic development of any sport.

7.9.5 It can be seen that the assessee's key concern is exercising complete control over cricket and more significantly, the revenue from the game. The activities and the structural framework of operations of the assessee, are clearly not in the interest of the game which is stated to be the main purpose of the assessee. On the contrary, the same, as discussed above, consist of preemptive measures taken to safeguard its commercial interests."

Our attention has also been drawn to the following rules also:

"....33-d. Private organizations shall not be allowed to organize an International Tournament or International match/matches in which foreign players/teams are participating or likely to participate. If at all such a tournament/match/matches is to be stage, then it should

> be exclusively by the affiliated member which recommends the proposal and within whose jurisdiction the tournament/match/matches will be staged." "33-e All International Tournaments, except in very exceptional cases, should be managed by the Board only……."
>
> "No registered player can play or participate in a Cricket match or Tournament organized as Festival/Charity/Benefit match or Tournament not registered with or approved by the Association or Board or ICC or any of its affiliated members without the written permission of the Board either in India or abroad."

35. We have also come across the order dated November 29, 2017 of the Competition Commission of India (in short 'CCI') passed in the case of " Sh. Surinder Singh Barmi vs BCCI", whereby the Commission has re-imposed a penalty of Rs522.4 million on the Board of Control for Cricket in India (BCCI) and reiterated the findings of its February 2, 2013 order, which had previously been set aside by way of a February 23, 2015 Competition Appellate Tribunal (COMPAT) order. The CCI held that the BCCI had abused its dominant position in the market by restricting competition while conducting IPL tournaments; and granting exclusive media rights for the broadcasting of IPL matches to one TV channel for a 10-year period. The CCI also differentiated international and other domestic cricket from professional leagues, such as the IPL. The CCI noted that in international and domestic cricket, the players represent the nation or concerned state. However, in professional leagues, foreign players are also involved and the main aim of each party is to profit**.** Further, the CCI found that due to the method of selecting players (by auction) and the amount of commercial

considerations involved, the IPL and similar professional leagues differ considerably from international and domestic cricket. The CCI concluded that the BCCI was dominant in the relevant market and has abused its dominant position and its such conduct has "resulted in denial of market access" for IPL competitors. The CCI observed that under Rule 28B of the BCCI rules, no affiliated member, player or umpire could participate or support a league unapproved by the BCCI. As such, no party could organise a league without BCCI approval. Since the BCCI had stated that it would approve no other professional league for 10 years, the market was foreclosed and competitors had been denied access. Apart from re-imposing a penalty of Rs522.4 million, the CCI directed the BCCI :

i) to cease and desist from any future practice which would deny market access to potential competitors, including the inclusion of similar clauses in any agreement;
ii) desist from using its regulatory powers when considering and deciding on any matters relating to its commercial activities;

iii) establish an effective internal control system to the satisfaction of the CCI, in good faith and after due diligence; and

iv) refrain from placing blanket restrictions on the organisation of professional domestic cricket leagues or events by non-members.

36. At this stage, it is also relevant to note that the object of the assessee PCA states:- "....maintain friendly relations with and amongst the population of the **area under its control** through sports

tournaments…." (emphasis supplied). The above crucial words "area under its control" show that the activities of the assessee are restricted to the area under its control as determined by the BCCI for the State Associations under its control. Which means the activities as well area of operation of the assessee is controlled by BCCI, hence, under the circumstances, assessee's activities and status cannot be said to be entirely separate or distinct from BCCI.

37. From the above facts, it is established beyond doubt that that the BCCI which is constituted of the Assessee and other State associations has acted in monopolizing its control over the cricket and has also adopted restrictive trade practice by not allowing the other associations who may pose competition to the BCCI to hold and conduct cricket matches for the sole purpose of controlling and exclusively earning the huge revenue by way of exploiting the popularity of the cricket. The assessee cricket association being the constituent member of the BCCI has also adopted the same method and rules of the BCCI for maintaining its monopoly and complete domain over the cricket in the 'area under its control'. As observed above, such an act of exclusion of others cannot be said to be purely towards the promotion of game rather the same can be said to be an act towards the depression and regression of the game. Hence the claim of the assessee that its activity is entirely and purely for the promotion of game cannot be accepted. In view of the above discussion, the contention of the Ld. Counsel that the payment by the

BCCI to the appellant is a grant to Charitable Institution cannot be accepted. Even as discussed above, the nature of payment by the BCCI, is not voluntary grant or largesse rather the same is a payment in an arrangement of sharing of Revenue from commercial exploitation of the Cricket and infrastructure thereof, hence, the plea of the assessee that the income from BCCI be treated as a capital receipt in its hand is not tenable.

38. Now coming to the next submission of Sh. Vohra, the Ld. Counsel for the assessee, that even if it is held that the appellant is involved in incidental business activity yet all the incidental income/surplus so earned by the assessee has been ploughed back for charitable purposes. That, profit making is not the motive of the assessee, hence exemption u/s can not be denied to the assessee. We are not convinced with the above argument of the Ld. Counsel for the assessee. As discussed above, the commercial exploitation of the popularity of the cricket and its infrastructure by the assessee, in our view, is not incidental but is inter alia, one of the main activities of the assessee. A perusal of grounds of appeal reveals that strong reliance has been placed by the assessee on the decision of the hon'ble Supreme Court in the case of " Surat Art Silk Cloth Manufacturers Association" (supra). However, in said decision of the Hon'ble Supreme Court, itself, the example of trust having its object of promotion of sports and having involved in organizing the cricket matches for profit has been given which directly fits into the facts and

circumstances of the case of the assessee. Apart from that, the hon'ble Supreme court has also discussed the example of a publication, which is involved in propagation of Gandhian thought and philosophy, which would apparently be an object of general public utility, but, it has been held that if the pricing of the journal is done on commercial lines, the inference will be that the activity is carried on for profit and the purpose is non-charitable. Even an example has also been given of an institution involved in the noble cause of Blood Bank, but it has been held that if such an activity is done for a higher price on commercial basis; undoubtedly, in such a case, the blood bank would be serving an object of general public utility but since it advances the charitable object by sale of blood as an activity carried on with the object of making profit, it would be difficult to call its purpose charitable. The relevant part of the judgement of the Hon'ble Supreme court in the case of " Surat Art Silk Cloth Manufacturers Association" (supra) is reproduced as under:-

> **" 15.** We must then proceed to consider what is the meaning of the requirement that where the purpose of a trust or institution is advancement of an object of general public utility, such purpose must not involve the carrying on of any activity for profit. The question that is necessary to be asked for this purpose is as to when can the purpose of a trust or institution be said to involve the carrying on of any activity for profit The word "involve" according to the Shorter Oxford Dictionary means "to enwrap in anything, to enfold or envelop; to contain or imply". The activity for profit must, therefore, be intertwined or wrapped up with or implied in the purpose of the trust or institution or in other words it must be an integral part of such purpose……

…….. **Take, for example, a case where a trust or institution is established for promotion of sports without setting out any specific mode by which this purpose is intended to be achieved. Now obviously promotion of sports can be achieved by organising cricket matches on free admission or no-profit no-loss basis and equally it can be achieved by organising cricket matches with the predominant object of earning profit. Can it be said in such a case that the purpose of the trust or institution does not involve the carrying on of an activity for profit, because promotion of sports can be done without engaging in an activity for profit. If this interpretation were correct, it would be the easiest thing for a trust or institution not to mention in its constitution as to how the purpose for which it is established shall be carried out and then engage itself in an activity for profit in the course of actually carrying out of such purpose and thereby avoid liability to tax. That would be too narrow an interpretation which would defeat the object of introducing the words "not involving the carrying on of any activity for profit".** We cannot accept such a construction which emasculate these last concluding words and renders them meaningless and ineffectual."

…… **18.** The application of this test may be illustrated by taking a single example. Suppose, the Gandhi Peace Foundation which has been established for propagation of Gandhian thought and philosophy, which would admittedly be an object of general public utility, undertakes publication of a monthly journal for the purpose of carrying out this charitable object and charges a small price which is more than the cost of the publication and leaves a little profit, would it deprive the Gandhi Peace Foundation of its charitable character? The pricing of the monthly journal would undoubtedly be made in such a manner that it leaves some profit for the Gandhi Peace Foundation, as, indeed, would be done by any prudent and wise management, but that cannot have the effect of polluting the charitable character of the purpose, because the predominant object of the activity of publication of the monthly journal would be to carry out the charitable purpose by propagating Gandhian thought and philosophy and not to make profit or, in other words, profit-making would not be the driving force behind this activity. But it is possible that in a given case the degree or extent of profit-making may be of such a nature as to reasonably lead to the inference that the real object of the activity is profit-making and not serving the charitable purpose. **If, for example, in the illustration given by us, it is found that the publication of the monthly journal is carried on wholly on commercial lines and the pricing of the monthly journal is made on the same basis on which it would be made by a commercial organisation leaving a large margin of profit, it might be difficult to**

> **resist the inference that the activity of publication of the journal is carried on *for* profit and the purpose is non-charitable.** We may take by way of illustration another example given by Krishna Iyer, J. in *Indian Chamber of Commerce* case *(supra)* **where a blood bank collects blood on payment and supplies blood for a higher price on commercial basis. Undoubtedly, in such a case, the blood bank would be serving an object of general public utility but since it advances the charitable object by sale of blood as an activity carried on with the object of making profit, it would be difficult to call its purpose charitable.** Ordinarily, there should be no difficulty in determining whether the predominant object of an activity is advancement of a charitable purpose or profit-making. But cases are bound to arise in practice which may be on the border line and in such cases the solution of the problem whether the purpose is charitable or not may involve much refinement and present real difficulty."
>
> (emphasis supplied by us )

From the above examples given by the hon'ble Supreme court, it is to be noted that differentiation lies between 'if some surplus has been left out of incidental commercial activity' and 'the activity is done for the generation of surplus'. Although such an activity for generation of surplus may also be serving the purpose of charitable object of general public utility, still it will not be covered as for "charitable purposes". The case of the assessee is squarely covered with the above examples given by the hon'ble supreme court and hence, despite having the objects of promotion of sports, the activity of the assessee being also directed for generation of profits on commercial lines will exclude it from the scope of charitable activity.

39. Moreover, even it is assumed for the sake of arguments that the commercial exploitation of the cricket and infrastructure is incidental to the main purpose of promotion of cricket, even then in view of the

decision of the the co-ordinate Chandigarh Bench of the Tribunal in the case of **"Chandigarh Lawn Tennis Association vs Income Tax Officer (Exemption)" reported in [2018] 95 taxmann.com 308 (Chandigarh - Trib.),** the income of the assessee from the incidental business activity beyond the prescribed limit of Rs. 10 Lakh for the year under consideration as per second proviso to section 2(15) of the Act will be taxable as its business income. The coordinate Chandigarh Bench in the case of "Chandigarh Lawn Tennis Association"(supra) has extensively discussed this issue and has duly analyzed and deliberated upon various case laws including the decision of the Hon'ble Pb. & Haryana High Court in the cases of Tribune Trust & Moga Improvement Trust -390 ITR 547 (supra), the decision of the Privy Council in the case of Trustees of The Tribune Press vs. CIT- 7 ITR-415; the judgement of the Hon'ble Supreme Court in the cases of "Sole Trustee, Lok Shikshana Trust vs. CIT" – 101 ITR 234 and Indian Chamber of Commerce vs. CIT – 101 ITR 796 and also the larger bench judgment of the hon'ble Supreme Court in the case of "Addl. CIT vs. Surat Art Silk Cloth Mfg". – 121 ITR 1 and has also considered the effect of introduction of 2nd Proviso to Sec. section 2(15), amendments in section 10(23C), provisions of section 11(4), 11(4A), 13(8) and Sec. 143 of the Act after delineating the legislature history behind Section 2(15). It is to be noted that the effect of introduction of 2$^{nd}$ proviso to section 2(15)of the Act has not been discussed in any of the decisions relied upon by the Ld. Counsel for the assessee. The coordinate Bench after thorough

discussion of the matter, {in the case of Chandigarh Lawn Tennis Association vs. ITO (Exemptions), (supra)} has held the trusts or the institutions carrying on the activity included in the first part of definition of 'charitable purposes' as defined under section 2(15) viz. for the objects of relief to the poor, education yoga, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest and are also carrying on the business activity which is incidental to the attainment of objective of such trust or institution {as provided under section 11(4A)}, are entitled to claim exemption of their income including the income from incidental business activity under section 11 subject to the compliance and applicability of the other relevant provisions of the Act, irrespective of the quantum of income earned from such incidental business activity. That, however, the trusts or institutions falling in the last limb of the definition of charitable purposes as defined under section 2(15) i.e. 'for the advancement of any other object of public utility' which also involves the carrying of incidental 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, as per the restrictions put by the provisos to section 2(15) the incidental business activity should be in the course of actual carrying out of the main object and the receipts therefrom should not cross the limit or cap (as applicable from time to time). That it will be immaterial that the funds or the profits from business activity are ploughed back to sub serve the

main or the predominant object of the trust. In this respect the words 'irrespective of the nature of use or application, or retention, of the income from such activity' finding place in the first proviso to section 2(15) would come into play. However, the other restrictions as provided under sections 11(4A), 13(8) and 143(3), would accordingly apply for claiming exemption under section 11; Further, the restriction inter alia put under the provisos to section 10(23C)(iv) and section 143(3) along with restrictions put by the provisos to section 2(15), will apply for claiming exemption under section 10(23) (iv).

40. Even the impact of the first and second proviso to section 2(15) has also been considered by the Coordinate Mumbai Benches of the Tribunal in the cases of "Ghatkopar Jolly Gymkhana v. Director of Income-tax (E)" reported in [2013] 40 taxmann.com 207 (Mumbai - Trib.) and "Cotton Textiles Exports Promotion Council v. Director of Income-tax (Exemption), Mumbai reported in [2014] 44 taxmann.com 168 wherein it has been held as per the second proviso w.e.f. 01.04.2009, where the gross receipts of a charitable institution from its business activities exceeds limit of Rs. 10 lakhs, assessee will not be entitled for exemption or other admissible tax benefits for that relevant year but it does not result in cancellation of its registration as charitable institution. The above view has been affirmed by the Hon'ble Bombay High Court in the case of Director of Income-tax (Exemption) v. North Indian Association [2017] 79 taxmann.com 410 (Bombay) wherein the

Hon'ble High court while further relying upon its another decision in the case of "DIT (Exemption) v. Khar Gymkhana[2016] 385 ITR 162/240 Taxman 407/70 taxmann.com 181 (Bom.) has duly taken note of the provisions of section 13(8) of the Act inserted vide Finance Act 2012 w.r.e.f. 1.4.2009 as well as the CBDT Circular No.21 of 2016 and though, held that merely because in one year income of assessee-trust exceeded prescribed limit provided under second proviso to section 2(15), that by itself, could not warrant cancellation of registration of trust, however, where the receipts are hit by the proviso to Section 2(15) of the Act, the benefit of exemption to its income for the previous year relevant to the subject assessment year will not be available. However, it has been further held that if this happens on continuous / regular basis, it could justify further probe / inquiry before concluding that the trust is not genuine. This is also so held in the own case of the assessee by the coordinate Bench of this Tribunal vide order dated 19.10 2015 in an appeal filed by the assessee against the cancellation of its registration u/s 12AA (3) of the Act bearing ITA No.834/Chd/2012. Admittedly the receipt from commercial exploitation of the cricket matches for the year under consideration has increased the prescribed limit for the year i.e. Rs. 10 lakhs, thus hit by the second proviso to section 2(15) of the Act. Hence the case of assessee is covered against the assessee by the decision of the Tribunal in the own case (supra) of the assessee.

However, the coordinate Chandigarh bench in the case of "Chandigarh lawn Tennis Association" (supra) reading down the relevant provisions, has held that the proper and harmonious construction of the relevant provisions will be that the institution carrying out the object of advancement of general public utility which involve the incidental or ancillary activity in the nature of trade, commerce or business and generating income therefrom, the income to such an extent as is limited by the second proviso to section 2(15) should be taken as exempt being treated as income from charitable purposes as per the relevant provisions of sections 2(15), section 10, section 11, section 12 or section 13, as the case may be and wherever applied. The other income which is not from the commercial activity, such as, by way of voluntary donations, contributions, grants or nominal registration fee etc. or otherwise will remain to be from charitable purposes and eligible for exemption under the relevant provisions. However, the income from activity in the nature of trade, commerce or business over the above limit prescribed from time to time as per the second proviso to section 2(15), should be treated as income from the business activity and liable to be included in the taxable total income. In view of the above, if the plea of the Ld. counsel for the assessee that the income from commercial activity of the assessee is incidental to the activity of the assessee towards pre-dominant object of charitable nature, even then in view of the proposition laid down by the coordinate Bench in the case "Chandigarh Lawn Tennis Association" (supra), the income from

commercial activity i.e. by way of commercial exploitation of the international matches and IPL which is over and above the prescribed limit of the Rs. 10 lakhs for the assessment year under consideration will be exigible to taxation.

However, since we have already observed that the assessee is regularly following commercial activity by commercially exploiting its property and rights to hold matches and thereby earning huge income, hence the said activity can not be said to be incidental activity rather the commercial exploitation of the match is one of the main activity of the assessee, hence, the case of the assessee ,in our view, for the year under consideration will not fall within the definition and scope of section 2(15) of the Act and thus the assessee is not entitled to exemption u/s 11 of the Act. While holding so, we do not mean that the assessee's activity is not at all for promotion of the game of cricket. No doubt, the assessee is also activity contributing towards the promotion and popularity of the cricket but at the same time its activities are also concentrated for generation and augmentation of the revenue by exploiting the popularity of the game and towards monopolisation and having dominant control over the cricket to the exclusion of others. What we want to convey is that the commercial exploitation of the popularity of the game and the property/infrastructure held by the assessee is not incidental to the main object but is apparently and inter alia one of the primary motives of the assessee. At this stage, we deem it fit to refer to the revised constitution

of the appellant PCA done in compliance of the directions of the Hon'ble Supreme Court dated 9.8.2018 passed in Civil Appeal No. 4235 of connected matter, as revised upto 11.8.2019 and registered with Registrar of firms and societies Punjab, the objects of the PCA interalia, include the following:

> "To carry out any other activity which may seem to the PCA capable of being conveniently carried on in connection with the above, or calculated directly or indirectly **to enhance the value or render profitable or generate better income/revenue, from any of the properties, assets and rights of the PCA;"**

41. The above object reveals that now the assessee's activities inter alia are also directed for generation and augmentation of revenue by way of exploitation of its rights and properties. The assessee in the earlier years (before the introduction of the above revised object) might have claimed the application of income on capital assets/infrastructure as application for charitable purposes. However now with the amended objects, it may exploit the so created infrastructure for commercial purposes. This leads to a very peculiar situation. In our view, the introduction of the above object has brought clarity about the manner of operation and activities of the assessee.

42. Under the circumstances, the appellant cannot be granted exemption under section 11 of the Act as its activities no more fall under the definition of charitable purposes as per the provisions of section 2(15) of the Act.

In view of the discussion made above, the amount paid by the BCCI to the appellant which has already been taxed at the hands of BCCI, cannot be now taxed in the hands of the member of the AOP i.e. the appellant State Association as it will amount to double taxation of the same amount. However, if the claim of the BCCI for treating the payments made to the State Association as deductible expenditure is accepted by any higher appellate authority in its case for the year under consideration, it will be open to the assessing officer of the appellant to reopen the case of the appellant and to decide whether the said payments received from BCCI can be taxed as income of the appellant which will be subject to our observations given on other issues raised in this appeal. However, the income received by the appellant/assessee otherwise, except the club income, which has not been taxed at the hands of the BCCI, will be assessed as per the normal provisions of the Act.

43. However, so far as the income from club facilities and from caterer is concerned, the plea of the assessee is that all the above facilities e.g. Gym, Lawn Tennis, Swimming pool etc. are interconnected and interwoven with the objects of the appellant i.e. promotion of sport and cannot be viewed separately. Without prejudice to above, it has been submitted that the appellant is maintaining separate books of accounts in respect of all above club activities. That these facilities are being provided on the principle of mutuality, accordingly,

these cannot be termed as trade, commerce or business activity. That the receipts from the caterer for providing catering service during the matches is intrinsically linked with the activity of organizing matches and tournaments for the promotion of cricket. It has been submitted that the club facilities are being run for the benefits of members and cricketers as per the objects of the society on the principle of mutuality.

However, the Assessing officer observed that the assessee earned huge income of Rs. 123.03 lacs during the year from these facilities and this includes a sum of Rs. 14.97 lacs from caterer. That the assessee hosted these facilities for the purpose of recreation or one time booking for parties, functions etc. and these were commercial activities in nature as the assessee was charging fees for providing these facilities.

44. After considering the rival submissions, in our view, this issue is required to be reexamined by the Assessing officer after verification of the accounts of the assessee as to ascertain which part of the club income and catering services has been generated from the members of the assessee association and which part of the income is earned from non-members. It is also to be looked into whether the income from the club house and other facilities is generated generally from the members only and the receipt from the non-members is an exception or the income is generated from members and non-members in normal course of business. Whether the catering services are limited to the members and their guests only or the same are also provided to non-members also

on commercial basis. The Assessing officer after thoroughly examining the above facts will decide if the principle of mutuality applies to the club income including catering contract in accordance with law. This issue is accordingly restored to the file of the Assessing officer.

45. Before parting, we deem it appropriate to mention here that in some of the case laws cited by the Ld. Counsel for the assessee the issue regarding the charitable nature in the case of other state associations has been decided in favour of those assessees, however, after going through the said decisions, with due respect to the said decisions and most humbly we are of the view that those decisions are based on the facts presented before the respective Benches in those cases. What is to be applied from a decision having precedential value is the proposition of law laid down after discussion on certain bundle of facts. Our findings above are based on the distinguished and specific facts brought out and evidences furnished before us by the parties and our findings may not be treated in any manner as laying down any contrary proposition of law to the decisions cited by the Ld. counsel for the assessee.

46. It is also made clear that our observations made above will not have any bearing as such on any adjudication in the cases of the BCCI and that the BCCI will have right and liberty to contest its cases irrespective of the observations given above as our findings rests on the pleadings of the parties before us though, the viewpoint of the BCCI has also been considered after giving due opportunity to the BCCI.

With the above observations, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced on 12.09.2019.

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|---|---|
| Sd/- | Sd/- |
| **( बी,आर.आर. कुमार / B.R.R. KUMAR)** | **(संजय गर्ग / SANJAY GARG )** |
| **लेखा सदस्य/ Accountant Member** | **न्यायिक सदस्य /Judicial Member** |

**Dated : 09/ 2019**
"आर.के."

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

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