IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' : NEW DELHI

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.3095/Del/2012
Assessment Year : -

Delhi & District Cricket Association Kotla Ferozshah Grounds Bahadursha Zafar Marg New Delhi	vs.	DIT (E) New Delhi
PAN: AAATD 0828 P (Appellant)		(Respondent)

Appellant by	:	Sh. Ashwani Tanjeja, Adv. And Shri Rahul Khare, Adv.
Respondent by	:	Dr. Sudha Kumari, CIT, D.R.

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee challenging the cancellation of the registration granted to it under Section 12A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Director of Income Tax (Exemptions) (hereinafter referred to as DIT(E)) vide his order no. DIT/E/12AA(3)/2012-13 /204 dated 23.05.2012 (sic)(21.05.2012) passed u/s 12AA(3) r.w.s. 12A of the Act.

2. Facts in brief:- The assessee was incorporated under Section 25 of the Companies Act, 1956 with an aim to promote the game of Cricket in and around Delhi. It is affiliated to the Board of Control of Cricket in India (BCCI). Registration under Section 12A of the Act was granted by the I.T. Department to the assessee vide order no. 633/96 dt. 6.3.1997, keeping in view its role in promoting the game of Cricket in the country. The DIT(E) vide Notice no. DIT(E)/12A/09/10/143 dt. 11th November,2009, issued a show cause notice to the assessee proposing withdrawal of registration granted under Section 12A of the Act.

2.1. The notice is extracted for ready reference.

"Registration under Section 12A was granted to you by this office vide order dt. 6.3.1997.

In view of the latest amendment a following insertion has been made to the s.2(15) of the Act from the AY 2009-10 which is reproduced as under:

(15) "charitable purpose" includes relief of the poor, education, medical relief, 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 purposes, if it involves the carrying on of any activity in the nature of trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity."

The Association has been engaged in the activities of conducting cricket matches at national as well as international levels in Delhi. The activities which are for the promotion of sports comes under the category of last limb of the s.2(15) of the Act i.e. the advancement of the general public utility. But you are engaged in the holding cricket matches at national as well as international levels which are purely commercial in nature and comes within the ambit of proviso to s.2(15) of the Act. Some of the main activities and source of the game etc. as under which clearly fall under the proviso to s.2(15).

1. *Ground Booking charges*
2. *Health Club charges*
3. *Income from Platinum*
4. *Income from Corporate Boxes*
5. *Lawn Booking Income*
6. *League Entry Fees*
7. *Playing Cards Receipts*
8. *Sponsorship Money*
9. *Sale of tickets, advertisements, souvenirs etc.*

By insertion of the proviso in the latest amendment to s.2(15), the legislature have intended to make a point that those or institutions or funds which are engaged in the activities of trade, commerce, business or rendering of any service in relation to any trade, commerce or business, for cess or fees or any other consideration, irrespective of the nature of use or application or retention, or income for such activity shall be come under the mischief of proviso of s.2(15) of the IT Act and shall be denied exemption under Section 11 or 12 of the IT Act.

In view of this, you are required to explain why registration granted under Section 12A could not be cancelled since your activities are not for charitable purposes as defined in the s.2(15) of the IT Act but are commercial. You are required to appear before the undersigned with your explanation/submissions

and also produce the complete books of accounts with bills/vouchers, bank statements and other misc. records since inception on 23rd Nov.2009 at 11.30 AM."

3. In reply, the assessee submitted that the assessee company was incorporated on 19th Feb.,1936 under the Indian Companies Act, VII of 1913, in New Delhi as a Company Limited by Guarantee, by taking over, an Association in the name of the "M/s Delhi and District Cricket Association Ltd.". Later the Company was registered as a Section 25 Company under the Companies Act, 1956. The main object of the Association was to develop and promote the game of Cricket and thus it was submitted that it is a Charitable Association.

The submissions of the assessee on its activities are summarized as follows.

(1). DDCA is affiliated Member of BCCI which controls and regulates all cricket activities in India.

(2). 112 clubs in Delhi are affiliated to DDCA and DDCA, organizes approximately 1400 league matches among these Clubs, every year by bearing all the expenditure.

(3). DDCA provides financial help to all the Clubs and there is no commercial angle in organizing matches.

(4). DDCA participates in all the tournaments and matches being played, as per the schedule and it pays all travelling cost, boarding and lodging costs, pays prescribed fees to players, provides balls, grounds, refreshment on ground etc. and there is no commercial angle.

(5). the only source for the DDCA is receipt of some amount from the BCCI on account of tournament subsidy.

(6). The DDCA is a non-profit organization and applies its surplus for promotion of the game of cricket and that its Objects prohibit distribution of any surplus to its Members.

(7). All the Members of the Executive Committee hold honorary position in DDCA;

(8). Being registered under Section 25 of the Companies Act, it is a Non-Profit Organisation and is not allowed to work on profit making basis or commercial basis.

(9). DDCA has produced a number of excellent cricketers of international repute and this was achieved by nurturing talent irrespective of cast, creed, status, religion etc. It also provides support to another facet of cricket i.e. umpiring.

(10) DDCA has a self-sustaining model and runs cricket at local level in Delhi, without any support, aid, grant or subsidy from any government.

(11). DDCA constructed a world class infrastructure facility, by modernizing the entire Firozshah Kotla Stadium. The expenditure was met out of accumulated funds and subsidy provided by the BCCI.

(12). DDCA provides medical aid to its players, remuneration to Coaches, Physiotherapists, Doctors etc.

(13). It organizes various programmes to encourage cricket.

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

(15). For Health Club charges, it was submitted that it is for the use of players and Members. It was submitted that the expenditure incurred for Health Club is Rs.6.48 lacs and whereas the amount charges was Rs.4.41 lakhs. It shows that the charges are highly subsidized.

(16). On receipts from Corporate Boxes, it was submitted that rights to view international matches were granted for the limited period of 10 years and the amounts received from these Corporate Houses has been used by the Association for the purpose of construction and modernization. It was pointed out that 1/10th of the amount received is being transferred to income and hence such activity cannot be considered as a commercial activity.

(17). On income from Platinum Seats, it was submitted that the Association cancelled the agreement with the Entities and paid back the outstanding amount. On lawn booking income it was submitted that the Association was providing facility to its Members at nominal cost and from the F.Y.2008-09, this practice has been discontinued.

(18). On League Entry Fee, it was submitted that the Association bears the cost of hiring charges of grounds, fee to umpires and scorers and other helping personnel during the matches. It also bears the cost of refreshment etc. provided to players during these matches. It also provides cricket balls.

(19) On playing card receipts, it was submitted that these were on account of use of card room by Members and that this facility along with playing cards is provided on a no profit, no loss basis and that, these receipts are almost negligible as compared to gross receipts of DDCA.

(20) On Sponsorship money, it was submitted that it is basically a Contribution by the Sponsorers for meeting the expenditure incurred by the Ranji Team. It was pointed out that despite money received from BCCI and money received from sponsorers of Rs.14.20 lakhs and Rs.13.01 lakhs respectively, DCCA has to incur an amount of Rs.29.85 lakhs as the total expenditure incurred by the DDCA during the F.Y. 2008-09 on Ranji matches was Rs.75.06 lakhs.

(21) On sale of tickets, advertisement, souveners etc. it was submitted that:

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

(b) On international matches, nominal charge is levied, as it would be impossible to control the crowd, if the viewing is free of cost. Tickets are being sold only to restricted public. The cost per ticket is much more than the amount which is charged for ticket and thus there is only a partial recovery. Examples were given.

(22). When matches are abandoned, DDCA had to incur additional cost without any receipts.

(23) All of this demonstrates that there is no profit motive.

(24) On income from advertisement and souveniers, it was submitted that the assessee has to maintain the stadium for the whole year and whereas, international matches are played only once or twice in the year, the cost of maintenance of stadium is as high as compared to the charges for transfer of interstate rights.

(25) It was vehemently contended that all funds were used for building up infrastructure for promotion of cricket and for the purpose of development of players and for promotion of the game and that no funds have been utilized for personal purpose of any of the Members of the Association and that the activities of the Association are not carried out on commercial basis. Annual Accounts for 7 years were enclosed.

3.1. The assessee further filed submissions on 9th March,2010 and 12th March,2010 before the DIT(E) giving details of coaching and training expenses, physical training camp, pitch qurator and various other activities for promotion of cricket including development of medical aid to players etc.

3.2. The Ld.DIT(E) in his impugned order no. DIT(E) 12AA/3/2012-13/204 dt. 23.5.2012 withdrew the registration granted under Section 12A w.e.f. 1.4.2009 for the following reasons.

(a) The assessee has entered into commercial agreement, with profit motive with M/s Twenty First Media Pvt. Ltd., giving up the right to sponsor Delhi Ranji Trophy and also right to reassign complete team sponsorship rights and the assessee has received Rs.1.18 crores by selling exclusively "in Stadia advertising rights" to this Agency.
(b) The assessee sells liquor, provides playing cards and health club facilities, after charging fee. These activities are not charitable in nature at all.
(c) This systematic activity of licensing the earmarked special boxes, by DDCA, to corporate entities for a specified consideration, bears all attributes of business activity.
(d) Sale of tickets, with pricing range too high, which is beyond the reach of the common man, demonstrates that there is no charitable purpose and activities in the organization.
(e) The highest heads of expenses include, lunch and catering expenses, which cannot be termed as charitable. Also advertisement and contractual receipts and agreements entered into, demonstrate that they are commercial contracts and the activity is a business activity. Alternatively provision to S.2(15) applies on these receipts also.

(f) Income from IPL matches cannot be considered as charitable activity. Organising IPL matches is in no way connected to promotion and development of the sport of cricket by any logic. Conducting and hosting these type of cricket matches was never in the Objects of Memorandum of Association.

3.3. Reliance was placed by the Ld.DIT(E), on number of case laws. At para 9, he concluded as follows.

"9. I have considered the entire facts and circumstances of the case. As per the provisions of section 12AA(3), registration of an Institution can be cancelled if the Commissioner/Director is satisfied that the activities of such Institution are not genuine. In view of the facts narrated in foregoing paragraphs, it is only logical to hold that the activities of the assessee are no longer coming within the definition of charitable purposes after amendment of sec.2(15) of the IT Act, with effect from 1.1.2009. The assessee is pursuing the objects of general public utility and conducting a business, the turnover of which far exceeds the threshold limit as per amended s.2(15) of the IT Act. Once the activity ceases to qualify as charitable, the same cannot be said to be genuine for the purpose of charity. Accordingly, the registration granted to the assessee, i.e. DDCA is hereby cancelled w.e.f. 01.04.2009 i.e. the applicable date of amendment tos.2(15) of the I.T.Act."

4. Aggrieved the assessee is in appeal before us on the following grounds.

"1. That having regard to the facts and circumstances of the case Ld.DIT(E) has erred in law and on facts in cancelling the registration granted to the appellant w.e.f. 1.4.2009 by observing that activities of the institution are not genuine and has further erred in holding that activities of the assessee society are not genuine and charitable under Section 2(15) of the Act and thus has erred in cancelling the registration granted to the appellant society.
2. That in any view of the matter and in any case, action of Ld.DIT(E) in cancelling the registration under Section 12AA is bad in law and against the facts and circumstances of the case and is contrary to the principles of natural justice as the impugned order has been passed without granting adequate

opportunity of hearing, by recording incorrect facts and findings and the appellant ought to have been granted benefit of registration under the law."

5. The Ld.Counsel for the assessee Mr.Ashwani Taneja appearing along with Mr.Rahul Khare, submitted that the orders passed by the DIT(E) is contradictory to law and facts. His submissions are summarized as follows.

(a) The DIT(E) has no power to cancel the registration obtained under Section 12A of the Act with retrospective effect. Reliance was placed on a number of case laws.
(b) Registration cannot be cancelled on an erroneous ground that activities of the assessee are commercial in nature. For invoking S.12AA r.w.s. 2(15), Revenue has to show that activities are not in accordance with the objects of the Association.
(c) The DIT(E) has not held that the activities of the assessee are not genuine or that the activities are not being carried out in accordance with the Objects of the assessee.
(d) The assessee was incorporated on 19.2.1937 as a non-profit company and since then it has been granted benefit of registration under Section 12A and number of assessment orders were passed under Section 143(3) extending the benefit of exemption under Section 11/12 to the assessee by the A.O.
(e) The core activities of the assessee are not in the nature of trade, commerce or business.

5.1. Reliance was placed on the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association vs. DIT(E) reported in 360 ITR 633 (Madras) and it is submitted that the case of the assessee is squarely covered by this judgement, as the objects, activities and other facts are para materia.

5.2. Mere charging of fees does not mean that the assessee is carrying out its activity in the nature of trade, commerce and business and thus the Proviso to S.2(15) is not automatically attracted. Reliance was placed on the following judgements.

GSI vs.DIT (Del) dt. 26.9.13 Writ Petition no. 7797/2009 reported in 360 ITR 138 (Delhi)

ICAI vs. DIT (Del) reported in 35 Taxmann.com 140

5.3. The adverse observations made by the DIT(E) are based on incorrect facts and contrary to the evidences placed on record. The assessee's submissions before the Ld.DIT(E) meet the various allegations made by the DIT(E), pointwise and issue wise and contradict the adverse observations therein.

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

5.5. Reliance was placed on the submissions made before the DIT(E) in letter dt. 7.5.2012 as well as on various case laws.

6. Mrs. Sudha Kumari, Ld.CIT, D.R. on the other hand submitted that sale of liquor and providing facilities for playing cards cannot, by any stretch of imagination, be considered as charitable activity entitling the assessee for continuing the registration under Section 12A of the Act. She submitted that the assessee has entered into commercial agreements with profit motives, with M/s Twenty First Media Pvt. Ltd, giving it the rights to sponsor Delhi Ranji Trophy, which included the right to reassign the entire sponsorship rights. She submitted that, the rights were granted exclusively to TFM, to sell to one or more companies, the rights to use the image of "DCCA cricket sponsorers" and to place "commercial logos" on the team clothing, practice kits, equipment bag and formal shirt and trousers. She submitted that, a perusal of the agreement clearly demonstrates, that it is commercial in nature. She submits that the DDCA involves in activities which are in the nature of trade, business or commercials or rendering of services in relation to the same. She submitted that business need not be confined to an active occupation, continuously carried out and entering into well structured commercial contracts, with corporate

entities, who are the market leader of sports marketing, is business activity. She relied on the order of DIT(E) and submitted that so long as the methods followed are commercial, the motive with which business is carried out is immaterial. She relied on certain case laws, which we would be referring to if we find it relevant and necessary, in the course of our findings, in support of her contention, that the activity undertaken by DDCA satisfies the requirements of the Proviso to S.2(15) of the Act. Without prejudice, she further submits that DDCA also falls squarely within the gamut of rendering of services, in relation to the business of Twenty First Century Media Ltd.

6.1. She reiterated that the activity of sale of liquor, carried on by the assessee and the activity of playing card facilities, is in complete violation of general public utility claimed by the assessee. She further submits that Health Club facilities are availed by paying of fee.

6.2. On income from corporate boxes, she submitted that the contracts provide that DDCA is to render various services to these boxes and that if these services are not provided, DDCA should reimburse to the end user and hence it has the attributes of business. On sale of tickets, she submitted that the pricing ranges from 200 to 7500 and this effectively excludes the common man from being a spectator. She pointed out that the maximum expenditure is incurred on lunch and catering and this demonstrates that no element of charity, in application of the Objects of the Association is involved. She reiterated the findings of the DIT(E), on the issue of contractual receipts and income from IPL matches. Written submissions were given citing case laws, which we would be dealing in due course, if necessary.

7. In reply Shri Ashwani Taneja, the Ld.Counsel for the assessee relied on the reply given point wise to the DIT(E), on each of these issues and argued that there is no commercial element in any of the activities and even if there is a commercial element, the profits therefrom were applied

towards the objects of the assessee. It was reiterated his contention that the issue is covered in favour of the assessee by the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association.

8. Rival contentions heard. On a careful consideration of the facts and circumstances of the case and on a perusal of the papers on record, as well as the orders of the authorities below and case laws cited, we hold as follows.

9. The first issue that comes for our consideration is whether the Ld.DIT(E) is correct in law in withdrawing the registration of the assessee with retrospective effect.

9.1. This issue is no more res integra.

(a) The Hon'ble Delhi High Court in the case of DIT(E) vs. Mool Chand Khairati Ram Trust (2011) reported in 339 ITR 622 (Delhi), held as follows

"Held: Power of cancellation of registration obtained u/s 12A came to be incorporated by way of amendment introduced u/s 12AA(3) by the Finance Act, 2010 wef 1st June,2010; Director of IT was not therefore justified in cancelling the registration u/s 12AA(3) wef Dec.2002-03 vide his order dt. 30th June,2009."

(b) In the case of Kapoor Educational Society vs. CIT (2010) reported in 134 TTJ 250 it was held as follows.

"Held: Amendment of s.12AA(3) by the Finance Act, 2010 w.e.f. 1st June,2010 is prospective in nature and if any trust/institution has been registered prior to 1st Oct.2004, either u/s 12A or 12AA, CIT has no power to cancel the registration u/s 12AA(3)."

9.2. In the above case, the Lucknow "B" Bench of the Tribunal held that, amendment to S.12AA(3) by the Finance Act, 2010 w.e.f. 1st June, 2010 is prospective in nature and if any Trust is registered under Section 12AA or

under Section 12A, the Ld.CIT has no power to cancel the registration under Section 12AA(3).

9.3. At paras 8 and 9 of the order, the Tribunal held as under:

"8. In the case of Oxford Academy for Career Development (supra), a dispute arose whether S.12AA(3) has retrospective effect and whether the CIT could cancel the registration granted to a trust/institution prior to 1st Oct.2004. The Hon'ble Jurisdictional High Court Lucknow Bench in the case of Oxford Academy for Career Development(supra) at headnotes held as under:
'The order cancelling the registration granted to a trust or institution u/s 12AA being a quasi judicial order does not fall within the category of orders mentioned u/s 21 of the General Clauses Act, 1897, which provides that the power conferred on an authority to issue orders includes the power conferred on an authority to issue orders include the power to rescind such orders, and the CIT earlier granting the registration to a trust or institution. S.12AA(3) was incorporated wef 1st Oct.2004, to empower the CIT to cancel the registration granted to a trust or institution. The object of this provision is not clarificatory or explanatory. So prior to that date, the authorities granting registration had no inherent power to withdraw or revoke the registration already granted. (Emphasis ours).

9. In the above decision, the Hon'ble High Court has clearly held that s.12AA(3) has no retrospective effect as it is neither explanatory nor clajrificatory in nature and the CIT has no power to rescind the order passed by the CIT prior to 1st Oct.2004. Now there is an amendment to s.12AA(3) by the Finance Act, 2010, which has inserted the phrase "or has obtained registration at any time u/s 12A" after the words "sub-s.(1)" as appearing in s.12AA(3). This amendment has been made applicable and effective from 1st June,2010. Keeping in view the ratio laid down by the Hon'ble High Court in the case of Oxford Academy for Career Development (supra) and also the amendment of s.12AA(3) by the Finance Act, 2010 wef 1st June,2010, it is amply clear that s.12AA(3) is prospective in nature and if any trust/institution has been registered prior to 1st Oct.2004 either u/s 12A or 12AA, the CIT has no power to cancel the registration u/s 12AA(3). In the instant case, registration to the assessee society was granted on 1st March, 1999 i.e. much prior to 1st Oct.2004 when s.12AA(3) was introduced and made effective from 1st Oct.2004 and the CIT had no jurisdiction to cancel the registration granted to the assessee society u/s 12A and that the order passed by the CIT u/s 12AA(3) is without jurisdiction, bad in law and liable to be quashed. We accordingly quash the impugned order of the Ld.CIT cancelling the registration granted to the assessee society u/s 12A of the Act on 1st March,1999. The appeal of the assessee stands allowed." (emphasis ours)

(c) The Hon'ble Allahabad High Court in the case of Oxford Academy for Career Development vs. Chief CIT, reported in 315 ITR 382 (2009), held as follows:

"S.12AA(3) was incorporated in the Act wef 1st Oct.2004 and not applicable retrospectively, registration granted to assessee on 1st April,1999 could not therefore be cancelled by CIT by invoking powers u/s 12AA(3), even assuming, the CIT has power to rescind the order of registration on the ground that the registration had been obtained by practicing fraud or forgery, there was nothing in the show cause notice or in the impugned order, alleging that the petitioner had obtained the registration by practicing fraud or forgery."

(d) Similarly in the case of M/s Ajit Education Trust vs. CIT(2010) 46 DTR 482 (ITAT Ahd), it was held that "Amendment of sub s.(3) of S.12AA wef 1st June,2010 should not be applicable retrospectively and its operation has to be effective from the date it was introduced and onwards and therefore CIT was not justified in cancelling, saying there was nothing to show cause notice in the impugned order alleging that the petitioner had obtained the registration by practicing fraud or forgery."

(e) Similar is the proposition in the case of DIT vs. NH Kapadia Education Trust, ITAT Ahmedabad Bench reported in 136 ITD 111 (Ahmd.)

9.3. Coming to the decision relied upon by the Ld.D.R. i.e. in the Hon'ble Bombay High Court in the case of Sinhagad Technical Education Society v.CIT (2012) 343 ITR 23 / 249 CTR 45 (Bom) (High Court) it was held as under:

S.12AA : Trust or Institution-Registration-Charitable purposes-Registration-Constitutional validity-Amendment of section 12AA(3) is held to be valid. The Commissioner issued the notice under section 12AA(3) on 31 st July , 2007 for cancellation of the registration granted to the petitioner for the assessment year 1999-2000 on the ground that the petitioner is charging capitation fee and donations in respect of admissions and diverting them in respect of personal gain of trustees. The proceedings were initiated and order was passed cancelling the registration. The said order was challenged before the Tribunal . The Tribunal allowed the appeal of assessee on the ground that the registration was granted under section 12A , which cannot be invoked by section 12AA(3) , which were brought on the statute book w.e.f 1st October, 2004. The appeal against the order of Tribunal is admitted and pending for final disposal before the High Court. Section 12AA(3) has been amended by the Finance Act of 2010

w.e.f. June 2010 giving the power to cancel the registration under section 12A. The Commissioner issued fresh show cause notice on 11 th Mach 2011 for cancellation of registration for reasons mentioned in his order dated 9th October , 2007.The assessee challenged the constitutional validity of provision of sub section (3) of the section 12AA as amended by the Finance Act of 2010 w.e.f. 1st June 2010 to the extent they provide for revocation of a registration granted under section 12A. The Court held that amendment of section 12AAA(3) by the Finance Act, 2010 is not arbitrary and it does not take away vested right nor does it create new obligation in respect of past actions and cannot be said to be retrospective in operation ; even if construed to be retrospective , it cannot be held to be violate of Article 14. Accordingly the petition was dismissed.(A.Y.1999-2000) (Emphasis ours)

In this case the assessee challenged the constitutional validity of the amendment and the Court upheld the constitutional validity. While doing so it held that this amendment cannot be said to be retrospective in nature. It was held that the Ld.CIT has power to cancel the registration w.e.f. 1.6.2010. The Hon'ble Court held that the Commission of Income Tax can exercise power under Section 12AA(3) in respect of a Trust registered prior to 1.6.2010. This does not mean that the Hon'ble Court laid down that registration granted u/s 12A or u/s 12AA, prior to the amendment can be withdrawn retrospectively. In fact the contention of the assessee that the Ld.CIT or DIT(E) cannot exercise the power of withdrawing the registration, retrospectively is supported by this judgement.

9.4. In view of the above discussion, following the binding judgement of the Jurisdictional High Court, we uphold the contention of the assessee that the withdrawal of registration with retrospective effect from 1.4.2009 by the order passed u/s 12AA(3), is bad in law.

10. The next issue that comes for our consideration is whether the registration can be cancelled on the ground that the activities of the assessee are commercial in nature.

10.1. The Hon'ble Delhi High Court in the case of M/s GSI India vs. DIT, Delhi reported in 360 ITR 138 held that :

"Section 2(15) of the Income-tax Act, 1961, was amended by the Finance Act, 2008, with effect from April 1, 2009, and a proviso was added to it. A

second proviso was inserted to section 2(15) by the Finance Act, 2010, with retrospective effect from April 1, 2009. There are four main factors that need to be taken into consideration before classifying the activity of the assesseee as "charitable" under the residuary category, i.e.," advancement of any other object of general public utility" under section 2(15) of the Act. The four factors are (i) the activity should be for advancement of general public utility; (ii) the activity should not involve any activity in the nature of trade, commerce and business; (iii) the activity should not involve rendering any service in relation to any trade, commerce, or business; and (iv) the activities in clauses (ii) and (iii) should not be for fee, cess or other consideration and if for fee, cess or consideration the aggregate value of the receipts from the activities under (ii) and (iii) should not exceed the amount specified in the second proviso. The earlier test of business feeding or application of income earned towards charity because of the statutory amendment is no longer relevant and apposite. It is evident from Circular No. 11 of2008 that a new proviso to section 2(15) of the Act is applicable to assessees who are engaged in commercial activities, i.e., carrying on business, trade or commerce, in the garb of "public utility" to avoid tax liability. The legal terms "trade, commerce, or business" in section 2(15) mean activity undertaken with a view to make or earn profit. Profit motive is determinative and a critical factor to discern whether an activity is business, trade or commerce. Business activity has an important pervading element of self-interest, though fair dealing should and can be present, whilst charity or charitable activity is the anti-thesis of activity undertaken with profit motive or activity undertaken on sound or recognised business principles. The quantum of fee charged, the economic status of the beneficiaries who pay commercial value of benefits, in comparison to the fee, the purpose and object behind the fee, etc., are several factors which will decide the seminal question, is it business? Charitable activities require operational/running expenses as well as capital expenses to be able to sustain and continue in the long run. There is no statutory mandate that a charitable institution falling under the last clause should be wholly, substantially or in part must be funded by voluntary contributions. A practical and pragmatic view is required to examine the data, which should be analysed objectively and a narrow and coloured view will be counter-productive and contrary to the language of section 2(15). The second proviso applies when business was/is conducted and the quantum of receipts exceeds the specified sum. The proviso does not seek to disqualify a charitable organization covered by the last limb, when a token fee is collected from the beneficiaries in the course of activity which is not a business but clearly charity for which it is established and it undertakes. (emphasis ours)

10.2. The Hon'ble Madras High Court in Tamil Nadu Cricket Association vs. DIT(E) (Madras) reported in 360 ITR 633, on identical facts held as follows.

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

30. Section 12AA(3) of the Act inserted with effect from October 1, 2004, under the Finance (No. 2) Act, 2004, and the amendment inserted by the Finance Act, 2010, with effect from June 1, 2010, therein empowering the Commissioner to cancel the registration granted under the stated circumstances, reads as under :

Provision inserted under the Finance Act, 2004 :

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

31. After the amendment in the year 2010, section 12AA(3) of the Income-tax Act reads as follows :

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

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

"51. As already noted in the preceding paragraphs, considering the provision under Section 12AA(3) of the Act, the cancellation or registration in a given case could be done only under the stated circumstances under Section 12AA(3) of the Act and in the background of the definition relevant to the particular year of registration. As rightly pointed out by the assessee, Revenue does not allege anything against the genuineness of the objects of the assessee or its activities. It rests its order only on the ground of the assessee receiving income from holding of matches which according to the assessee were not held by it. Thus, as regards the question as to whether the particular income qualified under Section 11 of the Act or not is not the same as activity being genuine or not. In the circumstances, we do not agree with the view of the Income Tax Appellate Tribunal that the order passed by the Director of Income Tax (Exemptions) was in accordance with the provisions of the Income Tax Act, 1961. He viewed that the conduct of test matches and ODI are in the nature of commerce or business. Though the assessee claimed their activities for promotion of sports, he held that the dominant feature is evident from the huge profits received and hence the amount received from BCCI as subsidy are commercial. As regards conducting of IPL Matches, he pointed out that though no services are rendered by the assessee for conducting the matches, the ground where the matches are played are given for rent which is a commercial venture. The subsidy received from BCCI included mainly TV Advertisements sold by BCCI for the conduct of IPL and their commercial receipts arising for IPL transactions. Therefore, the nature of receipt was important than the name of account under which it was accounted. Thus he viewed that the objects and activities would no longer come within the definition of Section 2(15) of the Act after the amendment come in effect from 01.04.2009.

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

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

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

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

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

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

58. In the result, the Tax Case (Appeal) stands allowed. No costs. Consequently, connected MP is closed. (emphasis ours).

10.3. The activities of the assessee, on facts, are similar to the activities of Tamil Nadu Cricket Association and hence the case law applies on all fours.

10.4. From a reading of the above case laws, the following propositions emerge.

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

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

i. Activity should be for advancement of 'general public utility'.
ii. Activity should not involve any activity in the nature of trade, commerce and business.
iii. Activity should not involve rendering of services in relation to any trade, commerce or business.
iv. Activities in Clauses b and c above, should not be for a fees, cess or other consideration, the aggregate value of which should not exceed the amount specified in the Second Proviso to S.2(15).

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

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

i. It is undertaken with the profit motive;
ii. The activity is continued on sound and recognized business principles and is pursued with reasonable continuity;
iii. There should be facts and other circumstances which justify and show that the activity undertaken is in fact, in the nature of business;
iv. The five tests propounded in the case of Customs and Excise Commissioner vs. Lord Fisher (1981) STC 238 and the propositions in the case of CST vs. Sai Publication Fund 258 ITR 70 (SC) apply.
v. Business activity is an important prevailing element of self interest.

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

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

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

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

(i) The quantum of fee charged, the economic status of the beneficiaries who pay, commercial values in comparison to the fee, purpose and object

behind the fee etc. are several factors which decide seminal question, is it business?

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

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

(l) A pragmatic view is required when we examine the data, which should be analysed objectively. A narrow and coloured view will be counter productive and contrary to S.2(15) of the Act.

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

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

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

10.5. Applying these propositions to the facts of this case, we observe that:

(a) the DIT(E) at para 9 of his order agrees that the assessee is carrying on activity of "general public utility", which means that the charitable nature of assessee's activity is not disputed by the Revenue. Thus the DIT(E) has contradicted himself by holding on one hand, that the assessee is a

charitable Institution carrying out charitable activity and on another hand, coming to a conclusion that the assessee is doing business. It is also not the case of the DIT(E) that, the assessee is not carrying on its activities in accordance with the objects for which it is founded. No such finding is recorded in the order. Thus the twin conditions mandatorily required for invoking the jurisdiction u/s 12AA(3) by the Ld.DIT(E), to cancel the registration granted u/s 12AA i.e. the satisfaction of the DIT(E) that (a) the activities of the Trust or Institution are not genuine or (b) that the activities of Trust or Institution are not being carried out in accordance with the objects of the Trust or Institution are not existing in this order.

10.6. Thus applying the principles laid down in the judgement of Hon'ble Madras High Court in the case of Tamilnadu Cricket Association (supra), the impugned order cancelling the registration u/s 12A quashed.

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

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

1. Subscription
2. Renting for hiring cricket ground rooms and premises
3. Fee for providing services for IPL

4. Income from advertisement
5. Subsidy from BCCI
6. Sale of tickets for conducting the matches and
7. Restaurant and catering income.

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

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

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

11.1. On the issue of sponsorship income from M/s. Twenty First Century Media (P) Ltd. (TFCM), it was explained that, despite the receipt of sponsorship money during the year of Rs.31,01,038/- and receiving a sum of Rs.14,20,000/- from BCCI as subsidy, there was a short fall of Rs.29,84,835/-, which was met by the assessee. It was specifically argued by the Ld.D.R. that the agreement with "M/s Twenty First Century Media Pvt.Ltd." is commercial in nature. The reply of the assessee is that it should be appreciated that, for any organization to run and survive it is essential

that it should augment some funds to meet the cost/expenditure, as required to be incurred, to carry out the activities meant to achieve its object. We agree with the submissions of the assessee.

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

Similar is the view of the Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association (supra).

11. 3. On the issue of sale of liquor, it was submitted that initially DDCA was formed as a Club to take over the assets and liabilities of the Association called, "Delhi Cricket Association". He referred to the objects and submitted as follows.

"One of the objects as given in the MOA of DDCA is to lay ground for playing game of cricket and to provide pavilion, refreshment rooms and other facilities in connection therewith. Therefore, an eatery was established which was eventually shaped as a canteen for the benefit of the members as well as few other persons associated with DDA e.g. players, coaches, staff, other guests etc."

11.4. In our view, for the purpose of making this Canteen self sustainable, it has to follow global standards and international protocols, since cricket is played at international level. Canteen keeps various items as per menu. Liquor is just part of this menu. It is not sold independently as trading item. The eatery is available for the use only of members, players, staff, other guests of DDCA. It is not open for public. A walk in customer/guest, cannot enjoy the facility of this eatery. The basic fact is that this canteen has direct and inextricable link with one of the core activities of DDCA i.e. maintaining such a huge cricket stadium and promoting the game of cricket. The Revenue, in this case is trying to project that the assessee as a liquor dealer. This is not correct. Internationally, when facilities are provided to players, liquor is part of the menu. This is just incidental to providing food and beverages. When the Ld.DIT(E) does not find anything wrong in the assessee supplying food and beverages in the canteen to the members, we cannot find fault with liquor being part of the menu card and being served as per international customs and requirements.

11.5. Hence to meet global standards these facilities are required and these are not independent of the activity of providing food and refreshments

to Members and Associated Persons. Running of a canteen is an incidental and necessary activity as is in every organization. This cannot be termed as business activity. It is part and parcel of the charitable activity and the receipt in question cannot be termed as exempt from activity which is in the nature of "trade, commerce or business".

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

11.7. On receipts from IPCL an elaborate explanation was given, the pith and substance is that expenditure has to be incurred by the DDCA on various items, as coordination has to be done and the aggregate of expenditure incurred for the same is Rs.238 lakhs. It was submitted that the DDCA, initially meets this expenditure out of its own sources and there after the BCCI and legal franchisee, contribute and compensate part of this expenses. The same arguments as were advanced by the assessee in the cases where sponsorship money received, were made here also. The summary of the submissions are as follows.

"Our respectful submission is that, as we have given detailed submission in earlier part of our submissions wherein we have made analyses of receipts as well as of the expenses incurred by the assessee.
The analysis of expenses have revealed that the expenses have been incurred on the promotion of the game of cricket. These expenses have been incurred either for the development of game of cricket or the development of players. There is no other cause or item for which any amount has been spent by the assessee.

Similarly, when we analyse the receipt side, we would find that the receipts are directly or inextricably linked with the organizing of matches and tournaments or for promotion of game of cricket in any other manner or for maintenance or building up the infrastructure meant for the promotion of the game of cricket. Thus, it can be safely said that the DDA exists for cricket and cricket only.

The CBDT has already clarified that sports is a matter of general public utility. Therefore DDCA satisfies the condition of having a charitable object as mentioned in s.2(15) of the Income Tax Act, 1961. It does not violate any condition as mentioned in proviso to s.2(15).

The apprehension that certain income received by the assessee, during the year, partake the character of business income, is ill founded. In this regard we have submitted in detail that this apprehension is misplaced on account of various submissions as per details given below.

1. *The entire receipts have been received for the promotion of game of cricket.*
2. *The assessee is not free to use it as per its convenience for any purpose other than for promotion of cricket. Thus, the amounts received in this manner cannot be characterized as business receipts.*
3. *The amount has been received as the voluntary contribution on discretion of the contributor (for e.g. BCCI). These have been received for raising the funds for meeting its costs and expenses.*
4. *In none of the cases there is any quid pro quo. The ultimate beneficiary is either the cricketer or the game of the cricket.*
5. *The assessee is not charging any fees or revenue from the cricketer who is ultimate beneficiary. Thus, there is no quid pro quo relationship with the cricketer. The assessee is promoting cricket on charitable basis as far as real beneficiary is concerned.*
6. *Whenever the revenue is earned these are not earned on commercial lines and these are earned without any commercial attributes. The revenue is generated for recovering the cost, at least partly if not fully.*
7. *The assessee has not entered any transaction with any person on profit motive. The other person may be an entrepreneur or may be doing*

business but the assessee has entered the transaction only for the sole and dedicated purpose i.e. for the promotion of cricket.

8. *These facts are worth noting that (a) the assessee has not diverted its funds for any purpose other than promotion of cricket; (b) the assessee has not done any activity or transaction with profit motive, (c) the assess has not done any activity beyond and outside its objects and (d) there is no change in facts so as to deviate from the stand taken by Ld.A.O. in all the past years accepting the claim of the assessee all along on facts as well as on law.*

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

11.9. Regarding playing cards, it is an incidental recreation activity undertaken in most Clubs and what is charged by the assessee, goes to recover the costs for providing such recreational facility to its member. The receipts are miniscule and hence negligible.

11.10. Similarly as far as receipts from health club is concerned, we find that, only a part of the expenditure incurred on health club is recovered by way of charges from Members, who are using the health club facility. These are all, at best be called user charges. In our view these receipts cannot be termed as an activity in the nature of "trade, commerce or business". In fact Health Club facility is recognized to promote the game of cricket.

11.11. All the receipts of the assessee are intrinsically linked with the activity of organizing matches and tournaments for the promotion of cricket. User charges are required for maintaining the facilities that are provided as part of the infrastructure, for conducting the activities of the assessee.

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

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

12. In the result the appeal of the assessee is allowed.

Decision pronounced in the open Court on 13th January, 2015.

Sd/-	Sd/-
(C.M. GARG)	**(J.SUDHAKAR REDDY)**
JUDICIAL MEMBER	**VICE PRESIDENT**

Dated : the 13th January, 2015

- Manga

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

Assistant Registrar