

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

BEFORE Dr. O.K.NARAYANAN, VICE-PRESIDENT  
AND SHRI V.DURGA RAO, JUDICIAL MEMBER

ITA No.396(Mds)/2012

The Tamil Nadu Cricket  
Association, No.5, M.A.  
Chidambaram Stadium,  
Victoria Hostel Road,  
Chepauk, Chennai-600 005.  
PAN AAAAT0398M.  
(Appellant)

Vs. The Director of Income-tax  
(Exemptions),  
Chennai.

(Respondent)

Appellant by : Shri S.Sridhar, Advocate  
Respondent by : Shri Guru Bashyam, IRS, JCIT

Date of Hearing : 23<sup>rd</sup> January, 2013  
Date of Pronouncement : 22<sup>nd</sup> February, 2013

**ORDER**

PER Dr.O.K.NARAYANAN, VICE PRESIDENT

This appeal is filed by the assessee. The appeal is directed against the order passed by the Director of Income-tax (Exemptions) at Chennai, dated 29-12-2011, wherein the Director of Income-tax (Exemptions) has cancelled section 12AA

registration granted to The Tamil Nadu Cricket Association, exercising the powers conferred on him under sub-section(3) of section 12AA of the Income-tax Act, 1961.

2. The assessee, The Tamil Nadu Cricket Association, is a society registered under the Societies Registration Act, 1860, on 1<sup>st</sup> of May, 1953. The Memorandum of Association of the assessee has provided a set of main objects in Part IV of its Memorandum of Association and also a set of incidental objects for the purpose of achieving the main objects.

3. The main object of the assessee is to maintain a general control of the game of cricket in the State of Tamil Nadu and in the Union Territory of Puducherry and give its decision on all matters concerning the game either when referred to or suo motu. The Association proposes to spread the game throughout the State of Tamil Nadu by organising tournaments, including Inter-University, Inter-School and Inter-Association Matches, to educate young sportsmen in the game generally and also in the field of physical culture and the spirit of sportsmanship. It is declared that the benefits would be available to the general public irrespective of caste, creed, religion or sex. The objects of

the Association continue to state as to maintain a library, to communicate with public authorities in India and abroad, to provide, acquire and maintain play-grounds and other facilities, to act in tandem with similar Associations for the development of cricket, etc. It also provides for conducting coaching for the benefit of cricketers and also to do all other lawful and possible needs to promote the overall development of the sports of cricket within its jurisdiction.

4. The incidental objects provided in the Memorandum enable the Association to arrange, supervise, regulate and finance visits of State Teams or Foreign Teams under the auspices of bodies like the Board of Control for Cricket in India, to arrange and manage tournaments, to start and publish journals in sports in general and the game of cricket in particular, to engage coaches, other experts to train the aspirants of the game of cricket, etc.

5. In India the game of cricket is promoted and regulated under the general control of the national body by name Board of Control for cricket in India (BCCI). The assessee is bestowed with the responsibility of promoting and developing the

game of cricket in the State of Tamil Nadu and in the Union Territory of Puducherry under the overall supervision and control of BCCI. Every State is having State-wise Associations, like the assessee, to look after the matters of the game of cricket in their respective States. Under the State Associations like the assessee, there are District Associations too. The District Associations carry on similar activities within their Districts under the overall guidance and supervision of State Associations like the assessee. This is the organizational structure of the cricket bodies functioning in India.

6. As the assessee is established for the purpose of promoting and developing the game of cricket, it was registered under section 12AA of the Income-tax Act, 1961 on 28-3-2003. The registration was granted on the basis of the submissions made by the assessee that its activities are covered by Circular No.395 of the Central Board of Direct Taxes, dated 24-9-1984. The said circular has clarified that promotion of sports and games is an object of general public utility and, therefore, covered under the definition of 'charitable purpose' under section 2(15) of the Income-tax Act, 1961.

7. When the assessee was granted registration under section 12AA, section 2(15) read as follows:

*“ ‘charitable purpose’ includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.”*

The above inclusive definition, as amended by the Finance Act, 1983, stood effective from 1-4-1984.

8. Section 2(15) was again substituted by the Finance Act, 2008, with effect from 1-4-2009, whereby a proviso has been added to the main body of definition provided under section 2(15). The said proviso reads as below:

*“**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.”*

9. The result of the amendment brought in by the Finance Act, 2008 with effect from 1-4-2009 by inserting the above proviso to section 2(15) is to explain the scope of the expression **'advancement of any other object of general public utility'**. The general expression earlier stood in the provision of law stated under section 2(15) as **'advancement of any other object of general public utility'** was very wide, so that even activities of commercial nature were coloured as charitable activities by applying the touchstone that those commercial activities are of general public utility. It is in order to bridle the uncontrolled exploitation of the expression of **'advancement of any other object of general public utility'** that Finance Act, 2008 has brought the proviso with effect from 1-4-2009, stating that **"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, shall not be considered as charitable even if carrying on of those activities do help the advancement of any object of general public utility"**.

10. The law has made a dividing line between advancement of any other object of general public utility in the strict sense of charity and other activities of advancement of any other object of general public utility carried on in the nature of trade, commerce or business or any other similar activity of making profit.

11. In the background of law as it stood amended by the Finance Act, 2008 with effect from 1<sup>st</sup> April, 2009, the Assessing Officer called for the details of the activities of the assessee to examine whether the activities carried on by the assessee are hit by the restraint inserted in the proviso to section 2(15) of the Act. The Assessing Officer, after examining the details available before him, came to a conclusion that the assessee has deviated from its declared objects and that at present it is carrying on activities of commercial nature and as such there is no justification in continuing the registration granted under section 12AA of the Act. The Assessing Officer, therefore, submitted a proposal to the Director of Income-tax(Exemptions) to initiate proceedings for cancellation of registration under section 12AA(3) of the Act.

12. In view of the above proposal, the Director of Income-tax(Exemptions) called for the details of the Association and examined them in detail. The Director of Income-tax(Exemptions), after examining the details and explanations offered by the assessee, came to a conclusion that the assessee is not pursuing the objects of general public utility, but was carrying on activities in the nature of business, resulting in huge turnover year after year and, therefore, the object of the assessee is no longer coming within the definition of 'charitable purpose' explained in section 2(15) with effect from 1-4-2009 in view of the proviso inserted under section 2(15) by Finance Act, 2008. He accordingly cancelled the registration exercising the powers conferred on him under section 12AA(3) of the Income-tax Act, 1961.

13. The assessee is aggrieved and, therefore, this appeal before us.

14. It is useful to reproduce the relevant portions of the grounds of appeal raised by the assessee before the Tribunal as under:-



*“1. The DIT(E) erred in invoking his jurisdiction under section 12AA(3) of the Income-tax Act (the Act) cancelling the registration granted to the appellant u/s 12AA with effect from 1-4-2009.*

*2. The DIT(E) failed to appreciate that he could not have passed the impugned order u/s 12AA(3) of the Act as the pre-conditions necessary for invoking the provisions of the said section viz., the appellant’s activities (a) are not genuine or (b) are not being carried out in accordance with its objects, had not been fulfilled in the present case.*

*3. The DIT(E) erred in holding that the activities of the Appellant were not charitable and in such a case its activities will be hit by the genuineness clause and therefore covered by section 12AA(3) of the Act.*

*4. The DIT(E) erred in holding that the Appellant was not carrying a charitable activity as the conditions specified in proviso to sec.2(15) of the Act had been fulfilled in its case.*

5. *The DIT(E) erred in coming to the conclusion that the various amounts received by the Appellant are commercial in nature.*

6. *The DIT(E) erred in holding that conduct of test matches and ODIs by the Appellant is in the nature of commerce and business.*

7. *The DIT(E) erred in observing that the TV subsidy of ₹ 16,82,38,072 received by the Appellant from BCCI is a share of advertisement income which cannot be treated in isolation from conduct of matches. He overlooked that this receipt was in the nature of a subsidy/grant from BCCI which had been confirmed by them and the Appellant.*

8. *The DIT(E) erred in holding that the Appellant was receiving commercial receipts for conducting of IPL matches. For reaching this conclusion he erroneously observed that though the IPL subsidy is stated to be a grant, the same is compensation for forgoing of advertisement right by the Appellant.*

*9. The DIT(E) erred in holding that miscellaneous receipts are commercial in nature. He further erred in observing that sharing of ₹ 2,50,000 from MCC for the advertisement received by the Appellant is a commercial receipt.”*

15. Shri S.Sridhar, the learned counsel appearing for the assessee, argued the case at length. The learned counsel explained that promoting and developing of sports and games are essentially in the nature of general public utility and, therefore, charitable in nature within the meaning of section 2(15) of the Income-tax Act, 1961. It was on the basis of the above foundation that the assessee was granted registration under section 12AA on 28-3-2003. Throughout its existence and even now the assessee is carrying on the same activities in the nature of general public utility by promoting and developing the game of cricket in Tamil Nadu and Puducherry. It is not carrying on any other activity. The assessee is carrying on the very same activities, for which it is established and, therefore, the Director of Income-tax(Exemptions) has no reason to satisfy that the activities carried on by the assessee are not genuine. For the

same reason, it is not possible for the Director of Income-tax(Exemptions) to hold that the assessee is not carrying on its activities in accordance with the objects declared in its Memorandum of Association.

16. The learned counsel further explained that the registration under section 12AA has been granted to the assessee after satisfying that the assessee is established for carrying on activities of promoting and developing the game of cricket. The assessee is actually carrying on its activities in pursuance of those objects. The matter being so, the registration already granted under section 12AA can be cancelled only under two specific circumstances, namely: (i) the authority is satisfied that the activities of such trust or institution are not genuine, and (ii) the authority is satisfied that the activities of the assessee are not being carried out in accordance with its declared objects.

17. In support of the above legal proposition, the learned counsel has relied on the decision of the Hon'ble jurisdictional High Court rendered in the case of CIT vs. Sarvodaya Ilakkiya Pannai, 343 ITR 300. In the above judgment

their Lordships have held that under section 12AA(3), the Commissioner is empowered to cancel the registration only on two conditions laid down in that section. Those two conditions are that after obtaining the registration, the activities of the trust or institution are found not genuine or that after obtaining the registration the trust or institution is found not carrying on the activities in accordance with its objects.

18. For the same proposition that the scope of the powers conferred on the Director of Income-tax(Exemptions) under section 12AA(3) is very confined, the learned counsel has further relied on the order of the Income-tax Appellate Tribunal, Ahmedabad Bench-A, rendered in the case of Gujarat Cricket Association vs. DIT(Exemption), passed in ITA No.93/Ahd/2011 on 31-1-2012. In the said order, the Tribunal has held that a registration already granted to an assessee could not be revisited by the Commissioner of Income-tax on the basis of reasons other than specified under section 12AA(3). Section 12AA(3) is confined as to whether the activities of the assessee are genuine or that the same are not being carried out in accordance with the stated objects. Except on the above two

grounds, it is not permissible for the authority to cancel the registration under section 12AA(3).

19. The learned counsel for the assessee has relied on another decision rendered by the Income-tax Appellate Tribunal, Nagpur Bench, in the case of M/s.Vidarbha Cricket Association vs. CIT, passed in ITA No.3/Nag/10 on 30-5-2011. In the said decision the Tribunal has observed that the Commissioner of Income-tax cannot cancel the registration under section 12AA(3) on the ground that the assessee is not carrying on charitable activities. As per the provisions of section 12AA(3) registration can be cancelled only on two grounds. The first ground is that the activities carried on by the assessee are not genuine. The second ground is that the activities carried on by the assessee are not in accordance with its objects. But for the above two reasons, no other reason can be relied on to invoke the provisions of section 12AA(3) for the purpose of cancelling the registration.

20. We heard Shri Guru Bashyam, the learned Joint Commissioner of Income-tax, who appeared for the Revenue.

21. The learned officer explained that The Tamil Nadu Cricket Association was registered as a charitable society with the main object of promoting and developing the game of cricket in Tamil Nadu and Puducherry and also to develop the overall scenario of sports and physical activities in these two States. But, on examining the details of the activities carried on by the assessee, the Director of Income-tax(Exemptions) has come to a conclusion that the assessee is not carrying on the activities for which it was registered, but it is carrying on activities of commercial nature, even though the activities are centred around the game of cricket. The assessee is collecting substantial amounts by way of sale of tickets while conducting National and International Matches, including One Day Internationals and Indian Premier League (IPL) Matches. In addition to the income derived out of sale of tickets, the assessee is generating huge amount of income out of advertisement revenue arising out of the telecast rights auctioned to different visual media. This advertisement revenue is obtained through the Board of Control for Cricket in India (BCCI), who distributes such income among different State Cricket Associations in India.

22. The learned officer explained that a major share of the income of the assessee is from selling television broadcasting rights through BCCI. Generating income through visual media and advertisement is nothing but commercial activity. It is an activity for making profit. The assessee is not earning income only by selling tickets. Major portion of the income is generated out of operations other than playing cricket matches. Huge revenue is generated out of sale of television rights. Again, huge amounts are collected from other modes of advertisements.

23. In addition to the regular cricket matches, the assessee is conducting commercially oriented matches like Indian Premier League (IPL). Players of IPL teams are selected by sponsors to play under their brand names. Players are selected through auctions. Players choose that sponsor which offers the highest amount of money. IPL Matches are played with hype and celebration so as to create more and more revenue out of sale of telecast rights. All these activities when read together, one has to come to a finding that the entire



activities of the Association is poised towards generating huge amount of income through the game of cricket.

24. Instead of promoting and developing the game of cricket in Tamil Nadu and Puducherry, the assessee is in fact carrying on the activities of promoting and developing cricket as an entertainment. The price of tickets sold to the public is so high that tickets are as good as highly priced market products.

25. In these circumstances, the learned officer explained that the assessee has shifted from its earlier activities of general public utility to commercial activities of generating income and revenue.

26. This change of character proves that the activities of the assessee carried on at present are not in accordance with the objects proclaimed in its Memorandum of Association. The earlier objects for which the assessee was formed into a society were charitable in nature inasmuch as it focused on the promotion and development of the game of cricket as an object of public utility in the State of Tamil Nadu and in the Union Territory of Puducherry. There was the intention of participating the public in the development of the game of cricket, but now it is

not so. The public are not participating in the development of the game. They are only spectators to view the costly matches played in the stadium. Therefore, the second condition provided in section 12AA(3) is satisfied in the present case. The first condition is also satisfied inasmuch as the present activities carried on by the assessee are not genuinely for the benefit of public.

27. Therefore, the learned officer submitted that in the facts and circumstances of the case, the Director of Income-tax(Exemptions) is justified in cancelling the registration to the assessee under section 12AA(3) of the Income-tax Act, 1961. He submitted that the appeal filed by the assessee may be dismissed.

28. We have heard both sides in detail, considered the rival contentions, perused the orders of the lower authorities and also considered the case laws and the decisions cited before us.

29. Before insertion of the first proviso to section 2(15) with effect from 1<sup>st</sup> April, 2009, the inclusive definition of 'charitable purpose' has made reference to relief of the poor, education, medical relief and advancement of any other object of

general public utility. In the said definition, as it always stood under the Indian Income-tax laws, every activity of 'charitable purpose' needs to be qualified as charitable activity within the meaning of the inherent meaning of the expression 'charitable purpose'. The activities of relief of the poor, education, medical relief and advancement of any other object of general public utility; all must come under the overall nuance of 'charitable purpose'. None of the activities carried on by an assessee can be considered as for a charitable purpose, if it is devoid of the soul and substance of 'charity'.

30. Now, what is charity? The expression is understood by everybody without any wide range of interpretation. Oxford Advanced Learner's Dictionary, Sixth Edition-2000, has given the meaning of 'charity' as under:

“An organization for helping people in need; kindness and sympathy towards other people, especially when you are judging them.”

31. It means that charity is the activity carried on by kind and sympathetic people for the help of people in need. It is within the ambit of the above meaning that section 2(15) has

held that advancement of any other object of general public utility also would be considered as charitable purpose. In other words, 'advancement of any other object of general public utility' cannot be understood as divorced from the inherent concept and understanding of the expression 'charitable purpose'.

32. The above spirit in the expression 'charitable purpose' provided in the income-tax legislation was examined by the Privy Council in the case of All India Spinners' Association vs. Commissioner of Income-tax, Bombay, 12 ITR 482. The Privy Council held that the expression 'object of general public utility' is very wide. The exact scope of this expression has not been and, perhaps, cannot be defined. However, this expression would exclude the object of private gain such as an undertaking for commercial profit although it would subserve general public utility.

33. The proviso inserted under section 2(15) with effect from 1-4-2009 subscribes the view expressed by the Privy Council in the above judgment. That is why the proviso has provided that 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.

34. The present case now placed before us is to be examined in the above background of genealogy of the concept of 'charitable purpose'.

35. In his order passed under section 12AA(3) of the Act, the learned Director of Income-tax (Exemptions) has examined the components of the total receipts accounted by the assessee for the financial year 2008-09, relevant to the assessment year 2009-10. The total receipts accounted by the assessee comes to ₹ 34,25,86,309/-. Out of the above total amount of receipts, a sum of ₹ 26,82,38,072/- was received from BCCI. The assessee has stated that the said sum of ₹ 26,82,38,072/- is a subsidy given by the BCCI. Out of the said amount of ₹ 26,82,38,072/- , the amount given by BCCI towards IPL Matches is ₹ 10 crores. The balance of ₹ 16,82,38,072/- was given by BCCI towards Test Matches and in particular relating to

television subsidy. Another major income of ₹ 2,90,17,293/- is the surplus earned by the assessee from IPL Season-I. Another big amount earned by the assessee is by way of interest of ₹ 3,47,39,430/-.

36. The Director of Income-tax(Exemptions) has examined the nature of the above mentioned receipts in a very meticulous manner. The assessee always argued before him that the subsidy given by the BCCI are grants towards compensation for advertisement right for the telecast of international matches, IPL, ODIs, etc. The assessee argued that all these receipts were in the nature of grants given by the apex body BCCI. But, on the basis of the detailed examination of the case, the Director of Income-tax(Exemptions) has come to a conclusion that the receipt totaling to ₹ 26,82,38,072/- was not in fact in the form of any subsidy or grant, but was the share of the assessee in the advertisement revenue collected by the BCCI while conducting different cricket matches.

37. The IPL Matches were also examined by the Director of Income-tax(Exemptions). He held that the entire activities carried on by the assessee in conducting the IPL

Matches are commercial in nature. In short, the Director of Income-tax(Exemptions) found that even though the assessee is entrusted with the development of the sport of cricket in the State of Tamil Nadu and in the Union Territory of Puducherry, the assessee has gone very much beyond those objectives and that the assessee is more engaged in playing different types of matches with wide publicity and thereby earning huge revenue from advertisements. All the activities of the assessee are tuned in such a way that maximum advertisement revenue is derived from any type of match conducted by the assessee.

38. The above paradigm shift in the activities carried on by the assessee has been treated by the Director of Income-tax(Exemptions) as a deviation from the objects for which the assessee was formed earlier. The assessee was formed and registration under section 12AA was granted on the proclaimed object of developing the sports of cricket, whereas at present the assessee is carrying on revenue earning exercise by arranging international matches, IPL matches, etc. and focusing its efforts on maximizing the revenue. Therefore, he held that the activities carried on by the assessee are not genuine, inasmuch as the

activities are not in accordance with the real objects for which the assessee was formed and registration under section 12AA was granted. In that way, the Director of Income-tax(Exemptions) held that the case of the assessee has satisfied the requirement of first limb of section 12AA(3) so as to justify the cancellation of 12AA registration. The Director of Income-tax(Exemptions) also held that as a consequence, the second limb is also satisfied.

39. Regarding the composition of the receipts of the assessee for the financial year 2008-09, there is no scope for any dispute. The heads, under which different receipts were accounted by the assessee, have been extracted in the order of the Director of Income-tax(Exemptions). On an examination of the nature of receipts made by the assessee, it is obvious that the main source of revenue of the assessee is what is called 'subsidy' from BCCI. It is explained by the assessee as in the nature of grant. This subsidy amounted to ₹ 26,82,38,072/-. We agree with the finding of the Director of Income-tax(Exemptions) that the expression of subsidy/grant from BCCI is a misleading nomenclature. In fact, it is not a subsidy/grant given by the BCCI. It represented the share due to the assessee in the total



revenue collected by BCCI from sale of telecast rights and advertisements. Test Matches have brought to the assessee as its share of revenue from TV advertisements, an amount of ₹ 16,82,38,072/-. Likewise, the advertisement revenue from IPL Matches is ₹10 crores. These receipts, totaling to ₹ 26,82,38,072/-, work out to 78% of the total receipts accounted by the assessee. The surplus from IPL Season-I is ₹ 2,90,17,293/-. This works out to 8.5% of the total receipts. Thus, it is seen that the advertisement revenue alongwith surplus from IPL Season-I alone constituted 86.5% of the total receipts accounted by the assessee for the financial year 2008-09.

40. There cannot be a dispute that the IPL Matches conducted by cricket associations are nothing but commercial ventures. IPL teams are owned by different sponsors including industrial houses and film stars. They are selecting the players on auction. They quote the highest price for the best player according to them. Every team is trying to bring in maximum number of prominent cricketers so that they have a better chance of winning the IPL Matches. The capital invested by the owners of the teams is redeemed by advertisement revenue.

The owners of the IPL teams are conducting these matches for the purpose of harvesting profits out of their investments. By any stretch of imagination, it is not possible to call IPL Matches as activities of public utility carried on by the assessee. IPL Match is a big game of big money. In fact it is an entertainment industry by itself.

41. Now, in addition to IPL Matches, Celebrity Cricket Matches are also being held all over India. All the players in Celebrity Cricket Tests are film stars. The associations like the assessee are conducting all these Celebrity Cricket Matches. In Celebrity Cricket Matches, there is no element of public utility. All these activities are either for money or for fame or for market image.

42. As already stated, 78% of the total receipts came out of advertisement revenue. Advertisement revenue is collected to such an extent only because of the extensive marketing made by the assessee and the BCCI.

43. De facto speaking, except for a small amount of interest, subscription and rent, the entire income of the assessee is made out of advertisement revenue generated in the course of

conducting different cricket matches. The costs of tickets are very high. It is not possible for a layman to buy a ticket and witness a cricket match. The advancement of an object of general public utility cannot be disassociated from general public which includes poor and laymen.

44. In the course of hearing of the case, we have asked the learned counsel as to whether the assessee is issuing free/concessional tickets to witness the cricket matches to the so called slum-dogs and other poor people? The learned counsel fairly and honestly replied that they do not give such free/concessional tickets to the poor people to come and witness the highly celebrated cricket matches. On the other hand, the assessee is issuing free tickets to VIPs and high dignitaries of the society, that too after paying entertainment tax on those free tickets. Whose interest is being looked after by the assessee by showing this differential attitude?; of course, not of general public.

45. Therefore, it is to be seen that almost the entire income of the assessee is generated out of active ties of commercial nature oriented towards earning hyper profits.

These activities contributed 86.5% of the receipts of the assessee in the financial year 2008-09.

46. In a lighter vein, we see that IPL Matches are further garnished by cheer girls and other fanfare. These are, in fact, marketing strategies by which associations like the assessee are trying to sell the game of cricket for the highest amount of revenue that could be collected. This is the point that has been brought out by the Director of Income-tax(Exemptions) in his order passed under section 12AA(3) of the Act. The efforts and thrust of the assessee are towards maximizing the revenue. There cannot be a concept of general public utility in these activities.

47. In this context, it is useful to refer to the judgment of the Hon'ble Mysore High Court in the case of Bangalore Race Club vs. Commissioner of Income-tax, 77 ITR 435. In that case of a racing club, the Hon'ble court held that betting on horse cannot be said to be beneficial to public and that objects of a racing club cannot be said to be for public interest.

48. The above ratio is applicable to the present case. Even though the circular issued by the CBDT has clarified that

activities to promote sports and games are objects of general public utility and therefore to be treated as charitable purpose, the same is not applicable to the present case, as the assessee is not carrying on any object of general public utility, but an object of general public entertainment. The game of cricket has grown into an industry by itself. Different people are investing money in different teams to earn super profit. Maximum revenue is generated through different marketing strategies. Tickets are sold for high prices, which are not normally accessible to the general public. When all these features are taken together, it is seen that assessee has become a profit centre.

49. The learned counsel appearing for the assessee has relied on the judgment of the Hon'ble Madras High Court rendered in the case of CIT vs. Sarvodaya Ilakkiya Pannai, 343 ITR 300. In the said judgment their Lordships have held that under section 12AA(3) a Commissioner of Income-tax is empowered to cancel 12AA registration only on two conditions laid down in that section. Those two conditions are that after obtaining the registration, the activities of the assessee or institution are found to be not genuine or that after obtaining the

registration the trust or institution is found not carrying on its activities in accordance with its objects. To support the same, the learned counsel has also relied on two decisions of the Income-tax Appellate Tribunal. The first decision is that of the Ahmedabad Bench-A rendered in the case of Gujarat Cricket Association vs. DIT(Exemption) in ITA No.93(Ahd)/2011 dated 31-1-2012 and the other one is that of the Nagpur Bench rendered in the case of M/s.Vidarbha Cricket Association vs. Commissioner of Income-tax-I, Nagpur in ITA No.3/Nag/10 dated 30-5-2011.

50. We respectfully subscribe to the legal proposition laid down in the above judgment of the Hon'ble Madras High Court and in the orders of the Tribunal. Registration granted under section 12AA can be cancelled only if any of the two conditions stated in section 12AA(3) are satisfied, i.e. the activities of the trust are not genuine or the institution is not carrying on the activities in accordance with its objects. We have absolutely no quarrel with the above legal proposition.

51. But, while presenting those cases under their respective jurisdictions, certain important facts of the cases

seem to have not been highlighted before the Hon'ble High Court and the co-ordinate Benches of the Tribunal. The argument of the assessee is that the object of the assessee is to promote and develop the game of cricket and the assessee is still carrying on the same activities of promoting the game of cricket and it is not carrying on anything else. What was exactly examined in the above cases was only the 'physical aspect' of the cricket game promoted by the assessees. In the present case also the assessee is not conducting football matches. It is playing only cricket matches. All its activities are centred around the celebrated game of cricket. But that is only the physical aspect of the object.

52. The question is whether they are promoting and developing the cricket game as an activity of general public utility. This is the crucial question to be asked. The physical play of cricket game is not the sole point which will decide as to whether the assessee is carrying on its activities as stated in its Memorandum of Association or assessee's activities are genuine or not. It is also necessary to examine whether the

assessee has satisfied the conceptual requirements of its objectives.

53. Regarding the physical aspect of the game, the assessee is carrying on what is stated in its objects. These activities are genuine. The genuineness of the activities carried on by the assessee stops with the physical aspects of the game. The matches conducted by the assessee do not go to the extent of 'advancement of any other object of general public utility'. The activities of the assessee do not come within the conceptual framework of charity vis-a-vis activity of general public utility envisaged in the Income-tax Act as laid down in section 2(15). As already stated, it has become an industry by itself. The pattern of the receipts accounted by the assessee shows that the revenue is generated from advertisement and special events like IPL Matches, Celebrity Matches, etc. These are all commercial activities. Therefore, it is crystal clear that even though cricket matches are conducted by the assessee, they are not conducted in accordance with the objects as stated in its Memorandum of Association and those activities are not for 'advancement of any



other object of general public utility', as explained in the proviso to section 2(15) of the Act.

54. Therefore, we have to state that the above judgment and the decisions cited by the learned counsel are not directly applicable to the present case for the reason that only one aspect of the issue was presented before the Hon'ble Court and co-ordinate Benches of the Tribunal. The necessary link between charity and the activities has not been highlighted before their Lordships and before the co-ordinate Benches of the Tribunal. It is necessary for the purpose of section 2(15) that the objects are carried out not only in their physical aspect but also in their conceptual framework, so as to claim the benefit of registration under section 12AA. In the present case, the conceptual framework has not been followed.

55. The Director of Income-tax(Exemptions) has clearly stated that the activities of the association are not in the nature of activities for advancement of any object of general public utility. But the activities involve carrying on activity in the nature of trade, commerce or business or any other activity of rendering any service for a cess or fee. Therefore, it is clear that the first

proviso inserted under section 2(15) hits the case of the assessee.

56. There cannot be a conflict between the first proviso inserted under section 2(15) and the conditions laid down in section 12AA(3) for cancelling the registration. If there is a conflict between the two, the law stated in the proviso will be defeated. So also, the law stated in section 12AA(3) will be defeated. Therefore, when the assessee is hit by the proviso to section 2(15), its consequential reflection is automatic on section 12AA(3), which prima facie establishes that the activities carried on by the assessee are not genuine, inasmuch as it is not for advancement of any object of public utility. The two conditions laid down in section 12AA(3) cannot be read and understood in disregard of the proviso to section 2(15).

57. Therefore, the two conditions stated in section 12AA(3) have reference to the de facto nature of the activities carried on by the assessee. The assessee was given registration under section 12AA on the ground that it is a charitable institution inasmuch as it is engaged in the advancement of an object of general public utility in the form of

developing and promoting the game of cricket in Tamil Nadu and Puducherry. But, now it is seen that its activities are oriented towards generating income and revenue by converting the sport of cricket into a celebrated industry. It means, the present activities carried on by the assessee are not genuine, when compared to the objects stated at the time of getting registration under section 12AA of the Act. It is not the physical factor as to whether the assessee is conducting cricket matches or not, which is the issue to be looked into. It is the purpose for which those physical activities are carried out. There is no case, as far as physical activities are concerned, that the game conducted by the assessee is not genuine. It becomes not genuine when we look into the objects for which the association is formed and registered under section 12AA of the Act.

58. Likewise, it is further seen that the object of the assessee was to carry on an activity for advancement of an object of general public utility by promoting the cricket game. But, it has deviated from the stated objective by carrying out the game of cricket as an entertainment industry, generating huge revenue.

59. Therefore, in the facts and circumstances of the case, we are of the considered opinion that the case of the assessee is covered by both the limbs stated in section 12AA(3) of the Act. We uphold the order of the Director of Income-tax(Exemptions) passed under section 12AA(3) of the Income-tax Act, 1961. The registration of the assessee granted under section 12AA has been rightly cancelled.

60. In result, this appeal filed by the assessee is dismissed.

Order pronounced on Friday, the 22<sup>nd</sup> of February, 2013 at Chennai.

Sd/-  
(V.Durga Rao)  
Judicial Member

Sd/-  
(Dr. O.K.Narayanan)  
Vice-President

Chennai,  
Dated, the 22<sup>nd</sup> February, 2013.  
V.A.P.

Copy to: 1. Appellant  
2. Respondent  
3. CIT  
4. CIT(A)  
5. DR  
6. GF.