

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 165/SRT/2020 (AY 2009-10)

(Hearing in Virtual Court)

Asst. Commissioner of Income-Tax (exemptions), Circle-2, 6 th Floor, Room No.607, Aayakar Bhavan (Vejalpur), Prahlad Nagar Road, Nr. Sachin Tower, Satellite,Ahmedabad-380 015	Vs	The Surat District Cricket Association, Lalbhai Contractor Stadium, Surat Dumas Road, Vesu, Surat-395007 PAN : AAATT 6114 A
Appellant / Revenue		Respondent / assessee

Assessee by	Shri Esmayeel Saherwala, CA
Revenue by	Shri H.P. Meena, CIT-DR
Date of hearing	14.03.2022
Date of pronouncement	09.05.2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue is directed against the order of Id. Commissioner of Income tax (Appeals)-3, Surat [‘CIT(A)’ for short] dated 13.02.2020 for assessment year (AY) 2009-10, which in turn arises out assessment order passed by Assessing Officer under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’). The Revenue has raised the following grounds of appeal:-

“1. Whether on the fact and circumstances of the case and in law, the Ld. CIT(Appeals) is correct in allowing the benefit of Section 11 and 12 when the Assessing Officer has clearly brought on record that assessee is covered under the proviso to Section 2(15) r.w.s. 13(8) of the Act?”

2. On the facts and circumstances of the case, the ld. CIT(Appeals) ought to have upheld the order of the Assessing Officer in denying the claim of exemptions under section 11 of the Act?

3. Whether, on the facts and in the circumstances of the case the ld CIT(Appeals) is correct in allowing the claim of subsidy of Rs.50,27,975/- as corpus donations u/s 11(1)(d) of the Act without appreciating the findings of the AO with regard to applicability of Section 2(15) of the Act?

4. Whether on the facts and circumstances of the case and in law, ld. CIT(Appeals) is correct in deleting the additions of 67,03,176/- claimed as capital receipts, without appreciating the findings of the Assessing Officer?

5. Whether, on the facts and in the circumstances of the case the ld. CIT(Appeals) is correct in allowing the claim of capital expenditure of Rs.2,19,98,390/- Rs.12,50,988 without appreciating the findings of the AO with regard to applicability of Section 2(15) of the Act?

6. The Revenue craves to add, alter, amend, modify, substitute, delete and/or rescind all or any Grounds of Appeal on or before the final hearing, in necessity so arises.”

2. Brief facts of the case are that assessee is a society registered under Society Registration Act and having registration under section 12A(a) of Income tax Act granted vide certificate No. SRT/CIT/SIB/110-529-S/87 dated 11.09.1987. The assessee filed its return of income for the assessment year 2009-10 on 23.06.2009 declaring nil income. The return of assessee was processed and accepted under section 143(1) of the Act. Subsequently, case of assessee was re-opened under section 147 by the Assessing Officer by taking view that on analyzing of

computation of income, he find that the assessee has received income of Rs. 1.57 Crore, which has been shown under the head “ in come from other sources” in income and expenditure account. The assessee claimed exemption under section 11 of Rs.3.90 Crore/-. The Assessing Officer on perusal of income and expenditure account and balance-sheet and the activities carried out by assessee during under consideration took his view that activities carried by assessee are commercial in nature and hit by the first Proviso to section 2(15) of the Act and accordingly assessee is not eligible for claiming exemption under section 11 and 12. On the above observation the case of assessee was re-opened. Accordingly, notice under section 148 was issued on 23.03.2016. The assessee filed its reply dated14.04.2016 and contended that the return filed on 23.06.2009 be treated as return in response to notice issued under section 148 of the Act. The Assessing Officer after serving notice under section 143(2) proceeded for re-assessment and issued various questionnaires. In response to questionnaire issued by Assessing Officer, assessee filed its reply and contended that assessee is a trust and its main object is to encourage the sports and various games

specially Cricket at State as well as National level. During the year, assessee has shown gross receipt of Rs.2.30 crores and claimed application of income for its objects of Rs.3.90 crores. The Assessing Officer noted that on perusal of income and expenditure account of assessee he found that the assessee has shown interest on securities, interest on bank fixed deposit, donation and other income. The assessee is carrying out the activities which are commercial in nature and this case of assessee is covered by the last limb of provisions of Section 2(15) of the Act. Accordingly, Assessing Officer issued show cause notice as to why the assessee should not be treated as “Associate of Person” (AOP) and income be computed under normal provisions of the Income Tax Act, 1961. The assessee filed its reply vide letter dated 02.12.2016. The contents of reply are extracted in para-3 of the assessment order. In reply, assessee contended that their case is identical on certain points as in the case of Delhi District Cricket Association Vs. DIT(E) New Delhi ITA No.3095/Del/2012 and stated that the same may be considered while deciding the issue of section 2(15). The reply of assessee was not accepted by Assessing Officer. The Assessing

Officer held that as per proviso has been inserted to Section 2(15) with effect from 01.04.2009 provides that the provisions of first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh Rupees or less in the previous year. The assessee has shown gross income of Rs.2.30 crores which consists of bank interest, donations and income from other sources. The income from other sources is Rs.1.57 crores. The main source of income under the head “income from other sources” are annual maintenance fees from members of Rs.1.28 crores, ground rent (cricket) of Rs.5.97 crores, guest fees of Rs.1.27 lakhs, health club & swimming pool income of Rs.1.28 lakhs, District Cricket Tournament income of Rs.3.29 lakh, Lawn Tennis income of Rs.1.42 lakh, Ranji Trophy match income of Rs.4.45 lakhs, Surat District Cricket Association open knockout cricket tournament income of Rs.8,978/-, summer coaching camp income of Rs.1.50 lakh etc. On the basis of aforesaid receipts, the Assessing Officer took his view that assessee is engaged in the business of nature of trade, commerce or business and aggregate value of receipts exceeded

Rs.25 lakhs from such activities and accordingly the case of assessee is covered by first proviso to Section 2(15) of the Act.

3. The Assessing Officer further noted that assessee has received subsidy of Rs.50.27 lakh from Gujarat Cricket Association infrastructure which has not been included in its income. Accordingly, the Assessing Officer issued show cause notice why such subsidy be not added to the total income of assessee. The assessee filed its reply vide reply dated 02.12.2016. In reply, assessee stated that the aforesaid amount was received for specific purpose and as per the provision of the Income Tax Act, the said amount was a part & parcel of specific / corpus fund. If it is treated and calculated its income, the taxable income remains negative. The reply of assessee was not accepted by Assessing Officer by taking view that the donor has not given any direction to the assessee to apply the donated amount for the purpose of corpus fund. Accordingly, the Assessing Officer the subsidy of Rs.50,27,975/- was added to the income of assessee.
4. The Assessing Officer on further perusal of balance-sheet found that assessee shown addition in its earmarked fund of Rs.54,68,620/-.The Assessing Officer issued shown cause notice

as to why such fund should not be added to the income of assessee. The Assessing Officer further noted that assessee received membership fees of Rs.12,34,556/- which has also not been included in the total income of the assessee. The assessee was also issued show cause notice as to why the same shall not be added to the total income of assessee. The assessee in its reply dated 02.12.2016 stated that assessee claimed net amount of capital expenditure including the membership fees. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer held that the ae has already been treated as AOP, therefore, the receipt of Rs.54,68,620 + Rs.12,34,556/- i.e., Rs.67,03,176/- was also included in the total income of assessee.

5. The Assessing Officer again noted that in computation of income the assessee has claimed 'application of income' and claimed capital expenditure of Rs.2.19 crores. Since the assessee was treated as AOP and case of assessee is covered by first proviso to Section 2(15) of the Act. Accordingly, the assessee is required to be assessed under the normal provision of the Income Tax Act. Accordingly, the capital expenditure of Rs.2.19 crores was also not allowed. Similarly, the ground renovation of Rs.12.50 lakh

was also not allowed and added to the total income of assessee by taking view that assessee is also treated as AOP.

6. Aggrieved by the treatment of AOP, the AOP and disallowance of exemption under section 11 of various receipt the assessee filed appeal before Ld.CIT(A). Before Ld. CIT(A) the assessee filed detailed written submission on 11.04.2018, 27.07.2018 and 10.02.2020. In its submission, assessee in sum & substance stated that main object of the assessee is to encourage the sports and various approved games specially cricket at the State as well as National level. The assessee is duly registered under Societies Registration Act, 1860 having registration under section 12A(a) on 11.09.1987. The assessee claimed that Central Board of Direct Taxes (CBDT) has already been clarified that “sports” is a matter of General Public Utility. Accordingly, the assessee satisfies the condition of having a charitable object as mentioned in Section 2(15) of the Act. It does not violate any condition as stipulated in proviso to Section 2(15) of the Act. In earlier year, the activities of assessee have been recognized as charitable activities and registration was granted. In past year, assessment under section 143(3) was passed, wherein the assessee was

registered as eligible for exemption under section 11 & 12 for the status of charitable institution is not a dispute the registration of assessee under section 12A(a) is continuing till date. The Assessing Officer denied the exemption under section 11 & 12 by taking view that activities of the assessee are in the nature of trade commerce or business and narrated receipts nature of various receipts in para-4 of his order and treated all the receipts are activities in the nature of trade and commerce. The assessee further stated that in case of Delhi & District Cricket Association Vs DIT(E) in ITA No.3095/Del/2012, the Tribunal clarified that once Assessing Authority hold that assessee is carrying on undisputed activity is of charitable in nature and another hand coming to a conclusion that the assessee is doing business, which creates contradiction. The assessee also relied on the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association, wherein it was held that amount received from ground booking charges, health club charges, lawn booking income, sale of ticket, advertisement etc., are not being result 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 and the said sale receipt are also of charitable activities and not trade, commerce or business activities. The assessee also stated that Assessing Officer erred in treating the assessee as AOP instead of trust and not allowing the various exemptions under section 11 & 12. The assessee in its submission dated 10.02.2020 has stated that Hon'ble jurisdictional High Court in the case of Director of Income Tax (Exemption) vs. (1) Gujarat Cricket Association (2) Baroda Cricket Association (3) Saurashtra Cricket Association in Tax Appeal No.123 of 2014 dated 27.09.2019 decided the issue in favour of those assessee's and dismissed the appeal of Revenue.

7. The assessee also referred certain observation of Ahmedabad Tribunal in those cases. The Ld. CIT(A) after considering the submission of assessee allowed the appeal of assessee by taking view that the sole ground of appeal contested by the assessee is against addition of Rs. 3.49 Crore made by assessing officer by holding that the assessee's case is covered by the proviso of section 2(15) of the Act and hence not eligible for exemption under section 11 of the Act. It was also held that Hon'ble

jurisdictional High Court confirmed the finding of Ahmedabad Tribunal in three appeals, in Tax Appeal No.123/2014 dated 27.09.2019. Accordingly, directed the Assessing Officer were directed to delete the addition. Aggrieved by the order of Ld. CIT(A), Revenue has filed present appeal before the Tribunal.

8. We have heard the submissions of Ld. Commissioner of Income-tax-Departmental Representative (CIT-DR) for the Revenue and Ld. Authorized Representative (AR) for the assessee and have gone through the orders of authorities below. The ld. CIT-DR for the Revenue supported the order of Assessing Officer and submits that the activities carried out by assessee clearly on the nature of trade, commerce or business with the profit making and the gross receipt during the year exceed Rs.25 lakhs. The assessee has not shown any activities undertaking for the promotion of sports, as per their object rather are earning income by way of maintenance funds, membership, ground rent, annual maintenance fees, guest fees, health club & swimming pool income, inter district cricket tournament income, lawn tennis income, Ranjit Trophy matches & summer coaching camp income The Assessing Officer while passing assessment order

has clearly spelt out that the case of assessee is directly covered by first proviso section 2(15) of the Act.

9. On the other hand, Ld. AR for the assessee submits that case of assessee is covered by the decision of Hon'ble jurisdictional High Court, wherein the decisions of Ahmedabad Tribunal in various similar Cricket Associations were upheld by dismissing the appeal of Revenue. The ld AR for the assessee submits that he has filed his written submission dated 10.03.2022 and placed on record audited balance sheet with income and expenditure and the submissions made before lower authorities. He has also filed copy of following decision;

- ❖ DIT(E) Vs Gujarat Cricket Association (R/Tax Appeal No. 268 of 2012),
- ❖ CIT(E) Vs Baroda Cricket Association (R/Tax Appeal No. 759 f 2019 & 5 of 2020),
- ❖ Saurashtra Cricket Association Vs ITO (R/ Special Civil Appeal No 2321 of 2014 & 2323 of 2014)
- ❖ Board of Cricket Control in India (BCCI) Vs PCIT (ITA No. 3301/Mum/2019).

10. We have considered the rival submission of both the parties and have gone through the orders of authorities below. There is no dispute that the assessee is registered society having object of promotion of cricket and other sports in State as well as at

national level. The assessee is also having valid registration under section 12A(a) of Income tax Act. The registration under section 12A was granted way back in 1987. It is also settled legal position that the registration of institution or trust under section 12 is the foundation for seeking exemption of section 11 though not conclusive. In other words the registration under section 12A is *sine qua non* for eligibility of benefit of section 11. It is also settled position under law that the eligibility of benefit is to be determined on year to year basis depending on the actual activities undertaken by the assessee. Thus, the assessing officer is entitled to determine the eligibility of exemption under section 11 on the basis of activities carried out by the assessee during the relevant financial year. The bone of contention on the eligibility between the assessee and the assessing officer are certain receipt received by the assessee during the relevant period under consideration viz; being the receipt income under the head "income from other sources" consisting annual maintenance fees from members of Rs.1.28 crores, ground rent (cricket) of Rs.5.97 crores, guest fees of Rs.1.27 lakhs, health club & swimming pool income of Rs.1.28 lakhs, District Cricket

Tournament income of Rs.3.29 lakh, Lawn Tennis income of Rs.1.42 lakh, Ranji Trophy match income of Rs.4.45 lakhs, Surat District Cricket Association open knockout cricket tournament income of Rs.8,978/-, summer coaching camp income of Rs.1.50 lakh etc. Further the assessee received infrastructure subsidy from Gujarat Cricket association of Rs. 50.27 Lakhs. The assessing officer treated the said receipts received from commercial activities and considered as these were covered by the proviso to the section 2(15) of the Act.

11. The coordinate bench of Tribunal in Gujarat Cricket Association Vs JCIT (E) (2019) 101 taxmann.com 453 (Ahd Trib) held that where predominant object of various cricket associations was to promote cricket and profit earning was not predominant purpose, proviso to section 2(15) could not have been invoked to decline benefit of sections 11 and 12. It was further held that amounts received under TV subsidy by assessee cricket association from Board of Control for Cricket in India (BCCI) being under a resolution which specifically stated that TV subsidies should henceforth be sent to Member Associations towards corpus funds and not under any legal obligation, were

to be treated as corpus donations. It was also held that where infrastructure subsidy received by assessee cricket association from Board of Control for Cricket in India (BCCI) was relatable to a capital asset created by assessee on his own or by an eligible district cricket association; it was outside ambit of revenue receipt/taxable income.

12. The Hon'ble Gujarat High Court in DIT (E) Vs Gujarat Cricket Association (2020) 120 taxmann.com 50 (Gujarat) while affirming the order of Tribunal held that where driving force of assessee-State cricket association was not desire to earn profit but object was to promote game of cricket and nurture best of talent, merely because it put up tickets of international cricket matches for sale and earned some profit out of same and said profit was used in activities of promotion of game, it would not lose its character of having been established for a charitable purpose.

13. The Hon'ble Supreme Court in Addl. CIT v. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1, held that when the object of a trust was carrying on of an object of general public utility, it is that object of general public utility which must not involve the carrying on of an activity for profit. It was pointed out

that it was immaterial how the money for achieving or implementing such purpose was found. Whether, that money was obtained by the running of an activity for profit or not, did not make the charity not charitable (*emphasis added by us*).

14. Further, the Hon'ble High Court in DIT Vs Sabarmati Ashram Gaushala Trust (223 Taxman 243 Gujarat) while considering the scope of the proviso to section 2(15) held that the said proviso provides for exclusion from the main object of the definition of the term 'Charitable purposes' and applies only to cases of advancement of any other object of general public utility. If the conditions provided under the proviso are satisfied, any entity, even if involved in advancement of any other object of general public utility by virtue to proviso, would be excluded from the definition of 'charitable trust'. However, for the application of the proviso, what is necessary is that the entity should be involved in carrying on activities in the nature of trade, commerce or business, or any activity of rendering services in relation to any trade, commerce or business, for a cess or fee or any other consideration. In such a situation, the nature, use or application, or retention of income from such activities would

not be relevant. Under the circumstances, the important elements of application of proviso are that the entity should be involved in carrying on the activities of any trade, commerce or business or any activities of rendering service in relation to any trade, commerce or business, for a cess or fee or any other consideration (*emphasis added by us*).

15. The Hon'ble Delhi High Court in Indian Trade promotion Organization (ITPO) Vs DGIT (371 ITR 333 Delhi) also held that the expression 'charitable purpose', as defined in section 2(15) cannot be construed literally and in absolute terms and it has to take colour and be considered in context of section 10(23C)(iv), thus, if dominant and prime objective of institution, was not desire to earn profits but, object of promoting trade and commerce not for itself, but for nation, it was clearly a charitable purpose(*emphasis added by us*).

16. We find that the predominant object of promotion of Cricket and other sports are not doubted by the assessing officer. There is no allegation of the assessing officer that the receipt shown under the head "income from other sources" was not utilised on the promotion of sports. Or no activities for promotions of sports

were undertaken by the assessee. Rather on careful examination of those disputed receipt we find that those receipt were generated from various by activities undertaken in furtherance of various sports. It is also matter of fact that prior to the impugned assessment year the assessee was granted exemption under section 11 of the Act. The assessing officer for the first time on the basis of certain receipt took his view that the activities undertook by the assessee are commercial in nature.

17. We find that the ld CIT(A) granted relief to the assessee by following the decisions of Ahmedabad Tribunal, which was affirmed by Jurisdictional High Court (supra). Thus, in view of the aforesaid factual and legal discussion that the assessee when the assessee's main dominant and prime objective was to promote the sports was not desire to earn profits but, object of promoting sports for Nation, it was clearly a charitable purpose. The important elements of application of proviso are that the assessee should be involved in carrying on the activities of any trade, commerce or business or any activities of rendering service in relation to any trade, commerce or business, which is clearly missing in the present case. Thus, we affirms the order of ld

CIT(A), with these additional findings. In the result, the grounds of appeal raised by the revenue are dismissed.

18. In the result, the appeal of the revenue is dismissed.

Order pronounced in open court on 09/05/2022 and the result was also placed on notice Board.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: 09/05/2022
Dkp. Out Sourcing Sr.P.S

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

// True Copy //

By order

Assistant Registrar, ITAT, Surat