

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH

श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 760/CHD/2017

निर्धारणवर्ष / Assessment Year : 2009-10

Punjab Cricket Association, Sector 63, SAS Nagar, Mohali	बनाम	The ITO, Ward 6(4), Mohali
स्थायीलेखासं./PAN NO: AAATP3502C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
<i>Appeal against order of CIT(A) -2 Chandigarh dated 23.2.2017</i>		

आयकरअपीलसं./ITA No. 761/CHD/2017

निर्धारणवर्ष / Assessment Year : 2011-12

5Punjab Cricket Association, Sector 63, SAS Nagar, Mohali	बनाम	The DCIT, Circle 6 (1), Mohali
स्थायीलेखासं./PAN NO: AAATP3502C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
<i>Appeal against order of CIT(A) -2 Chandigarh dated 07.2.2017</i>		

आयकरअपीलसं./ITA No. 762/CHD/2017

निर्धारणवर्ष / Assessment Year : 2012-13

Punjab Cricket Association, Sector 63, SAS Nagar, Mohali	बनाम	The ACIT, Circle 6 (1), Mohali
स्थायीलेखासं./PAN NO: AAATP3502C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
<i>Appeal against order of CIT(A) -2 Chandigarh dated 16.2.2017</i>		

आयकरअपीलसं./ITA No. 763/CHD/2017

निर्धारणवर्ष / Assessment Year : 2013-14

Punjab Cricket Association, Sector 63, SAS Nagar, Mohali	बनाम	The DCIT (Exemptions), Circle-1, Mohali
स्थायीलेखासं./PAN NO: AAATP3502C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
<i>Appeal against order of CIT(A) -2 Chandigarh dated 17.2.2017</i>		

निर्धारितीकीओरसे/Assessee by : Shri Rakesh Marwah, CA
राजस्वकीओरसे/ Revenue by : Shri P.K. Sharma, Addl. CIT

सुनवाईकीतारीख/Date of Hearing : 29.01.2020
उदघोषणाकीतारीख/Date of Pronouncement : 09.07.2020

आदेश/Order

Per Bench:

The captioned appeals are preferred by the assessee relating to assessment years 2009-10 and 2011-12 to 2013-14 against the separate orders (as mentioned above) of Commissioner of Income Tax (Appeals), Chandigarh [hereinafter referred to as 'CIT (A)']. Since identical grounds have been raised by the assessee in all the appeals, therefore, these have been heard together and are being disposed of vide this common and consolidated order.

2. The respective grounds taken by the assessee in different assessment years are as under:-

ITA No. 760/Chd/2017 (A.Y. 2009-10):-

- i) *That the Ld. Commissioner of Income-tax (Appeals) has erred in facts and law in confirming the conclusion drawn by the Ld. AO that the activities of the appellant, i.e. holding of matches, sale of match tickets, receipt from booking of corporate boxes by companies, receipt of IPL subvention from BCCI, income from club facilities, receipt from sponsors etc, are of commercial nature and hence the appellant is not eligible for exemption u/s 11 & 12 as it is hit by the first proviso to section 2(15) of the Income Tax Act, 1961. The denial of deduction u/s 11 & 12 of the Income Tax Act, 1961 on this account, merits to be set aside.*
- ii) *That the Ld. Commissioner of Income-tax (Appeals) has erred in facts and law in confirming the conclusion drawn by the Ld. AO that the rendering of services in respect of Indian Premier League cricket (IPL) by the appellant is a business activity and hence it not eligible for exemption u/s 11 & 12 as it is hit by the first proviso to section 2(15) of the Income Tax Act, 1961. The Ld. Commissioner of Income-tax (Appeals) as well as Ld. AO has failed to appreciate the arrangement of conducting Indian Premier League cricket (IPL) matches agreed between BCCI and Kings XI Punjab and the role of appellant therein. Therefore, the conclusions drawn are not sustainable.*
- iii) *That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on the facts in not following the ratio laid down by the Hon'ble IT AT, Bench "A" judgment in the case of M/s. Tamil Nadu Cricket Association V. DDIT (Exemption) Chennai ITA No. 1535,1536 & 1537/Mds/2014 dated 14/08/2015, on similar set of facts without giving any reason for the same.*
- iv) *That the Ld. Commissioner of Income-tax (Appeals) has erred in law by not following the judgment of Hon'ble Punjab & Haryana High Court, in case of Tribune Trust V.*

Commissioner of Income Tax, Chandigarh [2016] 76 taxmann.com 363, in which the Hon'ble court has held that even after the amendment of section 2(15) w.e.f. 2009, to know whether the income of the trust or the institution is ancillary or incidental to the attainment of the objects or whether it is the predominant motive or activity of the trust, the test laid down in the judgment of the Supreme Court in the case of Addl. CIT V. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 / [1979] 2 Taxmann 501 would apply.

- v) *That the Ld. Commissioner of Income-tax (Appeals) has erred on facts and in law in rejecting the legitimacy of letter, dated 29/09/2009 in respect of form no. 10 which was duly acknowledged by the DCIT, Circle 6(1), Mohali, mainly on the ground that receipt number has not been mentioned on that and secondly the same was not submitted during the assessment proceedings.*
- vi) *That the Appellant craves leave to alter, add or delete any grounds of appeal.*

ITA No. 761/Chd/2017 (A.Y. 2011-12):-

- i) *That the Ld. Commissioner of Income-tax (Appeals) has erred in facts and law in confirming the conclusion drawn by the Ld. AO that the activities of the appellant, i.e. holding of matches, sale of match tickets, receipt from booking of corporate boxes by companies, receipt of IPL subvention from BCCI, income from club facilities, receipt from sponsors etc, are of commercial nature and hence the appellant is not eligible for exemption u/s 11 & 12 as it is hit by the first proviso to section 2(15) of the Income Tax Act, 1961. The denial of deduction u/s 11 & 12 of the Income Tax Act, 1961 on this account, merits to be set aside.*
- ii) *That the Ld. Commissioner of Income-tax (Appeals) has erred in facts and law in confirming the conclusion drawn by the Ld. AO that the rendering of services in respect of Indian Premier League cricket (IPL) by the appellant is a business activity and*

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

- iii) That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on the facts in not following the ratio laid down by the Hon'ble IT AT, Bench "A" judgment in the case of M/s. Tamil Nadu Cricket Association V. DDIT (Exemption) Chennai ITA No. 1535,1536 & 1537/Mds/2014 dated 14/08/2015, on similar set of facts without giving any reason for the same.*
- iv) That the Ld. Commissioner of Income-tax (Appeals) has erred in law by not following the judgment of Hon'ble Punjab & Haryana High Court, in case of Tribune Trust V. Commissioner of Income Tax, Chandigarh [2016] 76 taxmann.com 363, in which the Hon'ble court has held that even after the amendment of section 2(15) w.e.f. 2009, to know whether the income of the trust or the institution is ancillary or incidental to the attainment of the objects or whether it is the predominant motive or activity of the trust, the test laid down in the judgment of the Supreme Court in the case of Addl. CIT V. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 / [1979] 2 Taxmann 501 would apply.*
- v) That the Ld. CIT(A) has erred in law and on the facts while rejecting appellant's contention that the sum of Rs. 236823750/- received as Infrastructure Subsidy from BCCI, being of capital nature and shown as capital receipt in balance sheet, was wrongly taxed by Assessing Officer considering it as a part of Revenue receipt for the year.*
- vi) The Ld. CIT(A) has ignored the provisions of section 11(1)(d) while confirming inclusion of Rs. 236823750/- by the Ld. Assessing Officer, in Revenue receipts for the year. He has*

completely overlooked the fact that said grant was given to appellant by BCCI specifically for building of a new stadium.

- vii) *That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on the facts while rejecting appellant's contention that the sum of Rs. 1505000/- received as one time entrance fee from new members and shown as capital receipt in balance sheet was wrongly taxed by Assessing Officer considering it as a part of Revenue receipt for the year.*
- viii) *That the Ld. Commissioner of Income-tax (Appeals) has ignored the provisions of section 11(1)9d) awhile confirming inclusion of Rs. 1505000/- in Revenue receipt for the year. He has completely overlooked the fact that the said amount is a part of the Corpus fund of appellant.*
- ix) *That the appellant craves leave to alter, add or delete any grounds of appeal.*

ITA No. 762/Chd/2017 (A.Y. 2012-13):-

- i) *That the Ld. Commissioner of Income-tax (Appeals) has erred in facts and law in confirming the conclusion drawn by the Ld. AO that the activities of the appellant, i.e. holding of matches, sale of match tickets, receipt from booking of corporate boxes by companies, receipt of IPL subvention from BCCI, income from club facilities, receipt from sponsors etc, are of commercial nature and hence the appellant is not eligible for exemption u/s 11 & 12 as it is hit by the first proviso to section 2(15) of the Income Tax Act, 1961. The denial of deduction u/s 11 & 12 of the Income Tax Act, 1961 on this account, merits to be set aside.*
- ii) *That the Ld. Commissioner of Income-tax (Appeals) has erred in facts and law in confirming the conclusion drawn by the Ld. AO that the rendering of services in respect of Indian Premier League cricket (IPL) by the appellant is a business activity and hence it not eligible for exemption u/s 11 & 12 as it is hit by the first proviso to section 2(15) of the Income Tax Act, 1961. The Ld. Commissioner of Income-tax (Appeals) as well as Ld. AO*

has failed to appreciate the arrangement of conducting Indian Premier League cricket (IPL) matches agreed between BCCI

and Kings XI Punjab and the role of appellant therein. Therefore, the conclusions drawn are not sustainable.

- iii) *That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on the facts in not following the ratio laid down by the Hon'ble IT AT, Bench "A" judgment in the case of M/s. Tamil Nadu Cricket Association V. DDIT (Exemption) Chennai ITA No. 1535,1536 & 1537/Mds/2014 dated 14/08/2015, on similar set of facts without giving any reason for the same.*
- iv) *That the Ld. Commissioner of Income-tax (Appeals) has erred in law by not following the judgment of Hon'ble Punjab & Haryana High Court, in case of Tribune Trust V. Commissioner of Income Tax, Chandigarh [2016] 76 taxmann.com 363, in which the Hon'ble court has held that even after the amendment of section 2(15) w.e.f. 2009, to know whether the income of the trust or the institution is ancillary or incidental to the attainment of the objects or whether it is the predominant motive or activity of the trust, the test laid down in the judgment of the Supreme Court in the case of Addl. CIT V. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 / [1979] 2 Taxmann 501 would apply.*
- v) *That the Ld. CIT(A) has erred in law and on the facts while rejecting appellant's contention that the sum of Rs. 947500/- received as one time entrance fee from new members and shown as capital receipt in balance sheet was wrongly taxed by Assessing Officer considering it as a part of Revenue receipt for the year.*
- vi) *The Ld. CIT(A) has ignored the provisions of section 11(1)(d) while confirming inclusion of Rs. 947500/- in Revenue receipts for the year. He has completely overlooked the fact that said amount is a part of the Corpus fund of appellant. The addition made on this account merits to be deleted.*

ITA No. 763/Chd/2017 (A.Y. 2013-14):-

- i) *That the Ld. Commissioner of Income-tax (Appeals) has erred in facts and law in confirming the conclusion drawn by the Ld. AO that the activities of the appellant, i.e. holding of matches, sale of match tickets, receipt from booking of corporate boxes by companies, receipt of IPL subvention from BCCI, income from club facilities, receipt from sponsors etc, are of commercial nature and hence the appellant is not eligible for exemption u/s 11 & 12 as it is hit by the first proviso to section 2(15) of the Income Tax Act, 1961. The denial of deduction u/s 11 & 12 of the Income Tax Act, 1961 on this account, merits to be set aside.*
- ii) *That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the denial of deduction u/s 11 & 12, and treating the appellant as AOP & taxing the entire surplus of Rs. 296343312/-, as done by the Ld. AO.*
- iii) *That the Ld. Commissioner of Income-tax (Appeals) has erred in facts and law in confirming the conclusion drawn by the Ld. AO that the rendering of services in respect of Indian Premier League cricket (IPL) by the appellant is a business activity and hence it not eligible for exemption u/s 11 & 12 as it is hit by the first proviso to section 2(15) of the Income Tax Act, 1961. The Ld. Commissioner of Income-tax (Appeals) as well as Ld. AO has failed to appreciate the arrangement of conducting Indian Premier League cricket (IPL) matches agreed between BCCI and Kings XI Punjab and the role of appellant therein. Therefore, the conclusions drawn are not sustainable.*
- iv) *That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on the facts in not following the ratio laid down by the Hon'ble IT AT, Bench "A" judgment in the case of M/s. Tamil Nadu Cricket Association V. DDIT (Exemption) Chennai ITA No. 1535,1536 & 1537/Mds/2014 dated 14/08/2015, on similar set of facts without giving any reason for the same.*

- v) *That the Ld. Commissioner of Income-tax (Appeals) has erred in law by not following the judgment of Hon'ble Punjab & Haryana High Court, in case of Tribune Trust V. Commissioner of Income Tax, Chandigarh [2016] 76 taxmann.com 363, in which the Hon'ble court has held that even after the amendment of section 2(15) w.e.f. 2009, to know whether the income of the trust or the institution is ancillary or incidental to the attainment of the objects or whether it is the predominant motive or activity of the trust, the test laid down in the judgment of the Supreme Court in the case of Addl. CIT V. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 / [1979] 2 Taxmann 501 would apply.*
- vi) *That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the addition on account of interest of Rs. 9,39,46,624/- earned on fixed deposit made in respect of accumulations made in earlier years as per section 11(5) of I.T. Act, 1961.*

3. At the outset, both the Ld. Representatives of the parties have submitted that the sole and the common issue involved in all the captioned appeals is 'whether the activities of the appellant / assessee are commercial nature and thus are being hit by the proviso to section 2 (15) of the Income Tax Act, 1961 and therefore, whether the Assessing Officer (in short 'AO') was justified in disallowing the claim of exemption to the assessee as otherwise available to the charitable institutions u/s 11 of the Act".

4. The undisputed facts of the case are that the assessee cricket association is a society registered under the Societies Registration Act, 1860. It was earlier granted registration u/s. 12A of the Act which was

cancelled by Commissioner of Income Tax vide order dated 31.03.2009 and the cancellation was made from assessment year 2009-10 onwards in view of the amended provisions of section 2(15) of the Income Tax Act (in short 'The Act'). On appeal by the assessee, the co-ordinate Chandigarh Bench of the Tribunal set aside the order of the Commissioner of Income Tax, against which the appeal of the Department is pending before Hon'ble Punjab and Haryana High Court. Further, in the proceedings relating to the assessment of the income of the assessee, the AO held that the activities of the assessee were not charitable in nature in view of the amended provisions of section 2(15) of the Act. He, therefore, denied the claim of exemption from taxation to the assessee as available to the charitable institutions under section 11 of the Act. The Ld. CIT(A) upheld the order of the AO. The assessee thus, has come before us with the captioned appeals for different assessment years.

5. Both the Ld. Representatives have stated that the identical issue as involved in these appeals has already been decided by this Bench of the Tribunal in the appellant's own case for the assessment year 2010-11 in ITA No. 427/Chd/2017 vide order dt 12.9.2019 reported in [2019] 109 taxmann.com 219 (Chandigarh-Trib.), whereby. the issue has been decided against the assessee. The Ld. counsel for the appellant-assessee has fairly admitted that the issue involved in these appeals, otherwise,

has been settled by this Tribunal in the own case of the assessee for assessment year 2010-11(supra). However, he has submitted that the Hon'ble Gujarat High Court in a bunch of appeals with the lead case titled as 'Director Of Income Tax (Exemption) vs Gujarat Cricket Association' reported in 2019-TIOL-2457-HC-AHM-IT has decided almost identical issue involved therein in favour of the assessee therein, upholding the order of the Ahmedabad Bench of the Tribunal passed in group of cases with the lead case 'Gujarat Cricket Association vs Joint Commissioner of Income-tax (Exemptions)', Ahmedabad reported in [2019] 101 taxmann.com 453 (Ahmedabad - Trib.). The Ld. counsel, therefore, has submitted that the issue involved in theses appeals may be accordingly decided in favour of the assessee.

6. The Ld. DR, on the other hand, has submitted that the decision of the Hon'ble Gujarat High Court (supra) cannot be applied in these appeals because of entirely distinguishable facts. Some of the distinguishable facts inter alia strongly stressed by the Ld. DR are enumerated as under:

- (A) (i) That in the case of Gujarat Cricket Association & Others, the plea taken by the assessee therein was that the amount received by the respective Cricket Associations was a voluntary donation given by the BCCI to the said associations. The reliance was placed on confirmations / BCCI resolution no 5 dated 29th September 2001.

The Hon'ble High Court held that in the light of the provisions of Section 11(1)(d) of the Act, any payment which the BCCI was not under an obligation to make, whatever be the mode of its computation, was a voluntary payment and any such payment with a specific direction that it was for corpus fund was a corpus donation to the State Associations. The Hon'ble High Court, therefore, while relying upon the BCCI resolution (supra) affirmed the finding of the Tribunal that the payments made by the BCCI to the State Associations was in the nature of corpus donation.

- (ii) The Ld DR has further submitted that in the case of Gujarat Cricket Association and Others, the BCCI was not provided with any opportunity of being heard either at the Tribunal level or in the High Court.

That, whereas, in the case of the present assessee, i.e. Punjab Cricket Association, decided vide order dated 12.09.2019 (supra) the BCCI has also been provided with the opportunity of being heard with respect to the claim made by the PCA.

- (iii) That the BCCI in its submissions has categorically stated that the payment by it to the PCA was not gracious or voluntary donation rather the same was under its obligation to pay to the State Associations. That BCCI in its books of account has booked the aforesaid payments to the State Associations as expenditure out of the gross receipts. That

the State Associations are entitled by virtue of established practice to 70 per cent of the media right fee.

- (iv) The Tribunal, therefore, has observed that when the payer i.e. BCCI, itself, has not recognized the payments made by it to State Associations as voluntary grants or donations, rather the BCCI has stressed the payments have been made to the State Associations under an arrangement arrived with State Associations for sharing of the revenues from International matches and IPL, then under the circumstances, the payee or to say recipient Associations cannot claim the receipts as voluntary grants or donations at discretion from the BCCI.

- (v) That in the case of PCA, it has been held by the Tribunal that from the facts and evidences on the file, it is apparent that the assessee association not only being the member of the BCCI which is the AOP of the assessee along with other members, but also, is individually involved in a systematic and regular manner in commercial exploitation of the popularity of cricket matches and its infrastructure. That the BCCI in clear terms has pleaded that without the involvement of State Associations, the conduct of the IPL matches and huge revenue generation from the same is not possible. The assessee being party to the Tripartite Agreement is itself an evidence of the assessee being commercially involved in BCCI-IPL matches. That the Tribunal; therefore has concluded that though, no doubt, the assessee is also actively contributing towards the promotion and popularity of the cricket but at the same time its activities are also concentrated for generation and

augmentation of the revenue by exploiting the popularity of the game and towards monopolisation and having dominant control over the cricket to the exclusion of others. The commercial exploitation of the popularity of the game and the property/infrastructure held by the assessee is not incidental to the main object but is apparently and inter alia one of the primary motives of the assessee.

- (B) That it has been observed in the case of PCA that the BCCI which is constituted of the assessee and other State associations has acted in monopolizing its control over the cricket and has also adopted restrictive trade practice by not allowing the other associations who may pose competition to the BCCI to hold and conduct cricket matches for the sole purpose of controlling and exclusively earning the huge revenue by way of exploiting the popularity of the cricket. The assessee cricket association being the constituent member of the BCCI has also adopted the same method and rules of the BCCI for maintaining its monopoly and complete domain over the cricket in the 'area under its control'. That such an act of exclusion of others cannot be said to be purely towards the promotion of game rather the same can be said to be an act towards the depression and regression of the game. That the Tribunal, therefore, has observed that the claim of the assessee that its activity is entirely and purely for the promotion of game cannot be accepted. However, these facts are not a matter of discussion in the case of Gujarat Cricket Association. (supra)

- (C) That the Tribunal in the case of PCA has also taken note of the revised constitution of the assessee done in compliance of the directions of the Supreme Court dated 9-8-2018 passed in Civil Appeal No. 4235 of connected matter, as revised up to 11-8-2019 and registered with Registrar of firms and societies Punjab, the objects of the PCA inter alia, include the following:

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

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

That, whereas, there is neither any reference nor any discussion about the amended objects, if any, in the case of Gujarat Cricket association(supra).

7. The Ld. counsel for the assessee at this stage has fairly admitted that the facts of the case of the assessee as discussed in order dated 12.9.2019 (supra) were clearly distinguishable and that the specific facts and evidences noted in the case of the assessee were not there either before the Tribunal or before the Hon'ble Gujarat High Court in the case of Gujarat Cricket Association (supra). He, therefore, conceded that the decision arrived at by the Hon'ble Gujarat High Court in the case of Gujarat Cricket Association cannot be applied as such in the case of the assessee.

8. At this stage, the attention of the Ld. counsel of the assessee has been invited to the provisions of section 115TD of the Act, sub section (1) clause (a) thereof states that where in any previous year a trust or institution registered u/s 12AA of the Act has converted into any form which is not eligible for grant of registration u/s 12AA, then in addition to the Income Tax chargeable for the year, the accreted income of the trust or the institution as on the specified date shall be charged to tax at the maximum marginal rate on the accreted income. It has been further provided under sub section (2) that the accreted income for above purpose means the amount by which the aggregate fair market value of

the total assets as on the specified dates exceeds the total liability of such trust or institution. Further, under sub section (3) clause (ii), a trust or institution shall be deemed to have been converted into any forum not eligible for registration u/s 12AA in a previous year if it has adopted or undertaken modification of its objects which do not conform to the condition of registration.

9. The Ld. counsel for the assessee fairly agreed that since the Tribunal in the case of the assessee for AY 2010-11 has already made the observation that as per the amended objects of the assessee, now the assessee's activities inter alia are also directed for generation and augmentation of revenue by way of exploitation of its rights and properties. The Ld. counsel, therefore, has conceded that in view of the provisions of Section 115TD of the Act, the accreted income of the assessee due to the exemption, if any, granted to the assessee in earlier years become taxable in view of the amended objects of the assessee, hence, even if the claim of exemption is allowed to the assessee for the assessment years under consideration that will not serve any useful purpose as the assessee in the subsequent years will be liable to pay tax on such accreted income.

10. The counsel, however, has submitted that in the case of the assessee for AY 2010-11, the Tribunal inter alia has held that since the BCCI is being treated by the tax authorities as an 'AOP' only and the

payments made to the State Associations as distribution of profits, hence, under the circumstances, these payments by the BCCI to the State Associations including the appellant, having already been taxed at the hands of BCCI can not be now taxed in the hands of the member of the AOP i.e. the appellant State Association as it will amount to double taxation of the same amount. The Ld. Counsel, therefore, has submitted that the said findings may be affirmed in these appeals also.

Since, the matter in appeals under consideration is squarely covered with the decision arrived at by this Tribunal in the own case of the assessee for AY 2010-11 vide order dated 12.09.2019, hence, the observations made therein and the findings arrived at by the Tribunal vide order dt 12.9.2019 will apply mutatis mutandis to these appeals of the assessee. The concluding part of the order of the Tribunal dated 12.9.2019, for the sake of ready reference is reproduced as under:

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

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

in this appeal. However, the income received by the appellant/assessee otherwise, except the club income, which has not been taxed at the hands of the BCCI, will be assessed as per the normal provisions of the Act.

43. However, so far as the income from club facilities and from caterer is concerned, the plea of the assessee is that all the above facilities *e.g.* Gym, Lawn Tennis, Swimming pool *etc.* are interconnected and interwoven with the objects of the appellant *i.e.* promotion of sport and cannot be viewed separately. Without prejudice to above, it has been submitted that the appellant is maintaining separate books of account in respect of all above club activities. That these facilities are being provided on the principle of mutuality, accordingly, these cannot be termed as trade, commerce or business activity. That the receipts from the caterer for providing catering service during the matches is intrinsically linked with the activity of organizing matches and tournaments for the promotion of cricket. It has been submitted that the club facilities are being run for the benefits of members and cricketers as per the objects of the society on the principle of mutuality.

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

44. After considering the rival submissions, in our view, this issue is required to be re-examined by the Assessing officer after verification of the accounts of the assessee as to ascertain which part of the club income and catering services has been generated from the members of the assessee association and which part of the income is earned from non-members. It is also to be looked into whether the income from the club house and other facilities is generated generally from the members only and the receipt from the non-members is an exception or the income is generated from members and non-members in normal course of business. Whether the catering services are limited to the members and their guests only or the same are also provided to non-members also on commercial basis. The Assessing officer after thoroughly examining the above facts will decide if the principle of mutuality applies to the club income including catering contract in accordance with law. This issue is accordingly restored to the file of the Assessing officer.

45. Before parting, we deem it appropriate to mention here that in some of the case laws cited by the Ld. Counsel for the assessee the issue regarding the charitable nature in the case of other state associations

has been decided in favour of those assesseees, however, after going through the said decisions, with due respect to the said decisions and most humbly we are of the view that those decisions are based on the facts presented before the respective Benches in those cases. What is to be applied from a decision having precedential value is the proposition of law laid down after discussion on certain bundle of facts. Our findings above are based on the distinguished and specific facts brought out and evidences furnished before us by the parties and our findings may not be treated in any manner as laying down any contrary proposition of law to the decisions cited by the Ld. counsel for the assessee.

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

The findings / directions as given vide order dated 12.09.2019 (supra), as reproduced above, will be applied accordingly in the captioned appeals.

11. The appeals of the assessee are, therefore, treated as partly allowed for statistical purposes.

Order could not be pronounced earlier due to non-functioning of the Bench on account of curfew / lockdown in the wake of Covid-19 Pandemic.

Order pronounced on 09.07.2020.

Sd/-

(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

Sd/-

(संजय गर्ग / SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

Dated : 09.07.2020

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File