

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'B' BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President),
and Ravish Sood (Judicial Member)]

ITA No. 3301/Mum/2019

Board of Control for Cricket in India
Wankhede Stadium, D Road, Churchgate
Mumbai 400 020 [PAN:AAATB0186A]

.....Appellant

Vs.

Principal Commissioner of Income Tax
Central Charge -3 , Mumbai

.....Respondent

Appearances by

Percy J Pardiwalla, Senior Advocate, and Nitesh Joshi, Advocate
along with Sukh Sagar Syal, Advocate, and Anil Sathe, CA for the appellant
Rahul Raman, Commissioner (Departmental Representative), for the respondent

Date of concluding the hearing : 30/09/2021
Date of pronouncing the order : 02/11/2021

O R D E R

Per Pramod Kumar, VP:

1. This appeal challenges correctness of the order dated 28th March 2019 passed by the learned Principal Commissioner of Income Tax, Central Charge 3, Mumbai (*hereinafter referred to as the Commissioner*), rejecting the application for registration under section 12A(1)(ab) r.w.s. 12AA of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act'*).

2. The registration of an institution is foundational, though not conclusive, a factor so far as tax exemption benefits under sections 11 and 12 of the Act to the assessee are concerned inasmuch as registration under section 12A or 12AA is a *sine qua non* for eligibility for the income tax exemption benefits under section 11 and 12 of the Act, but then such a registration *per se* does not confer any tax exemption benefit under section 11 and 12; the eligibility for exemption benefits is determined on a year to year basis depending upon on the actual activities of the assessee and other considerations germane to this context.

3. Granting registration as a charitable institution is usually a one-time exercise and the assessee institution has duly been granted registration under section 12A on 12th February 1996. That registration is yet to be cancelled or withdrawn. However, the assessee has applied for fresh registration, and the event triggering the present registration application is the amendment of its 'memorandum of association, and rules and regulations', to implement the recommendations of a Committee chaired by Justice R M Lodha, former Chief Justice of India

(hereinafter referred to as 'Justice Lodha Committee') and as approved by Hon'ble Supreme Court of India, vide judgment dated 9th August 2018.

4. The assessee has taken as many as eleven grounds of appeal, which will be taken up together for our adjudication, as reproduced below:

1. The learned Principal Commissioner of Income Tax (PCIT) erred in facts and in law in rejecting the application under section 12A(1) (ab) of the Income Tax Act made by the Appellant.

2. The learned PCIT erred in facts and in law in denying registration to the Appellant under section 12AA of the Income Tax Act.

3. The learned at PCIT ought to have held that clause (ab) of section 12A(1) of the Income Tax Act had no application to the new constitution as made applicable by the Hon'ble Apex Court by its order dated 9th August 2018, as the preconditions in the said clause had not been fulfilled in its case.

4. The learned at PCIT ought to have held that as per the said new constitution the Appellant's objects continued to be promotion of the game of cricket which is for advancement of an object of general public utility. Further, the said Constitution also did not render its activities to be non-genuine in any manner as to be not in accordance with its objects.

5. The learned PCIT ought to have held that there is nothing in the said new constitution which would result in the activities of the Appellant becoming non-genuine and not in accordance with its objects.

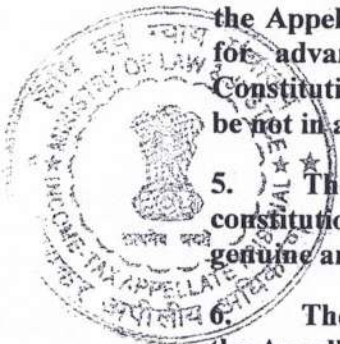
6. The learned PCIT erred in facts and in law in holding that the activities of the Appellant are in nature of "Business".

7. The learned PCIT erred in facts and in law in not appreciating that proviso to section 2(15) has no role to play at the time of granting registration under section 12AA of the Income Tax Act.

8. The learned PCIT erred in facts and in law in placing undue reliance on the surplus generated from the activities pertaining to IPL, without considering overall activities of the Appellant in a holistic manner and in coming to a conclusion that the activities of the Appellant are not genuine.

9. The learned PCIT erred in facts and in law in emphasizing on the surplus generated from the activities pertaining to IPL and completely disregarding the other activities, without appreciating that the such surplus is merely incidental to the primary objects of the Appellant

10. The learned PCIT failed to appreciate the facts, material and the legal position applicable which were relevant for considering the appellant's application under section 12A(1)(ab) of the Income Tax Act and instead erred in relying on facts and circumstances which were totally irrelevant thereby vitiating the impugned order on matters of facts and law.




11. The appellant craves leave to add alter or amend any of the grounds of at any time before or at the time of hearing of the Appeal.

5. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us is a society registered at Madras, on 28th November 1940, under Societies Registration Act 1880- now repealed and substituted, so far as the State of Tamilnadu is concerned, by the Tamilnadu Societies Registration Act 1975. Until the assessment year 1996-97, the assessee was granted an exemption, as a notified institution, under section 10(23) of the Act. Section 10(23), it may be mentioned, stands omitted as of now. On 12th February 1996, the Director of Income Tax (Exemption) Mumbai issued a certificate of registration under section 12A to the assessee, with effect from 1st April 1995, i.e. financial year relevant to the assessment year 1996-97. On 1st June 2006, and then on 21st August 2007, certain amendments were made to the Memorandum of Association of the assessee society. These amendments were examined by the Director of Income Tax (Exemptions), and, vide communication dated 28th December 2012, he informed the assessee that "(i) when the objects of the institution, which are the basis of grant of registration are altered after grant of such registration, the very foundation of registration having been removed by the voluntary act of the assessee, the registration would not survive; (ii) the registration under section 12A, was granted vide order dated 12th February 1996, on the basis of the Memorandum and rules & regulations of the assessee as on the date of registration and that, admittedly, the amendments were made on 1st June 2006 and also on 21st August 2007, but this had not been informed to DIT, who had granted registration under section 12A of the Act and that this information on amendments had not been given the Department for more than three years and, hence, as the very foundation for grant of registration had been removed, the registration would not survive". Aggrieved, assessee carried the matter in appeal before a co-ordinate bench of this Tribunal. While the co-ordinate bench dismissed the appeal as non-maintainable on the ground that there was no cancellation of registration as such and the impugned communication was no more than an 'advisory in nature', without the force of law, the co-ordinate bench did observe that **"the registration granted under section 12A, on 12th February 1996, and the benefits flowing therefrom, cannot be extended to the amended objects of the society unless the DIT examines the same and comes to a conclusion that the registration under section 12A, can be extended to the revised objects, memorandum and by-laws"** and that **"the assessee society should approach the registering authority with the changes and amendments so that the authorities could examine as to whether the amendments in question meet the requirement of law"**. Subsequently, show cause notices were issued by the then Principal Commissioners on 30.11.2016, 13.11.2017 and 30.11.2017, requiring the assessee to show cause as to why the registration granted under section 12A not be cancelled or withdrawn. Elaborate submissions were made by the assessee explaining the reasons as to why no such withdrawal or cancellation of registration is justified on the facts and in the circumstances of the case, and that the amendments made in 2006 and 2007 were minor amendments without any impact on the basic objects. Copies of these show cause notices, as also replies thereto, have been placed in Volume II of the paper-books filed before us. One of the allegations against the assessee was that the assessee has not approached the Principal Commissioner with the amended memorandum of association etc and that the assessee does "not respect the Tribunal by carrying out their suggestions/ directions". Implicit in these observations was the stand of the Commissioner that once there is an amendment in the memorandum of association, the assessee should approach the Principal Commissioner for re-examination of

eligibility for registration. Be that as it may, the matter was, as evident from the show cause notices and replies thereto, examined in detail, and the contention of the assessee all along was that these amendments were insignificant and had no impact whatsoever on the basic objects of the institution. It appears that the further proceedings were dropped in the matter, as the proposed action was not really taken by the Commissioner, and the registration obtained by the assessee under section 12 A remained intact.

6. It is in this backdrop that we have to take note of certain amendments in the memorandum of association and rules and regulations of the assessee institution. These amendments were on the recommendations of a Committee appointed by Hon'ble Supreme Court of India, and chaired by one of the former Chief Justices of India, namely Hon'ble Justice R M Lodha. As for the mandate and purpose of this Committee, we can do no better than to reproduce certain extracts from the very first chapter, i.e. "Getting Off The Mark", of the report as follows:

.....



Cricket is a national sport that connects the people of India in a unique way. The Board of Control for Cricket in India ('BCCI') which administers the game in the nation, however, continues to be mired in one controversy after another. These include serious inaction regarding betting and match-fixing, frequent amendments to the rules to enable persons in power to perpetuate their control and promote their financial interests, permitting or enabling its office bearers, employees and players to do acts which clearly give rise to conflicts of interest which have no resolution mechanism, lack of transparency and accountability, failure to provide effective grievance redressal mechanisms and a general apathy towards wrongdoing. In addition, although the BCCI discharges public functions, its working is perceived as a closed door and back-room affair, not accountable to those who are affected by its decisions nor to those who matter most – the cricket fans.

At stake therefore are the faith, love and passion for the game of hundreds of millions of people.

The task at hand

The Supreme Court has left us in no doubt about its grave concern about the place at which Indian cricket finds itself today. The "cloud over the working of the BCCI" has left followers of the game "worried and deeply suspicious about what goes on in the name of the game" says the Court, before indicating the way forward for a sport that is not only a passion but a great unifying force, by adopting a "zero tolerance approach", which can alone satisfy the cry for cleansing. It cannot also go unnoticed that while re-emphasizing that BCCI discharges public functions, the Court has referred to the tacit concurrence and support of the Central and State Governments in activities which create a monopoly over cricket.

The Supreme Court appointed Committee comprising of Justice R.M.Lodha, former Chief Justice of India, Justice Ashok Bhan, former Judge of the Supreme Court and Justice R.V.Raveendran, former Judge of the Supreme Court was mandated inter alia to examine and make suitable recommendations to the BCCI for reforms in its practices and procedures and necessary amendments in the Memorandum of Association and Rules & Regulations on the matters set out in Paragraph 109 of the judgment dated 22nd January 2015.

The task assigned to the Committee is clear: recommend those changes in the Rules and Regulations of BCCI that will further the interest of the public at large in the sport of cricket, improve the ethical standards and discipline in the game, streamline and create efficiency in the management of the BCCI, provide accessibility and transparency, prevent conflicts of interest situations and eradicate political and commercial interference and abuse and create mechanisms for resolution of disputes and grievances. As the Supreme Court has reiterated that the BCCI is carrying out public functions – functions that govern the interests of the public – the necessary corollary is that BCCI is subject to the rigours of public law. This would mandate that it acts in line with the general principles of reasonableness and fairness, and also that it adheres to the basic principles of accountability and transparency.

7. Justice Lodha Committee submitted its very comprehensive report, making a large number of recommendations to achieve the objects for which the committee was set up, and this report also suggested, at Annexure A, the amended 'Memorandum of Association' and 'Rules and Regulations' to give effect to these recommendations. On 24th July 2017, Hon'ble Supreme Court, accepting the recommendations of the Justice Lodha Committee- except on a few points, directed that **all concerned shall implement the recommendations of the Justice Lodha Committee as far as practicable..... The purpose is to implement the report as far as practicable, and, thereafter, it shall be debated as to how the scheme of things can be considered so that the cricket, the 'gentlemen's game', remains nearly perfect. Be it noted, the issue with regard to qualification or disqualification of the representative is kept open".** On 23rd August 2017, the Committee of Administrators (*hereinafter referred to as the CoA*), appointed by the Hon'ble Supreme Court of India, was entrusted with the task of preparing a draft constitution in accordance with the recommendations of the Justice Lodha Committee and judgments of Hon'ble Supreme Court. On 27th October 2017, the CoA submitted its draft constitution. Taking this draft into account, as also the comments and suggestions of the stakeholders', Hon'ble Supreme Court, vide judgment dated 9th August 2018, approved the draft constitution of the assessee institution, though subject to certain modifications, and held as follows:

40. Having regard to the fact that the draft constitution submitted by the CoA on 27 October 2017 has now been approved by this Court subject to the aforesaid modifications, we issue the following directions:

1. The Registrar of Societies under the Tamil Nadu Societies Registration Act, 1975 shall upon the presentation of the said Constitution

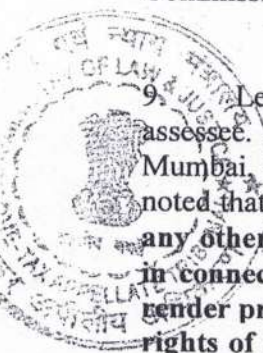
by the CEO, register the documents forthwith and report compliance by way of a report to the Secretary General of this Court within four weeks;

2. Upon the registration of the said Constitution of BCCI, each of the members shall undertake registration of their respective Constitutions on similar lines within a period of 30 days thereafter. A compliance certificate must be furnished to the CoA, which shall file a status report before this Court with reference to the compliance undertaken by the State Associations; and

3. In the event that any State Association does not undertake compliance with the above said directions, the directions contained in the orders of this Court dated 7 October 2016 and 21 October 2016 shall revive.

41. The Committee of Administrations is at liberty to submit a further report for such future directions as may be warranted and to secure compliance.

8. On 15th September 2018, i.e. also immediately after the above directions of Hon'ble Supreme Court as above having been given effect, the assessee institution filed an application in Form 10A seeking registration under section 12AA r.w.s. 12A(1)(b). That is how the Commissioner was seized of the matter with respect to continuance of the registration.



9. Learned Principal Commissioner, however, did not accept the registration request of the assessee. She began by noting that "the date of original registration is 12.2.1996 by DIT(E) Mumbai, and the date of modification of its objects has been shown as 21.8.2018". It was then noted that clause (s) of the amended Memorandum of Association provided that "to carry out any other activity which may seem to the BCCI capable of being conveniently carried out 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 BCCI". It was further noted that there is a specific clause (p) inserted to provide for conducting the Indian Premier League (IPL) matches by stating that "GOVERNING COUNCIL is the standing committee constituted by the BCCI which shall in charge of and conduct the Indian Premier League". Having noted *inter alia* the above, the learned Principal Commissioner opined that "it can be easily concluded that activities of the applicant specially in relation to the IPL are in the nature of trade, commerce or business, and therefore, the applicant is squarely covered by proviso to Section 2(15) and hence applicant's claim of being covered by the last limb, i.e. advancement of any other object of general public utility cannot be held to be charitable purpose". Learned Principal Commissioner then took note of the annual report for the year 2007-08 to form the view that the activities of the assessee trust have 'entertainment value' in the light of the fact that the assessee has been organizing IPL matches. A reference was then made to the findings in the assessment orders for the assessment years 2007-08 to 2016-17. It was noted that the case of the assessee, in view of the quantum of earnings from the IPL, cannot be covered by the exceptions to the application of proviso to Section 2(15). Learned Principal Commissioner was of the view that "it is the objects alongwith the activities which decide the overall 'form' as well as 'substance' of the institution under which the case of the assessee is hit by section 115TD

read with Section 12A(1)(ab) as discussed above". The assessee was asked to show cause as to why the application of the assessee seeking registration under section 12AA not be rejected. In response to this show cause notice, it was explained by the assessee that the applicability of proviso to Section 2(15), even if that be so, cannot be reason enough to decline registration under section 12AA, as held by a co-ordinate bench of this Tribunal, in the case of **Kapurthala Improvement Trust Vs CIT [(2016) 154 ITD 637 (Asr)]**, for the reason that, the application of proviso to Section 2(15) is an annual and year to year exercise, which leads to declining of exemption under section 13(8) in appropriate cases, the grant of registration is one time exercise. It was also submitted that while granting registration, what is to be considered is whether the objects of the trust are charitable in nature having regard to the established legal principles governing the concept of 'charity', while proviso to section 2(15) can only come into play while granting the exemption under section 11. Without prejudice to this line of argument, it was also emphasized that the activities of the BCCI, in any case, were well within the ambit of the expression 'charitable purposes' under section 2(15). It was further added that genuineness of the activities of the assessee are anyway not in doubt, and all that is to be seen, for the present purposes, is whether the amended objects are charitable or not. Elaborate submissions were made in support of the proposition that the activities of the assessee are wholly charitable, genuine and the element of profit, in organizing the IPL event, does not vitiate the predominant character of the assessee. As for the observation with regard to the insertion of the clause "to carry out any other activity which may seem to the BCCI capable of being conveniently carried out 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 BCCI" it was submitted that it was an ancillary object, preceded by elaborate main and primary objects, in order to facilitate smooth functioning of the Board, and to achieve its main objects, and that it should not be seen on a standalone basis. It was also submitted that the aforesaid clause only enables the BCCI to carry out incidental activities in connection with its main objects and to ensure optimal utilization of available resources and that the mere presence of this clause does not signify that profit earning is the main object of the assessee. It was also pointed out that the aforesaid clause was anyway present in the original memorandum of association, on the basis of which registration under section 12A was granted in 1996. Independent of this argument, it was further contended that the rejection of the application is being contemplated as (i) an attempt at better utilization of resources which results in the generation of incremental generation of revenue is being treated as a basis for treating the applicant as non-charitable; and (ii) the fact that benefits of an activity accruing to persons other than BCCI (i.e. team owners in IPL) is also being held against the BCCI. Such an approach, as was submitted, would be erroneous for the reasons that (a) making an attempt to optimal use of resources cannot be put against an assessee for the purpose of declining registration under section 12AA; (b) when examining impact of an activity, the benefit, from such an activity, to persons other than the assessee cannot be a relevant consideration; (c) entertainment value of an activity cannot be a relevant factor for grant of registration, because, in that event, no music or dance institution would ever get registration under section 12A; and (d) while revenue of IPL event is being given undue attention, what is being clearly overlooked is that it is because of the IPL that several young talented cricketers are getting opportunities for growth and recognition. Elaborate submissions were then also made on the legal and factual aspects of the matter. None of these submissions, however, impressed the learned Principal Commissioner. She rejected the application for registration, and her findings in this regard can be summarised as follows:

- i. In paragraphs 4 and 5 at pages 13 and 14 of the impugned Order, after referring to section 12A and section 12AA, it has been observed that the Respondent has to satisfy herself regarding the objects of the Appellant and genuineness of its activities.
- ii. In paragraph 6 at page 14 of the impugned order reference has been made to the fact that the Appellant, despite opportunity, did not produce the audited Accounts for the assessment year 2018-19.
- iii. In paragraphs 7 and 8 at pages 14 to 16, reference has been made to the proviso to section 2(15) of the Act alongwith the necessary interpretation to be placed thereon with an observation that the fulfilment of the condition of the said proviso would be necessary to examine the objects and genuineness of the activities of the Appellant in terms of charitable purpose as defined under section 2(15) of the Act.
- iv. The entire discussion thereafter in paragraphs 9 to 12.3 from pages 16 to 34 is on the manner of the conduct of the IPL by the Appellant and streams of revenue derived therefrom, the disputes and litigation that has arisen thereafter and the receipts from conduct of IPL exceeding the threshold limit as provided for in the provisos to section 2(15) of the Act. It is an admitted position that, the conduct of IPL was visualised and implemented for the first time in the year 2008.
- v. In paragraphs 13 and 14 at pages 34 to 40 of the impugned order, the summary of submissions made by the assessee, her comments thereon and the conclusion reached by the learned Principal Commissioner has been referred to. There again, the entire discussion revolves around the manner of conduct of IPL, streams of receipts generated therefrom and composition of the said receipts in its total receipts.
- vi. In this background the learned Principal Commissioner concluded as follows:

From the above interpretation of law and statement of facts narrated above it is concluded that the activities of the applicant, as per the amendments in its MoA read with its rules and regulations, are facilitative of the conducting business for profit by commercial exploitation of game of cricket, through franchisee ownership in terms of the 20-20 format of IPL. The applicant is squarely covered by proviso to Section 2(15) and hence applicant's claim of being covered by the last limb, i.e. advancement of any other object of general public utility cannot be held to be 'charitable purpose' on the basis of facts narrated in detail above and law applicable to these facts.

On the basis of the facts and the income tax law applicable to these facts, the application under section 12A(1)(ab) is rejected, as I am satisfied that the applicant, BCCI, cannot be granted registration under section 12AA.

10. In response to a question from the bench as to what was the occasion of filing this fresh application for registration when, as is the claim of the assessee, the objects of the assessee trust are materially similar vis-à-vis the pre-amendment objects and the assessee had not "undertaken



modifications of the objects which do not conform to the conditions of registration", it was explained by the learned senior counsel that the assessee was indeed under no obligation to approach the Commissioner as the amendments in the assessee's memorandum of association and rules and regulations did not even remotely affect its basic objects, for which registration was granted, the assessee nevertheless approached the Principal Commissioner in deference to the observations made by a co-ordinate bench to the effect that **"the assessee society should approach the registering authority with the changes and amendments so that the authorities could examine as to whether the amendments in question meet the requirement of law"**.

11. The fact that the assessee did inform the Principal Commissioner, according to the learned senior counsel, of the changes in the Memorandum of Association should be seen in this light. Learned senior counsel, however, submits that once the assessee has moved the application, the Commissioner ought to have held that since there is no material change in the objects of the assessee institution, so far as entitlement to registration under section 12A is concerned, the assessee is entitled to registration. In any event, now that the registration has been declined by the learned Principal Commissioner, according to the learned senior counsel, we have to take a call on the correctness of her stand in doing so. It is once again submitted that her action is clearly erroneous and contrary to the scheme of the Income Tax Act. For this reason also, the impugned order is said to be vitiated in law.

12. The assessee is aggrieved of the stand so taken by the learned Principal Commissioner and is in appeal before us.

13. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

14. What is impugned in this appeal is the order passed by the learned Principal Commissioner on an application filed by the assessee under section 12A(1)(ab) but on a plain reading of Section 12A(1)(ab), we find that where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A and, subsequently, **"it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration"**, such a person has to make an application to the Commissioner or the Principal Commissioner in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification. The true trigger for an application under section 12A(1)(b) has to be the modification of objects "which do not conform to the conditions of the registration". In our considered view, therefore, unless such modifications are demonstrated, there is no occasion for the Principal Commissioner to assume jurisdiction. This aspect of the matter is thus a foundational aspect to the entire proceedings in question. We must therefore begin by looking at this aspect of the matter. As we do so, we may also mention that, as submitted by the learned senior counsel, the questions actually requiring our adjudication in this appeal are as follows:

- a. Considering the facts and circumstances of the present case, whether the Appellant was under any obligation to apply for re-registration under section 12A(1)(ab) of the Act. The Appellant submits that if the Tribunal accepts the

position, then, it may be held that there was no necessity to do so and the registration as earlier granted on 12.02.1996 continues to hold good.

b. Assuming without admitting that the Appellant has to obtain registration as per section 12A(1)(ab) of the Act, whether the enquiry carried out by the Respondent and the finding given by her goes beyond the scope of the relevant statutory provisions.

c. Whether for fulfilling the condition relating to genuineness of the activity of the trust or institution, the only test should be whether the activities carried on by the assessee Institution are within the four corners of the objects or they go beyond it.

d. Whether the proviso to section 2(15) of the Act can have no relevance for adjudicating the aspect relating to the genuineness of the activities of the Trust. Placing of reliance on this proviso for denying grant of registration under section 12A/12AA tantamounts to reading a condition in the said sections which does not exist.

e. Assuming without admitting that the proviso to section 2(15) of the Act has any relevance while considering the present application, whether the predominant object pursued by the Appellant continues to be to control, regulate, encourage and promote the game of cricket and conduct of the IPL is an activity carried out in furtherance of the said object and not as a business.

15. The registration granted vide order dated 12th February 1996, a copy of which was placed before us at page 275 of the paper-book, was on the basis of "memorandum of association dated 28th November 1940". Unless, therefore, there are significant variations in the aforesaid memorandum of association and the amended memorandum of association, the provisions of Section 12A(1)(ab) will not come into play inasmuch these provisions come into play only when the assessee "has adopted or undertaken modifications of the objects which do not conform to the conditions of registration".

16. Let us, in this light, see the provisions of Section 12A(1)(ab) which are reproduced below:

12A. The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—
(ab) the person in receipt of the income has made an application for registration of the trust or institution, in a case where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)], and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification,

to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;

17. Quite clearly, the provisions of Section 12A(1)(b) come into play not simply because there is a modification *per se* in the objects of the assessee trust or institution but because the modifications are such that these modifications do not conform to the conditions of registration i.e. the conditions in the memorandum of association on the basis of which the registration under section 12A was obtained.

18. In this light, let us now take a look at the two documents- i.e. memorandum of association dated 28th November 1940 and the memorandum of association dated 21st August 2018 as amended by order of Hon'ble Supreme Court (*supra*). Copies of these documents are placed before us at pages 116 to 122 and pages 16-115, respectively. Learned senior counsel has meticulously taken us through the object clauses in both of these documents to demonstrate that there is no material or significant change in the new memorandum of association which does not conform to the old memorandum of association, based on which the registration was granted. Learned senior counsel has also filed a statement comparing these two documents. This statement, inter alia, gives the following comparison:

THE BOARD OF CONTROL FOR CRICKET IN INDIA

COMPARISON OF THE OBJECTS AS PER ORIGINAL AND AMENDED MEMORANDUM OF ASSOCIATION (MoA)

Cl.	Relevant clauses of MoA adopted in 1994 on the basis of which registration u/s 12A was granted	Corresponding clauses of MoA as amended in 2018 in accordance with direction of the Supreme Court
1.	The name of the Association is "THE BOARD OF CONTROL FOR CRICKET IN INDIA" and it shall hereafter be referred to as the BOARD	The name of the Association is "THE BOARD OF CONTROL FOR CRICKET IN INDIA" and it shall hereafter be referred to as the "BCCI"
2.	The objects of the Board are:	The objects and purposes of BCCI are:
	(a) To control the game of Cricket in India and give its decision on all matters which may be referred to it by any State, Regional or other Association	(a) To control and improve quality and standards of the game of Cricket in India, lay down policies, roadmaps, guidelines and make rules and regulations (and amend or alter them) in all matters relating to the game of Cricket, recognizing that primary stakeholders are the players and Cricket fans in India, and that accountability, transparency and purity integrity of the Game are the core values
	(b) To encourage the formation of State, Regional or other Cricket Associations and the organization of Inter-State and other Tournaments	(d) To encourage the formation of State, Regional or other Cricket Associations and the organization of Inter-State and other Tournaments; to lay down norms for recognition which achieve uniformity in the structure, functioning and processes of the Member Associations
	(c) To promote the game throughout India by organizing Coaching schemes, Tournaments, Exhibition Test Matches and by any other manner	(b) To provide for measures necessary for promotion and development of the game of Cricket, welfare and interest of Cricketers and elimination of unethical and unfair practices in the Game of cricket; and for that purpose, organize coaching schemes, establish coaching academies, hold tournaments, exhibition matches, Test matches, ODIs, Twenty/20, and any other matches and take all other required steps

	No corresponding clause in the original objects	(c) To strive for sportsmanship and professionalism in the game of Cricket and its governance and administration; inculcate principles of transparency and ethical standards in players, team officials, umpires and administrators; and to ban doping, age fraud, sexual harassment and all other forms of inequity and discrimination
	(g) To frame the Laws of Cricket in India and to make alteration, amendment or addition to the Laws of Cricket in India whenever desirable or necessary	No corresponding clause in the amended objects
	(h) To appoint Trustees in whom shall vest immovable properties and funds of the Board as may be entrusted to them from time to time	(o) To vest immovable properties and funds of the BCCI in Trustees appointed by it, for carrying out the objects of the BCCI
	(k) To carry on any other activity which may seem to the Board capable of being conveniently carried on in connection with the above, or calculated directly or indirectly to enhance the value of, or render profitable any of the properties or rights of the Board	(s) To carry out any other activity which may seem to the BCCI 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 BCCI
	(l) To donate such sum or sums for (i) such causes as would be deemed fit by the Board conducive to the promotion of the game of Cricket; (ii) the benefit of a Cricketer or his widow or children as the Board may deem fit; (iii) any other person who has served cricket or his widow or his children as the Board may consider fit	(u) To grant/donate such sum/s for: (i) Such causes as would be deemed fit by the BCCI conducive to the promotion of the game of Cricket; (ii) The benefit of Cricketers or their spouses and children by introducing benevolent fund schemes or other benefit schemes, as the BCCI deems fit, subject to its rules and regulations; (iii) The benefit of any other persons who have served Cricket or their spouses and children as the BCCI may consider fit; (iv) To award sponsorships to sportspersons in games other than Cricket for development of their individual skills (v) To donate to any charitable cause
	(m) To organize matches in aid of Public Charities and Relief Funds (t) To start or sponsor and/or to subscribe to funds or stage a match for the benefit of the cricketers or persons who may have rendered service to the game of cricket or for their families or to donate towards the development or promotion of the game	(v) To start or sponsor and/or to subscribe to funds or stage matches for the benefit of the Cricketers or persons who may have rendered service to the game of cricket or for their families, or to donate towards the development or promotion of the game and to organize matches in aid of Public Charitable and Relief Funds



(n) To lay out any ground for playing the game and for other purposes and to provide Pavilion, Canteen and other conveniences and amenities in connection therewith	(m) To lay out cricket grounds and to provide pavilion, canteen and other facilities and amenities for the convenience and benefit of the members, players, and Cricket fans including the woman and the disabled, and to ensure the availability of Cricket gear and amenities to Cricket players
(o) To impart physical education through the medium of Cricket and take all steps to assist the citizens to develop their physique	(w) To impart physical education through the medium of Cricket
(p) (i) To acquire movable and immovable property and to apply both the capital and income thereof and the proceeds of the sale or mortgage thereof, for or towards, all or any of the objects of the Board	(q) To acquire or purchase properties – movable and immovable, and assets – tangible and intangible, and to apply the capital and income there from and the proceeds of the sale or transfer thereof, for or towards, all or any of the objects of the BCCI
(p)(ii) To appoint Committees, from time to time to organize matches for the achievement of the objects of the Board and to utilize the net proceeds thereof towards the implementation of the objects set out herein	(n) To constitute Committees, from time to time, and entrust or delegate its functions and duties to such Committees, for achieving the objects of the BCCI
(r) To take such action as may be necessary to co-ordinate the activities of affiliated Associations, Institutions and their Members in relation to the Board and amongst themselves	(x) To co-ordinate the activities of members and institutions in relation to the BCCI and amongst themselves
(s) To select teams to represent India in test matches, official or unofficial played in India or abroad, and to select such other teams as the Board may decide from time to time	(g) To select teams to represent India in Test Matches, One Day Internationals, Twenty/20 matches and in any other format in India or abroad as the BCCI may decide from time to time
(oo) To employ, appoint executive secretaries and assistant secretaries, clerks, managers, coaches, professional cricketers, umpires, scorers, statisticians, groundsmen, peons, servants and other service personnel and staff and to pay them and other persons in return for their services rendered to the Board, salaries, wages, gratuities, pensions, honorariums, compensations, any ex-gratia payments and/or provident fund and to remove or dismiss such employees	(k) To employ and appoint CEO's, professional managers, auditors, executive secretaries, administrative officers, assistant secretaries, managers, clerks, team support staff, players, and other service personnel and staff; and to remunerate them for their services, by way of salaries, wages, gratuities, pensions, honoraria, ex-gratia payments and/or provident fund; and to remove/terminate or dismiss such employees or personnel
(x) To start and maintain a library of books, museum, periodicals on Sports in general and Cricket in particular and to start journal or journals on cricket	No corresponding clause in the amended objects
No corresponding clause in the original objects	(I) To ensure that tickets to cricket matches are widely available well in advance of the matches to members of the public at reasonable rates, and to prevent distribution of the same as largesse; and also to offer seats gratis or at nominal rates to students

	No corresponding clause in the original objects	<p>(t) To promote, protect and assist the Players who are the primary agents of the game by:</p> <p>(i) Creating a Player's Association to be funded by the BCCI;</p> <p>(ii) Being sensitive to Player's before international calendars are drawn up so that sufficient time is provided for rest and recovery;</p> <p>(iii) Taking steps, particularly on longer tours, so the emotional wellbeing and family bonds of the Players' are strengthened;</p> <p>(iv) Compulsorily having qualified Physiotherapists, Mental Conditioning Coaches/Counsellors and Nutritionists among the Team's support staff;</p> <p>(v) Having a single point of contact on the logistics and managerial side so that the Players' can fully concentrate on the game;</p> <p>(vi) Registering all duly qualified agents to ensure that there is oversight and transparency in player representation;</p> <p>(vii) Offering appropriate remuneration of an international standard when representing the country on the international stage, and always recalling that national representation has priority over club or franchise</p>
	No corresponding clause in the original objects	<p>(y) To create and maintain a central repository and database of all Cricketers along with their game statistics</p>
	No corresponding clause in the original objects	<p>(aa) To provide a fair and transparent grievance redressal mechanism to players, support personnel and other entities associated with Cricket</p>
3	The income, funds and properties of the Board however acquired, shall be utilised and applied solely for the promotion of the objects of the Board as set forth above to aid and assist financially or otherwise and to promote, encourage, advance and develop and generally to assist the game of cricket throughout India	The income, funds and properties of the BCCI however acquired, shall be utilised and applied solely for the promotion of the objects of the BCCI as set forth above to aid and assist financially or otherwise and to promote, encourage, advance and develop and generally to assist the game of cricket or any other sport throughout India



4.	The Board shall not be dissolved unless the dissolution is decided upon by a special resolution passed at a General Meeting of the Board convened for the purpose by a majority of 3/5th of the Members present and entitled to vote. The quorum of such meeting shall be 2/3rd of the members who have a right to vote. In the case of dissolution of the Board if there shall remain after satisfaction of all debts and liabilities, any property whatsoever, it shall be given or transferred to some other Institution or Institution having objects similar to those of the Board and not running for profit.	The BCCI shall not be dissolved unless the dissolution is decided upon by a special resolution passed at a General Meeting of the BCCI convened for the purpose by a majority of 3/4th of the Members present and entitled to vote. The quorum of such meeting shall be 2/3rd of the members who have a right to vote. In the case of dissolution of the BCCI if there shall remain after satisfaction of all debts and liabilities, any property whatsoever, it shall be given or transferred to some other Institution or Institution having objects similar to those of the BCCI and not running for profit.
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Object clauses which have not changed or are identical –

Cl. No. of MoA adopted in 1994	Corresponding clauses of MoA as amended in 2018
Clause (c)	Clause (e)
Clause (d)	Clause (f)
Clause (f)	Clause (h)
Clause (i)	Clause (p)
Clause (j)	Clause (r)
Clause (q)	Clause (z)
Clause (u)	Clause (j)
Clause (v)	Clause (i)
Clause (y)	Clause (bb)

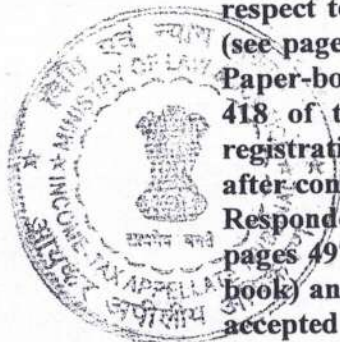
Our careful perusal of the above chart, as indeed the object clauses in the two sets of memorandum of association, does not show any change in the present MoA which is contrary to the corresponding clause in the earlier MoA. In any event, these changes, as mentioned in the Justice Lodha Committee report and as approved by Hon'ble Supreme Court, stated to be changed "that will further the interest of the public at large in the sport of cricket, improve the ethical standards and discipline in the game, streamline and create efficiency in the management of the BCCI, provide accessibility and transparency, prevent conflicts of interest situations and eradicate political and commercial interference and abuse and create mechanisms for resolution of disputes and grievances" Hon'ble Supreme Court, as noted by Justice Lodha Committee, has reiterated that the BCCI is carrying out public functions – functions that govern the interests of the public – the necessary corollary is that BCCI is subject to the rigours of public law, which mandates that the BCCI acts in line with the general principles of reasonableness and fairness, and also that it adheres to the basic principles of accountability and transparency. Any changes to bring out these reforms and specifically approved by Hon'ble Supreme Court, cannot, by any stretch of logic, be such changes that dilute the fundamental objective of promoting the game of cricket, and "not in conformity" with the objects all along espoused by the BCCI and as set out in the pre-amendment MoA. The very foundation of the approach implicit in the impugned order is thus wholly unsustainable in law, and clearly misconceived.

20. No material has been brought before us to controvert the above position, and neither in the impugned order passed by the learned Principal Commissioner nor in the submissions made by the learned Commissioner (DR) any effort has been made to even indicate that the

modifications in the objects of the amended deed do not conform to the objects in the memorandum of association based on which the registration was granted. It is also important to bear in mind the fact that Section 12A(1)(ab) specifically refers to 'objects' of the assessee trust or institution, and, it cannot, therefore, be open to the Principal Commissioner to go beyond the 'objects' so far as jurisdiction under this section 12A(1)(ab) is concerned. It is only when there is such a modification in the object clause that it does not conform to the conditions of registration, i.e. objects clause in the documents based on which registration was granted- only the memorandum of association in this case, that Section 12A(1)(ab) can come into play. We may, in this regard, also refer to the following submissions made by the learned counsel in a written synopsis filed before us:


12A(1)(ab) not applicable to the present case.

a. The Appellant has been registered as a Charitable Institution under section 12A of the Act w.e.f. 12.02.1996. (see page 275 of the Paper-book). Though the Director Income-tax(Exemption), Mumbai by his order dated 28.12.2009 had held that its registration would not exist after the amendment of its Memorandum of Association on 01.06.2006 and 21.08.2007, the Tribunal has, based on a concession made by the Revenue's Counsel, held that the registration would continue with respect to the original objects. Subsequently show-causes notices dated 17.11.2016 (see pages 411 to 414 of the Paper- book), 30.11.2016(see pages 415 and 416 of the Paper-book), 13.11.2017 (see page 417 of the Paper-book) and 20.11.2017 (see page 418 of the Paper-book) were issued by the Respondent herein to cancel the registration earlier granted under section 12A of the Act on 12.02.1996. However, after considering the detailed submissions as made by the Appellant before the then Respondent on 14.12.2016 (see pages 419 to 429 of the Paper book), 11.12.2017 (see pages 497 to 505 of the Paper book), 14.12.2017 (see pages 506 to 533 of the Paper book) and 18.12.2017 (see pages 534 to 546 of the Paper book), the Respondent has accepted the Appellant's claim as no order cancelling the registration has been passed till date. A bare perusal of the objects as per the Memorandum of Association prior to its amendment and after the amendment shows that except for some minor changes in language, the basic objects remains the same. Annexed hereto and marked as Annexure 'A' is a copy of the tabular chart detailing the objects as existing before and after the adoption of the amended Constitution. Therefore, the objects on the basis of which registration continued upto 08.08.2018 (i.e before approval of the amended constitution by the Supreme Court), fundamentally remains the same after that date. In fact that position is accepted by the Revenue inasmuch as at page 2.of written submissions filed by the learned DR has stated that "The Hon'ble Supreme Court has only approved changes regarding better corporate governance and made it transparent within the organisation to avoid conflict of interest." A bare perusal of section 12A(1)(ab) of the Act shows that the said provision applies only when an institution which had been earlier granted registration inter alia under section 12A has adopted or undertaken modification of its objects which do not conform to the condition of the registration. As stated hereinabove, the objects of the Appellant Institution have remained unchanged. Hence, there was no requirement to make the said application. Based thereon, the Appellant submits that the Tribunal may be pleased to clarify the said



position and hold that the registration as originally granted on 12.09.1996 under section 12A of the Act shall continue to hold good.

21. In the notes to clause of the Finance Bill 2017, inserting the provisions of Section 12A(1)(ab), it was inter alia stated that "(i)t is proposed to insert a new clause (ab) in sub-section (1) of said section so as to provide another condition for the applicability of sections 11 and 12, where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996], and, subsequently, it has adopted or undertaken modification of the objects which do not conform to the conditions of registration, it shall be required to make an application for registration in the prescribed form and manner, within a period of thirty days from the date of such adoption or modification in the objects, and that it is registered under section 12AA". This also does not leave any doubt about the fact that it is not a change simpliciter in the memorandum of association, which was basis of the earlier registration granted to the assessee, that triggers the provisions of Section 12A(1)(ab) being invoked, the change has to be such that it does not conform to the original objects of the trust or institution based on which registration was granted.. As we have noted earlier as well, any changes to bring out reforms in the functioning of the BCCI and specifically approved by Hon'ble Supreme Court to be for that purpose, cannot be termed to be the changes that dilute the fundamental objective of promoting the game of cricket, or said to be "not in conformity" with the objects of promoting the game of cricket all along espoused by the BCCI and as set out in the pre-amendment MoA. In this view of the matter, the condition precedent for invoking section 12A(1)(ab), in our humble understanding, is not fulfilled on the facts of the present case.



22. We may, at this stage, once again reiterate, with respect, the view of the co-ordinate bench, as articulated in the assessee's own case (supra), that "the assessee society should approach the registering authority with the changes and amendments so that the authorities could examine as to whether the amendments in question meet the requirement of law", but then this requirement, in our humble understanding, does not necessarily extend to the filing of the fresh application of registration under section 12A(1)(ab) unless the amendments are such as not in conformity with the documents based on which registration was originally granted. There is a difference in these two situations, i.e. between keeping the registration authority about the changes in the memorandum of association etc, and between making an application for fresh registration which comes into play only when the amendments in question do not conform to the objectives in respect of which registration was granted or obtained. Unless that condition is satisfied, Section 12A(1)(ab) come into play.

23. The mere fact that the assessee has filed an application under section 12A(1)(ab), even as he is all along contending that there is no material change in the object clause so as not to conform to the objects clause in the original memorandum of association, cannot vest jurisdiction in the Principal Commissioner to deal with the application on merits, unless it is established that there is indeed a modification in the object clause which does not conform to the conditions on which the original registration is granted i.e. the memorandum of association based on which the registration was originally granted. As Mr Pardiwalla rightly contends, there

is a vital distinction between 'object' and 'power'. It cannot even be in dispute that the object of the assessee institution is the promotion of cricket game, and, at best, the assessee has powers to hold IPL tournament for achieving this object. Whether this power of conducting IPL tournament is exercised with predominantly pecuniary gains in mind or not is a different aspect as of now, but then this is a 'power' not an 'object'. So far as the provisions of Section 12A(1)(ab) are concerned, the Principal Commissioner was only required to examine the objects of the institution and not to extend her considerations to the powers vested in the institution. Unless the bridge of finding variations in objects of pre-amendment or post-amendment objects is crossed, there is no occasion to examine anything else. It is this foundational requirement that triggers the application of Section 12A(1)(ab). That is not satisfied on the facts of the present case. Of course, when there are any other reasons for cancellation of registration, such as lack of genuineness of activities or any other factors, it is open to the Principal Commissioner to cancel the registration under section 12AA(3), but then those proceedings, having been initiated by the Principal Commissioner, did not lead to cancellation of registration under section 12AA(3). We are, therefore, not really concerned with that aspect of the matter as on now.

24. In view of the above discussions, as also bearing in mind the entirety of the case, we are of the considered view that the learned Principal Commissioner erred in declining registration under section 12AA on the facts of this case; she ought to have held that the registration under section 12A dated 12th February 1996 not having been withdrawn or cancelled still holds good in law and in force.

25. In any event, however, entire basis of declining registration is invoking the proviso to Section 2(15) on the ground that the IPL activities are in the nature of commercial activities and cross the threshold limit specified in exceptions to the proviso to Section 2(15). It is, however, well-settled in law that so far as registration under section 12 AA is concerned, Section 2(15) has no application in the matter. Holding so, a co-ordinate bench of this Tribunal, in the case of Kapurthala Improvement Trust (*supra*) and speaking through one of us (*Vice President*), has observed as follows:

10. There is, however, a much more fundamental a reason for the assessee succeeding in this appeal. In our considered view, the considerations with respect to the first proviso to Section 2(15) coming into the play and, for that reason, the objects of an assessee trust or institution being held to be not covered by the definition of 'charitable purposes', have no role to play in the matters relating to registration of a trust or institution under section 12A or 12AA - whether in respect of granting or declining of a registration or in respect of cancellation, even if otherwise permissible, of a registration. A closer look at the scheme of the Act would unambiguously show this aspect of the matter.

11. Let us begin by taking a look at Section 2(15) which defines charitable activities and first and second provisos thereto. These statutory provisions are as follows:

(15) "charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or

historic interest,] and the advancement of any other object of general public utility:

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

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year: (Emphasis supplied)

12. What is clear from the riders in the above definition of 'charitable purposes' is that rider set out therein, under first proviso to Section 2(15), can only come into play on year to year basis and not in absolute terms. The same activity can be hit by this rider in one year and thus the assessee trust or institution may not qualify to be existing for 'charitable purposes', and that very activity of the assessee trust or institution may remain unaffected by the same disabling provision for another year. The reason is that it is not only the nature of the activity but also the level of activity which, taken together, determine whether this disabling clause can come into play. The safeguard against the objects of the trust being vitiated insofar as their character of 'charitable activities' is concerned, is inbuilt in the provisions of Section 13(8) which was brought into effect with effect from the same point of time when proviso to Section 2(15) was introduced -i.e. with effect from 1st April 2009. Section 13(8) provides as follows:

Section 13-Section 11 not to apply in certain cases.

(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year".

13. While introducing this amendment, Explanatory Memorandum to the Finance Bill 2012 <http://indiabudgetnic.in/budget2012-2013/ub2012-13/mem/meml.pdf> explained the reasons and backdrop of this legislative amendment as follows:

Assessment of charitable organization in case commercial receipts exceed the specified threshold


Sections 11 and 12 of the Act exempt income of any charitable trust or institution, if such income is applied for charitable purposes in India and such institution is registered under section 12AA of the ActSection 2(15) of the Act provides definition of charitable purpose. It includes "advancement of any other object of general public utility" as charitable



purpose provided that it does not involve carrying on of any activity in the nature of trade, commerce or business.

2nd proviso to said section provides that in case where the activity of any trust or institution is of the nature of advancement of any other object of general public utility, and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from the commercial activities does not exceed Rs. 25,00,000 in the previous year, then the purpose of such institution shall be considered as charitable, and accordingly, the benefits of exemption shall be available to it. Thus, a charitable trust or institution pursuing advancement of object of general public utility may be a charitable trust in one year and not a charitable trust in another year depending on the aggregate value of receipts from commercial activities.

There is, therefore, need to expressly provide in law that no exemption would be available for a previous year, to a trust or institution to which first proviso of sub-section 2(15) become applicable for that particular previous year. However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of notification issued in respect of trust or institution.



Therefore, there is need to ensure that if the purpose of a trust or institution does not remain charitable due to application of first proviso on account of commercial receipt threshold provided in second proviso in a previous year. Then, such trust or institution would not be entitled to get benefit of exemption in respect of its income for that previous year for which such proviso is applicable. Such denial of exemption shall be mandatory by operation of law and would not be dependent on any withdrawal of approval or cancellation of registration or a notification being rescinded.

It is, therefore, proposed to amend section 13 of the Act to ensure that such organization does not get benefit of tax exemption in the year in which its receipts from commercial activities exceed the threshold whether or not the registration or approval granted or notification issued is cancelled, withdrawn or rescinded.

This amendment will take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent assessment years. (Emphasis supplied)

14. It is thus clear that the impact of the proviso to Section 2(15) being hit by the assessee will be that, to that extent, the assessee will not be eligible for exemption under section 11 of the Act. The mere fact that the assessee is granted registration under section 12 A or 12AA as a charitable institution will have no bearing on this denial of registration. As a corollary to this legal position, the fact that the objects of

the assessee may be hit by the proviso to section 2(15) cannot have any bearing on the grant, denial or withdrawal of the registration under section 112AA.

15. It is also important to bear in mind the fact that in terms of the second proviso to Section 2(15), which was introduced by the Finance Act 2010 with retrospective effect from 1st April 2009, the legal prescription set out in first proviso to section 2(15) cannot come into play "if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year". Clearly, therefore, in order that the benefits under section 11 are declined to the assessee on the ground that it is engaged in such activities as may be hit by the first proviso to Section 2(15), not only the assessee must be engaged in carrying out such activities as may hit the first proviso to Section 2(15) but also the receipts of the assessee from such activities must exceed a specified limit. The second limb of this disability clause needs to be satisfied with respect to each assessment year. Obviously, therefore, this aspect of the matter cannot be examined at the stage of the grant or withdrawal of registration since the registration exercise is a one time exercise and not something which must be done for each assessment year separately. That is precisely the reason, as noted in the Explanatory Memorandum, as to why the remedy for the activities being hit by the first proviso to Section 2(15) lies not in grant, decline or withdrawal of registration but in declining the benefits of exemption under section 11 on that count, on year to year basis, notwithstanding the status of registration.

16. The scheme of the Act, in this respect, is thus clear. The status of registration under section 12A or 12AA has no bearing, as recognized in Section 13(8), on the availability of exemption under section 11. To the extent income of the assessee arises from the activities hit by the first proviso to Section 2(15) in any assessment year, the assessee will be disentitled for exemption under section 11 to that extent. It is also important to bear in mind the fact that the disentitlement for exemption under section 11, as a result of the activities of an assessee being held to be not for charitable purposes under section 2(15) read with provisos thereto, is in respect of entire income of the assessee trust or institution but only for the assessment year in respect of which the first proviso to Section 2(15) is triggered.

17. If the status of registration is to be declined to an assessee only on the ground that some of the objects may be hit by the first proviso to Section 2(15) but the assessee's receipts from such activities do not exceed specified threshold in a particular assessment year, the assessee will be subjected to undue hardship in the sense that while the assessee will be disentitled to exemption under section 11 due to denial of registration under section 12 A or 12AA which is *sine qua non* for admissibility of exemption under section 11. On the other hand, if the status of registration is granted to the assessee even when some of the objects may be hit by the first proviso to Section 2(15) and the assessee's receipts from such activities do exceed specified threshold, no prejudice will be caused to the legitimate interests of the revenue because, notwithstanding the status of registration and by the virtue of section 13(8), the assessee will not be eligible for exemption under section 11 in respect of such income. It is only elementary that a statutory provision is to be

interpreted *ut res magis valeat quam pereat*, i.e., to make it workable rather than redundant.

18. The considerations about the possibilities of the first proviso to Section 2(15) coming into play affecting the grant, decline or withdrawal of registration under section 12AA will thus lead to wholly avoidable undue hardships to the assessee, will be unworkable in practice and be contrary to the scheme of the Act.

19. In view of the above discussions, in our considered view, the considerations about the possibilities of first proviso to Section 2(15) into play are wholly extraneous in the present context. As the withdrawal of registration is solely based on these considerations, the very foundation of the learned Commissioner's action is unsustainable in law and consists of reasons which are not at all relevant in the context of registration status under section 12A or 12AA of the Act. For this reason also, the action of the learned Commissioner is wholly devoid of any legally sustainable merits.

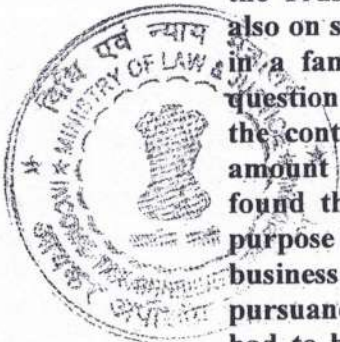
26. What essentially follows is that the remedy to the proviso to Section 2(15) coming into play is not denial of registration under section 12A or 12AA but denial of benefits of exemption under section 11 under section 13(8). That is the reason that along with the insertion of proviso to Section 2(15), effective from the same date, sub section 13(8) was also inserted and these two provisions are thus clearly complementary in nature. It is important to note that the Explanatory Memorandum to the Finance Bill categorically states that **"there is need to ensure that if the purpose of a trust or institution does not remain charitable due to application of first proviso on account of commercial receipt threshold provided in second proviso in a previous year. Then, such trust or institution would not be entitled to get benefit of exemption in respect of its income for that previous year for which such proviso is applicable. Such denial of exemption shall be mandatory by operation of law and would not be dependent on any withdrawal of approval or cancellation of registration or a notification being rescinded"**. The application of proviso to Section 2(15) is to be thus done on a year to year basis, while the grant of registration is a one time exercise.

27. Learned Commissioner (DR) defence primarily consists of his reliance on Hon'ble Kerala High Court's judgment in the case of **Mahatma Gandhi Charitable Society Vs Commissioner of Income Tax [(2019) 107 taxmann.com 309 (Kerala)]**. That is a case in which cancellation of registration under section 12AA(3) was held to be justified on the ground that the proviso to Section 2(15) was attracted on the facts of this case. It is thus contended that, to that extent, the decision of the co-ordinate bench does not hold good law. That plea, however, does not appeal to us. As learned senior counsel rightly points out, Hon'ble Kerala High Court has upheld the stand of the Tribunal on the ground that **"the activity specifically carried on by the assessee is the execution of contract awarded by the Indian Railways"** and **"this (activity) does not come within any of the objects professed by the assessee in its MoA"**. Once the activity of the assessee trust is held to be not for the objects professed in the MoA, the very justification for registration as a charitable institution ceases to hold good in law. In the entire operative portion of this judgment, which is reproduced below in its entirety, there is not even a whisper about the application of proviso to Section 2(15). Therefore, irrespective of what

was observed by the Commissioner cancelling the registration or the Tribunal upholding the cancellation, this decision of Hon'ble Kerala High Court cannot be an authority for the proposition that application of proviso to Section 2(15) has a role to play in cancellation or registration of a trust or an institution. As held by Hon'ble jurisdictional High Court in the case of **CIT v. Sudhir Jayantilal Mulji [(1995) 214 ITR 154 (Bom)]**, a judicial precedent is only "an authority for what it actually decides and not what may come to follow from some observations which find place therein". The propositions which are assumed by the Court to be correct for the purpose of deciding the same are, according to this judgment of the Hon'ble jurisdictional High Court, lack precedence value and are not binding in nature. In the present case, there is not even a mention of the proviso to Section 2(15) in the operative portion of the order. The entire operative portion of the said judgment is as follows:

9. The appellant-trust obviously was engaged in executing contracts as awarded by the Indian Railways for cleaning train coaches and railway stations. The contention of the assessee was also that considering the work of cleaning, for which the contract was awarded, it should be assumed that the employment would only be of persons from the marginalised sections of society. The Tribunal considered the question elaborately. The specific objects as available in the MoA of the Trust was extracted by the Tribunal. The reliance placed by the assessee was also on sub-clause (17) which reads as "giving employment at least for one member in a family, which is needy and deserving". The Tribunal first considered the question as to whether taking a contract from the Indian Railways and carrying out the contract work by employing poor people as claimed by the assessee would amount to a charitable purpose or not. The Tribunal, according to us, correctly found that execution of a contract as awarded by the Indian Railways for the purpose of cleaning train coaches and railway stations is a purely commercial and business activity. The Tribunal also noticed that when there is employment given in pursuance of a contract work, there are many labour friendly legislations which had to be complied with by the employer. Mere employment of people from the weaker sections of Society would not absolve the contractor from the labour legislations and such work is one carried out with a clear intention at making profit. The assessee having bid in a competitive tender had been awarded the work for a consideration agreed upon between the parties and carrying on of such work cannot be categorised as a charitable work merely because the poor or persons from marginalised sections are given employment. The execution of the work awarded by the Railways, is not a public utility service carried on by the assessee and the mere fact that the poor are employed in such execution of contract awarded, would not make it a charitable purpose.

10. Further though the assessee is said to have provided employment to various people who are engaged in the actual cleaning work carried out in pursuance of the contract, there is absolutely no material placed as to the categories from which such employees were sourced. But for the mere assertion that the nature of the work would itself indicate that only poor people would come for the same, the assessee has not indicated anything about the source from which the assessee had employed such people.



11. The Tribunal correctly found that for cancellation of registration, there are two conditions to be satisfied; one that there is a registration granted earlier and the other the satisfaction of the Commissioner that the trust or the institution is not genuine or the activity of the trust is not being carried on in accordance with the objects of the trust. The activity specifically carried on by the assessee is execution of contract awarded by the Indian Railways. This does not come within any of the objects as professed by the assessee in its MoA. The provision of employment is an incidental and necessary corollary to the execution of the contract awarded by the Indian Railways to the assessee. Various High Court judgments as proffered before the Tribunal were discussed by the Tribunal to distinguish them on facts. We would not further labour on the same, since the only argument was on the basis of the aforesaid judgment of the Division Bench of this Court itself. The Commissioner, according to us, has rightly found that the activities carried on by the assessee being in the nature of execution of a contract work as obtained from the Indian Railways, would not be a charitable purpose coming under the definition under the Act. We, hence, uphold the order of the Tribunal and dismiss the Income Tax Appeal. We do not think that consideration of the facts by the Tribunal was perverse in any manner. We find no question of law arising from the order of the Tribunal. We reject the Income Tax Appeal. No costs.

[Emphasis, by underlining, supplied by us]

28. The above decision does not, therefore, negate or even deal with the proposition laid down by the co-ordinate bench in the Kapurthala Improvement Trust case (*supra*). In view of the above discussions, and respectfully following co-ordinate bench decision in the case of Kapurthala Improvement Trust (*supra*), we hold that the application of proviso to Section 2(15), even if that be so, cannot be reason enough to decline the registration under section 12AA, and there is nothing more than the application of proviso to Section 2(15) to justify the registration being declined in the impugned order. The impugned order of the learned Principal Commissioner does not, therefore, meet our judicial approval for this reason as well.

29. As for the basic issue raised by the revenue authorities, which has witnessed vehement arguments from both sides, i.e. whether the IPL matches can indeed be said to be commercial in nature in the sense that the entire orientation of these matches is aimed at making money in the garb of promotion of cricket, strictly speaking, it is not necessary for us to go into this aspect of the matter at this stage, as the impugned order is held to be vitiated in law on account of factors discussed hereinabove. We may, however, add that on the face of it merely because a sports tournament is structured in such a manner so as to make it more popular, resulting in more paying sponsorships and greater mobilization of resources, the basic character of the activity of popularizing cricket is not lost. It is indeed possible that the predominant object remains the promotion of cricket but that activity is done in a more effective and financially optimal manner, and that there is no conflict in the cricket becoming more popular and the cricket becoming more entertaining. It results in providing significant economic opportunities to those associated with the holding of the IPL tournament and, in the process, enriching the resources of the assessee trust. As long as the object of promoting cricket remains intact, and that continues to be the predominant object, the assessee cannot be said to be not following the object of promoting

cricket, just because the operational model of a cricket tournament, whether IPL or any other tournament, is more entertaining, more economically viable, provides greater economic opportunities to all those associated with that tournament, and mobilizes greater financial resources for popularising cricket. The purpose for which all the funds at the disposal of the assessee trust, including the additional funds generated by holding the IPL tournament, are employed is certainly for promoting cricket, and that is what really matters. Improvising the rules of the game, adding entertainment value to it and making it economically attractive, may be a purist's nightmare but the same factors can also be viewed as radical and innovative ideas to popularise a game- the very *raison d'être* of an institution like this assessee, and that is how we view it.

30. In view of the above discussions, as also bearing in mind the entirety of the case, we hold that the assessee was entitled to the continuance of its registration under section 12 A dated 12th February 1996 and that, accordingly, the impugned order passed by the learned Principal Commissioner stands quashed. The assessee gets the relief accordingly.

In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 02nd day of November 2021

Sd/-
Ravish Sood
(Judicial Member)

Mumbai, dated the 02nd day of November, 2021

Sd/-
Pramod Kumar
(Vice President)

Copies to:

(1)	The appellant	(2)	The respondent
(3)	CIT-III	(4)	CIT(A) - N/A
(5)	DR	(6)	Guard File

By order etc


Assistant Registrar/ Sr PS
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Mumbai benches, Mumbai
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Senior Private Secretary
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