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## **Cancellation of registration of a cricket association trust upheld as its activities were for commercial purposes and were not charitable in nature**

### **In brief**

In a recent decision in the case of Mumbai Cricket Association<sup>1</sup>, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) has upheld the cancellation of the registration of Mumbai Cricket Association (MCA) under section 12A of the Income-tax Act, 1961 (the Act) on the premise that MCA's Indoor Cricket Academy (ICA) and related facilities were for commercial or profit purpose and were not charitable in nature. However, the Tribunal held that the registration can be cancelled only prospectively and not retrospectively.

<sup>1</sup> Mumbai Cricket Association v. DIT(Exemption), Mumbai [TS-590-ITAT-2012- (Mum)]

### **Facts**

- The assessee, MCA, was registered under the Societies Registration Act, 1860, and the Bombay Public Trust Act, 1950. It was engaged in the activity of promoting and regulating the game of cricket in Mumbai. MCA was registered under section 12A of the Act w.e.f. 14 March, 1975.
- MCA entered into a concession agreement with Shrike Infrastructure (SI) in 2005 for developing a world-class indoor cricket academy on a plot situated in Bandra Kurla Complex, which was allotted to MCA by the Mumbai Metropolitan Region Development Authority (MMRDA). Pursuant to this agreement, MCA granted rights to SI to construct the ICA and its facilities,

which would include sporting, health, cafeteria, conference, relaxation, leisure, entertainment, health and fitness facilities.

- SI was required to construct the ICA within two years and hand it over to MCA. Further, SI had to construct the ICA facilities on the vacant land and utilise the same for further 15 years, and at the end of 17 years (2 years *plus* 15 years), SI to handover the ICA facilities to MCA.
- SI was required to pay to MCA a sum of INR 750 million in phases, in 13 instalments up to 31 March 2017, starting with INR 20 million at the time of signing of the agreement.
- Based on the facts and circumstances of the case noted above, the Directorate of Income-tax (DIT) passed an order cancelling the registration under section 12A of the Act, with effect from the date of entering into the agreement with SI, on the premise that the assessee was engaged in commercial activities.

### Issues before the Tribunal

- Was the cancellation of registration in accordance with law?
- If cancellation of registration was valid, will it have retrospective effect?

### Assessee's contentions

- The assessee contended that MCA did not carry on any commercial activity since the ICA facility was the business of SI and not that of MCA. In support of this, the following arguments were put forth:
  - As per the concession agreement, SI alone was responsible for meeting the cost of running the ICA facilities and for all levies, taxes, duties and fees

payable. Further, SI was responsible at its own cost, for all maintenance and repairs of the ICA facilities and engages its own staff.

- All costs and advantages were to be borne and enjoyed by SI till it was in possession of the ICA facilities.
- No activities of the ICA facilities was shown in the books of MCA, whereas the entire project had been shown in the books and on the website of SI.
- Till the end of 17 years, the responsibility of running the club facility, including the commercial interest were with SI. Therefore, the issue of registration should be examined only after the completion of the tenure. Future takeover of the facilities should not be allowed as the reason for cancellation of registration from the date of signing of the concession agreement.
- In the context of exemption under section 10(23) of the Act, the coordinate bench in the appellant's own case for assessment years from 1989-90 to 1991-92 had held that the hiring out of the vacant space cannot be treated as a business activity. In that case, as a means to raise funds for construction of ICA, MCA had let out vacant land earmarked for the construction of an ICA and collected hire charges or donations from its users. The revenue department took a view that the said activities cannot be said to be incidental to the MCA's objects. However, the Tribunal observed that such activity constitutes an integral part of the *bona fide* activities of MCA. The Tribunal opined that seeking optimal utilisation of resource *per se* would not change the character of MCA to a business organisation.
- The cancellation of registration from a retrospective date was not tenable since the provision giving the authority for cancellation under section 12AA(3) of the

Act was effective only from 1 June ,2010. In this connection, the following decisions were relied upon:

- Kapoor Education Society<sup>2</sup>
- K.M. Scientific Research Centre<sup>3</sup>

### Revenue's contentions

- MCA is carrying on a commercial activity as,
  - The facility centre is referred to as the MCA recreation centre in practice and also in the newspaper advertisements, which suggests that it is a commercial activity.
  - The objective of MCA is to promote and regulate the game of cricket. However, the total area allocated for cricket is less than the total area for non-cricket activity. The activity of running four restaurants with bar, banquets hall cannot be termed as activity incidental to cricket.
  - As per the agreement, the appellant was to receive 50% of the associate fee from 3,000 members. The associate fee ranges from INR 1 million to 1.5 million per member and it cannot be said that collecting such substantial associate fee is a non-business activity. It was contended that the ICA facilities, in substance, were an ultra-modern and high-class club for higher echelons of the society.

- Though the activities were being run by SI, the assessee had conceived and executed the plan and the actual ownership of the entire premises was with the appellant.
- Violation of lease agreement or law:
  - The plot of land allotted by MMRDA to MCA was strictly for non-commercial activities and was mainly allotted for the activity of cricket. However, by planning and executing the activity of MCA Recreation Centre, the MCA had violated the terms of the agreement under which MMRDA had allotted the land. Thus, by violating the terms of the agreement, MCA had acted against public policy.
  - MCA had actually sub-let its rights to SI, which was violation of the agreement clause of MMRDA.
- Cancellation was applicable retrospectively:
  - The cancellation of the registration of the trust or institution was required to be made effective from the date on which the activities of such trust or institutions have become non-genuine or not in accordance with the objects of such trust or institution. Therefore, the activities of the appellant had become non-genuine from the date on which the appellant entered into agreements with SI.

### Tribunal ruling

- ICA facilities were a commercial and profit-sharing venture undertaken primarily by SI.

<sup>2</sup> Kapoor Education Society v. CIT [2010] 44 DTR 97 (Lucknow )

<sup>3</sup> K.M. Scientific Research Centre v. Lakshman Prasad and Others [1998] 229 ITR 23 (Allahabad )

- As per the concession agreement, the managing committee of the ICA facilities was always under the control of MCA. Even though the operation of ICA facilities was carried on by SI, MCA always had control over the ICA.
- The Tribunal also distinguished its earlier decision in the assessee's own case in the context of exemption under section 10(23) of the Act. In that case, the commercial or rental activity took place for a film shooting, where the lessees exited after giving the rent for the specified usage. However, in the present case, there was a permanent establishment with permanent structure that has been developed for the purpose of creating a club, wherein the club membership was given after collecting hefty amounts from the members.
- There had been complete violation of the conditions on which the MMRDA allotted land to MCA. Further, MCA had entered into commercial and profit-driven activity for a longer duration.
- The contention of the assessee that registration once granted cannot be reviewed was incorrect since there was no bar in the review of functions of an association. The grant of registration can be reviewed at any point of time.
- On the retrospective cancellation of registration, the Tribunal had followed judicial pronouncements<sup>4</sup> relied upon by the assessee and held that section 12AA(3) of the Act was applicable to a trust registered under section 12A of the Act with effect from 1 June, 2010 and cannot have retrospective operation.

### **Conclusion**

The Tribunal decision was primarily based on the facts and circumstances of the case. However, the distinction drawn by the Tribunal in respect of a permanent structure for carrying on the business activity and temporary income incidental to the charitable activities earned by way of leasing of space is worth noting. Furthermore, the Tribunal had followed the principle that the statutory power to cancel registration is applicable prospectively with effect from the date on which the provisions were inserted.

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<sup>4</sup>Kapoor Educational Society v. CIT [2010] 44 DTR 97 (Lucknow ) and K.M. Scientific Research Centre v. Lakshman Prasad and Others [1998] 229 ITR 23 (All)

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