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## Benefit granted to a charitable institution cannot be automatically extended to the substantially amended objects of the institution

### In brief

The Income-tax Appellate Tribunal, Mumbai (the Tribunal) in the case of the Board of Control for Cricket in India<sup>1</sup> (BCCI or the assessee), held that benefits granted to a charitable institution cannot be extended to its substantially amended objects.

### Facts

- The BCCI, a charitable institution, is a society registered with the object to promoting cricket.

- Registration was granted to the BCCI under section 12A of the Income-tax Act, 1961 (the Act) by the Director of Income Tax (Exemptions) (DIT) on 12 February, 1996.
- During the course of assessment proceedings of the BCCI for Assessment Year 2007-08, the Additional Director of Income Tax (Exemptions) (AO) noticed that the BCCI amended its objects during the years 2006 and 2007 to permit direct and indirect commercial interest in the Indian Premier League and 20:20.
- The AO noticed amendments to the Memorandum of Association and brought them to the notice of the DIT.

<sup>1</sup> The Board of Control for Cricket in India v. ACIT [TS-251-ITAT-2012]

- The DIT passed an order on 28 December 2009 stating that as the amendments to the memorandum of association were not communicated to the revenue authorities, the registration as a charitable institution would not survive.
- Aggrieved, the BCCI filed an appeal before the Tribunal.

## Issue

Whether benefits granted to a charitable institution can be extended to its amended objects unless the revenue authorities have examined the amendments?

## Assessee's contentions

- Section 12AA(3) of the Act which grants authority to the revenue authorities to cancel the registration of a charitable institution granted under section 12A of the Act was introduced in the Act with effect from 1 June 2010. This amendment is prospective in nature<sup>2</sup>.
- Considering the prospective amendment of section 12AA(3) and the fact that the DIT issued its letter to the BCCI on 28 December 2009, cancellation or withdrawal of registration under section 12A is not permitted.
- The DIT has no power to withdraw the registration or to hold that the registration does not survive.
- Without prejudice, registration could be cancelled or withdrawn only if the DIT is satisfied that the activities of the charitable institution are not genuine or that the activities are not being carried out in accordance with the objective of the charitable institution. No such satisfaction is recorded by the DIT and hence the withdrawal is bad-in-law.

<sup>2</sup> DIT(E) v. Mool Chand Khairatiram Trust [ITA No. 54 of 2011] and CIT v. Manav Vikas Avam Sewa Sansthan [2011] 336 ITR 250 (All)

- Promotion of sports is a charitable activity<sup>3</sup>. The amendments made to the memorandum of association are minor. Therefore, the order of the DIT must be cancelled.
- The assessee is under no obligation to intimate the revenue authorities about the amendments.
- The entire emphasis of the DIT was on the amendment to the objects in the memorandum of association. However, the bye-laws of the assessee were not referred. The bye-laws provided for the constitution of a committee for the Indian Premier League which is similar to other committees formed.
- Only the amended objects could be excluded from the benefits of registration. There is no provision in the Act to re-register an entity as a charitable institution.
- The benefits granted to charitable institution continue to hold good for its amended objects.

## Revenue's contentions

- The registration of a charitable institution is not restricted merely to the name of the assessee. All of its objects mentioned in the memorandum of association and its bye-laws are considered while granting registration.
- The benefits under section 12A of the Act are dependent on the objects. Substantial alteration of objects would affect the benefits available.
- The BCCI's amendment of its objects (which form the basis for grant of registration earlier) to include commercial transactions and failure to intimate the revenue authorities about these amendments would lead to non-availability of benefits under registration.

<sup>3</sup> Circular no. 3/1995 dated 24 September 1984 issued by the Central Board of Direct Taxes

- The DIT had neither cancelled the registration nor withdrawn it.
- The assessee may apply for fresh registration by enclosing the amended memorandum of association and bye-laws so that the revenue authority granting the registration may decide on granting registration in view of the amended memorandum of association and bye-laws.

### **Tribunal ruling**

- The BCCI amended its objects twice to include changes that permitted commercial interest to its administrators in IPL, champions league and 20:20.
- The registration is applicable to the institution along with its memorandum of association and bye-laws and not just of its name.
- Benefits granted to charitable institution cannot be extended to amended objects and bye-laws.
- The AO is not bound by the registration granted with respect to the alterations to the memorandum of association and bye-laws.
- The DIT is justified in expecting the assessee to intimate the revenue authorities about the alterations made to its memorandum of association and bye-laws, and to get approval for claiming the benefits for the altered objectives.

- The issue whether the amendments to the objects vitiate the entire claim of benefits available to the charitable institution has to be examined by the AO and it is the duty of the assessee to discharge the burden of proof for claiming exemption.
- The DIT has not withdrawn or cancelled the registration. Accordingly, the appeal is not maintainable under section 253 of the Act.

### **Conclusion**

Every institution claiming the benefits under section 12A of the Act, ought to intimate all changes to objects to the revenue for vetting. Non-intimation would deny the revenue from examining whether the amendments meet the requirements of law.

This ruling is of relevance to all organisations claiming benefits under section 12A of the Act. It would be critical compliance to intimate all changes to the memorandum and bye-laws, especially objects, to make sure the tax exemption status is not questioned or denied.

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