IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1041 OF 2012

The Board of Control for Cricket in India]
a Society registered under the Tamil Nadu]
Societies Registration Act, 1975 and]
having its registered Office at Cricket]
Centre, Wankhede Stadium, `D' Road,]
Churchgate, Mumbai – 400 020]…Appellant

Versus

1] The Assistant Commissioner of]
Income Tax]
Central Circle 35, Mumbai having his]
Office at Room No.104, First Floor,]
Aaayakar Bhavan, M. K. Road]
Churchgate, Mumbai – 400 020]
]

2] Commissioner of Income-tax]
(Exemptions)]
Mumbai having his Office at]
at Room No.104, First Floor,]
Aaayakar Bhavan, M. K. Road,]
Churchgate, Mumbai – 400 020]...Respondents

WITH
WRIT PETITION NO.1898 OF 2012

The Board of Control for Cricket in India]
a Society registered under the Tamil Nadu]
Societies Registration Act, 1975 and]
having its registered Office at Cricket]
Centre, Wankhede Stadium, `D' Road,]
Churchgate, Mumbai – 400 020]…Petitioner

Versus

1] The Assistant Commissioner of Income Tax Central Circle 35, Mumbai having his Office at Room No.104, First Floor, Aaayakar Bhavan, M. K. Road Churchgate, Mumbai – 400 020

2] Director of Income-tax (Exemptions) Mumbai having his Office at Piramal Chambers, Lower Parel, Mumbai – 400 012

3] Union of India through the Secretary, Ministry of Finance, having its Office at North Block, New Delhi – 110 001 ...Respondents.

Mr P J Pardiwalla, Senior Advocate a/w Mr. Nitesh Joshi i/by Mr. Atul K Jasani, for the Appellant/Petitioner.
Mr P C Chhotaray a/w Mr. Suresh Kumar, for the Respondent/ Revenue.

CORAM **M.S. Sonak & Jitendra Jain, JJ.**
Reserved on : **11 February 2025**
Pronounced on : **18 February 2025**

JUDGMENT: (*Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. The appeal and the Writ Petition were directed to be heard together by order dated 05 November 2014.

3. The Appeal was admitted on 05 November 2014 on the following substantial questions of law: -

> "a) Whether the Tribunal erred in holding that an appeal against the order dated December 28, 2009, passed by Respondent No.2 is not maintainable before it as it is only advisory in nature and not in exercise of any statutory power?
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> b) Whether the Tribunal erred in holding that the Appellant was under an obligation to intimate the amendments in its objects to Respondent No.2 and the consequence of such non-intimation shall be that the exemption under sections 11 and 12 will not be available in respect of the amounts applied by the Appellant towards such amendment objects?
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> c) Alternatively the Tribunal was right in dismissing the appeal as not maintainable, whether it erred in concluding that the benefit of registration granted under section 12A of the Act will not be available to the amended objects?
>
> d) Alternatively Respondent No.2 was justified in cancelling the registration granted to the Appellant under section 12A of the Act whether such order should have effect only from the date when it was passed and could not relate back to an earlier period?"

4. The Appellant/Petitioner, namely the Board of Control for Cricket in India (BCCI), is a society established under the Tamil Nadu Societies Registration Act with the aim of promoting sports, particularly cricket. The BCCI was granted registration under Section 12A of the Income Tax Act, 1961, on 12 February 1996.

5. The Memorandum of Association of the BCCI was amended on 01 June 2006 and 21 August 2007. According to the BCCI, such amendments do not change the fundamental objects of the BCCI, i.e., the promotion of sports. However, such changes were not intimated to the Tax Authorities who had granted registration under Section 12A of the IT Act, 1961.

6. Therefore, by order dated 28 December 2009, the Director of Income-tax (Exemptions) (DIT) wrote to the BCCI that since the BCCI had modified its objects and no intimation of such modification was sent to the second Respondent "*it is quite clear that the registration granted to BCCI u/s.12A of the Income-tax Act, 1961 vide order dated 12.02.1996 does not survive from the date on which the objects were changed i.e. 01.06.2006. However, as has been mentioned in the above para a fresh application for registration u/s.12AA of the Income-tax Act, 1961 may be filed alongwith necessary documents.*"

7. Aggrieved by the aforementioned communication/order dated 28 December 2009, the BCCI filed an appeal, ITA No. 1285/Mum./2010, before the Income Tax Appellate Tribunal (ITAT) on 17 February 2010.

8. Before the ITAT, the learned Special Counsel for the Revenue submitted that the DIT, by the impugned communication/order dated 28 December 2009 had neither cancelled nor withdrawn the registration dated 12 February 1996 granted to the BCCI under Section 12A of the IT Act, 1961. He contended that by the impugned communication/order, the DIT had merely intimated the BCCI of the consequences of changes in the objects of the BCCI. Based on these submissions, the Special Counsel for Revenue contended that Appeal under Section 253 of the IT Act, 1961 would not be maintainable against the impugned communication/order dated 28 December 2009.

9. The ITAT, by the impugned order dated 30 March 2012 accepted the Revenue's contention that the impugned communication/order dated 28 December 2009 did not amount to either cancellation or withdrawal of registration under Section 12A of the IT Act, 1961. On this basis, the ITAT held that the BCCI's Appeal was not maintainable under Section 253 of the IT Act, 1961.

10. After recording the above conclusion in the impugned order dated 30 March 2012, the ITAT addressed the merits of the communication/order dated 28 December 2009 and virtually held that the DIT's view in that communication/order was correct.

11. The BCCI, therefore, instituted Income Tax Appeal No.1041 of 2012 challenging the ITAT's order, *inter alia* holding that the impugned communication/order dated 28 December 2009 did not amount to an order cancelling or withdrawing the BCCI registration under Section 12A of the

IT Act and consequently dismissing the BCCI's Appeal as not maintainable under section 253 of the IT Act.

12. The BCCI, as a matter of abundant caution, instituted Writ Petition No.1898 of 2012, challenging the ITAT's impugned order dated 30 March 2012 to the extent it had delved into the merits of the impugned communication/order dated 28 December 2009 and virtually upheld the view of the DIT expressed therein. The BCCI also challenged the impugned communication/order dated 28 December 2009 in this Petition.

13. Therefore, the Appeal and the Writ Petition were admitted and directed to be heard and disposed of together.

14. Mr. Pardiwalla, the learned Senior Counsel for the Petitioner-BCCI, asserted that the impugned communication/order dated 28 December 2009, in essence, amounted to the cancellation of BCCI's registration dated 12 February 1996 under Section 12A of the IT Act, 1961. He contended that cancelling the registration was unlawful, null, and void, as Section 12AA (3), which empowered the Commissioner to cancel registration, was introduced only by the Finance Act, 2010, effective 01 June 2010. He argued that before this amendment, there was no authority to effectuate the cancellation of registration. Furthermore, he maintained that none of Section 12AA (3) predicates were fulfilled in this instance. Consequently, the cancellation of registration was unlawful, null, and void.

15. Mr.Pardiwalla submitted that Section 12A(1)(ab) mandating an application to be made where a trust earlier

registered, *inter alia* under Section 12A, has adopted or undertaken modification of the objects which do not conform to the condition of registration was inserted by Finance Act 2017 only with effect from 01 April 2018. He, therefore, submitted that there was no such requirement in the law prior to such amendments. He, therefore, submitted that the provision of Section 12A (1) (ab) would not apply to the amendments undertaken on 01 June 2006 and 21 August 2007.

16. In the alternate, Mr. Pardiwalla submitted that the amendments of 1 June 2006 and 21 August 2007 were minor and did not affect any of the BCCI's objectives, namely promoting sports. He also submitted that the ITAT did not consider these aspects. He submitted that nothing in Section 12A obliges the BCCI to inform the registering authority of the amendments to its objects. He also submitted that the undertaking furnished by the BCCI when obtaining registration was ultra vires, and based on this, the impugned communication/order could not have been made. He submitted that the validity of the impugned communication/order dated 28 December 2009 had to be tested on the reasons therein. He submitted that the ITAT had exceeded its jurisdiction in referring to the Indian Premier League (IPL), the 79th Annual Report, etc.

17. Finally, Mr. Pardiwalla submitted that after accepting the Revenue's contention that the impugned communication/order dated 28 December 2009 was only a letter or an advisory but not an order of cancellation or withdrawal of registration, then, the ITAT, completely exceeded its jurisdiction in making observations on the merits

of the impugned communication/order dated 28 December 2009 and virtually approving the DIT's view in the matter.

18. Mr. Chhotaray, the learned counsel for Revenue, defended the ITAT's order based on its reasoning.

19. Mr. Chhotaray submitted that the impugned communication dated 28 December 2009 was legal and valid. He submitted that this communication neither cancelled nor withdrew the BCCI's registration under Section 12A of the IT Act, 1961. However, this communication only informed the BCCI that their registration, based on the objects at the time of registration, did not survive or ceased to survive upon the BCCI amending such objects. He submitted that this view of the DIT was entirely consistent with the decision of the Allahabad High Court in **Allahabad Agricultural Institute and Another Vs Union of India and Others**[1].

20. Mr. Chhotaray submitted that the BCCI failed to abide by this undertaking after undertaking to inform the DIT about the changes in its objects. In such circumstances, the DIT merely informed the BCCI about the consequences of amending its objects, i.e., the non-survival of registration under Section 12A of the IT Act, 1961. He referred to the observations in paragraphs 22 and 29 of the impugned order and submitted that the findings/observations made therein were justified in the facts of the present case. He also reiterated the contentions in paragraph 11 of the ITAT's order to contend that after the amendment of the objects, the BCCI had ceased to be a charitable institution but was a commercial entity.

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[1] (2007) 291 ITR 116 (All)

21. Mr. Chhotaray submitted that in the subsequent developments referred to by Mr. Pardiwalla, during his arguments, like issue of show cause notice for cancellation of registration, assessment, etc., were all irrelevant and based upon, there was no warrant to interfere with the ITAT's impugned order.

22. Mr. Chhotaray submitted that the onus was on the BCCI to prove the exemption provision covered the case. He submitted that exemption from taxation always increases the burden on the other members of the community. He submitted that exemption provisions had to be strictly construed. Based on all this, He submitted that there was no error in the impugned communication/order dated 28 December 2009, holding that the BCCI's registration did not survive the amendments to its objects carried out on 01 June 2006 and 21 August 2007. He relied on **Novopan India Ltd., Hyderabad Vs Collector of Central Excise and Customs, Hyderabad**[2] and **Commissioner of Income Tax (Exemptions) Vs Saifee Hospital Trust**[3]

23. The rival contentions now fall for our determination.

24. The two main issues involved in these matters are the following:

[A] Whether the ITAT, after recording a categorical finding that the impugned communication/order dated 28 December 2009 did not amount to any order of cancellation of BCCI's registration under

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[2] 1994 Supp (3) SCC 606

[3] (2017) 88 taxmann.com 694 (Bombay).

Section 12A of the IT Act, 1961 and further holding that since there was no cancellation, no appeal was maintainable against the impugned communication/order dated 28 December 2009 under Section 253 of the IT Act, 1961, was justified in nevertheless examining the impugned communication/order dated 28 December 2009 on merits and recording observations or findings virtually upholding the reasons and perhaps even the conclusion in the impugned communication/order dated 28 December 2009?

[B] Whether solely based on the impugned communication/order dated 28 December 2009, which the revenue styled (or accepted the styling) as an advisory or a non-statutory letter, could any action to deny exemption or cancel Section 12A registration be initiated by the Revenue?

25. The impugned communication/order dated 28 December 2009 records that the BCCI was granted registration under Section 12A of the IT Act on 12 February 1996. It also records that on 01 June 2006 and 21 August 2007, the BCCI amended its objects, but no intimation about such amendments was given to the registering authority/department. It then refers to the Allahabad High Court's decision in the case of **Allahabad Agricultural Institute** (supra). It concludes that as a consequence of the amendments made by the BCCI to its objects, the registration granted to BCCI under Section 12A on 12 February 1996 “does not survive from the date on which the objects were changed, i.e. 01.06.2006”.

26. The BCCI, after considering the impugned communication/order dated 28 December 2009 as an order/communication cancelling its registration under Section 12A, instituted an appeal, ITA No.1285 of 2010, before the ITAT. Section 253(1)(c) provides that an appeal shall lie before the ITAT against an order made by the Principal Commissioner or Commissioner under Section 12AA or Section 12AB of the IT Act 1961. Section 12AA (3) refers to a written order cancelling the registration of a charitable trust or an institution.

27. The Special Counsel for the Revenue contended before the Tribunal that the DIT has neither cancelled the registration nor withdrawn the registration and that he has just intimated the assessee of the consequences of the changes in the objects to the assessee. He argued that on such intimation, an appeal cannot lie under Section 253 of the Act (see paragraph 11 of ITAT's impugned order). Paragraph 25 of the ITAT's impugned order dated 30 March 2012 records the following categorical argument raised by learned Special Counsel on behalf of the Revenue: -

> "25. Learned Sr. Special Counsel, on the other hand, argues that the Revenue has not withdrawn or cancelled the registration granted under section 12A and that the DIT has only availed of an opportunity to inform the legal position to the BCCI and has for its benefit enclosed a copy of the extracts from the book *"Charitable and Religious Trusts and Institutions"* authored by the learned author Mr. S. Rajaratnam, so that the assessee takes suitable action."

28. The ITAT, based upon the Special Counsel's above submissions/contentions, made the following observations in the impugned order connected with the issue of

maintainability of the Appeal under Section 253(1)(c) of the IT Act, 1961:-

> "26. When it is the stand of the Revenue that the registration granted under section 12A, is not withdrawn or cancelled, the assessee society should not have any grievance. If the Assessing Officer has not understood the letter of The DIT dated 28th December 2009, as not withdrawing or canceling of the Registration granted under section 12A, then the assessee can rely on the stand of the Revenue before the Tribunal which is that the registration granted on 12th February 1996, is not cancelled or withdrawn. No party can take contradictory stands in different proceedings on the same issue."
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> "28. Coming to the case laws relied upon by the parties, the same are not applicable for the reason that the decision of a co-ordinate bench of the Tribunal in Shri Shanmukhananda Fine Arts & Sangeetha Sabha (supra) relied upon by the Revenue is distinguishable as on facts it was set aside to the DIT on the ground of natural justice. **When it is the stand of the Revenue that the registration under section 12A, is not cancelled or withdrawn, the issue of examining the issue as to whether the DIT has power to withdraw or cancel the registration under section 12AA(3), or under section 12A, prior to amendment, does not arise.**"
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> "29. ..... **Since the stand of the Revenue, as already stated, is that the letter dated 18th November 2009, is only advisory in nature and is not an exercise of a statutory power and that it is not a withdrawal or cancellation of registration under section 12A, we hold that the appeal is not maintainable under section 253 of the Act.**"
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> "30. **In the result, assessee's appeal is dismissed as not maintainable. Order pronounced in the open Court on 30th March 2012."**

29. From the above, it is apparent, that the ITAT accepted the Revenue's contention that the impugned communication/order dated 28 December 2009 was not an order of cancellation or withdrawal of registration under Section 12A of the IT Act, 1961 or an order made under Section 12AA (3) of the IT Act, 1961 and, therefore, no appeal was maintainable against the impugned communication/order

dated 28 December 2009. This is clear from the above-quoted observations/findings in the ITAT's impugned order dated 30 March 2012.

30. At this stage, we do not propose to go into the issue as to whether the ITAT was correct or justified in accepting the Revenue's contention that the impugned communication/ order, dated 28 December 2009 was not an order for cancellation or withdrawal of BCCI's registration under Section 12A of the IT Act, 1961.

31. Mr. Pardiwalla did point out several documents and orders on record, suggesting that even the Revenue had regarded the impugned communication/order dated 28 December 2009 as one cancelling or withdrawing the BCCI's registration. In any event, He pointed out two documents and orders that suggested that the impugned communication/order dated 28 December 2009 had the effect of cancelling BCCI's registration under Section 12A of the IT Act, 1961.

32. However, without going into the issue whether the Revenue's contention regarding the impugned communication/order dated 28 December 2009 not being an order of cancellation of BCCI's registration or the ITAT's upholding of this contention, we believe that the ITAT, after having upheld the Revenue's contention [whether rightly or wrongly] exceeded its jurisdiction in examining the impugned communication/order dated 28 December 2009 on its merits and recording observations tending to uphold the impugned communication/order dated 28 December 2009 on its merits.

33. In the impugned order dated 30 March 2012, the ITAT has made the following observations: -

> "17. We agree with the findings of the DIT that granting of registration under section 12A, means granting of registration based on the objects and by-laws of the society as filed by the assessee along with the application for registration. Grant of registration under section 12A, does not mean that only the name of the society is registered. It means that the memorandum and by-laws are examined by the authorities and on being satisfied that the memorandum and by-laws fulfilled the conditions laid down under the Act, registration under section 12A, is granted and this, in turn, enables the assessee to avail the benefit of sections 11 to 13 of the Act. Thus, what is registered is the society along with its memorandum and by-laws. If there are significant or material changes in the objects or bye-laws, in our opinion, it cannot be said that the registration under section 12A, can be extended to those amended objects and bye-laws. Any other view would defect the very purpose of registration. The assessee has made various amendments to the Memorandum of Association as well as in the Rules and Regulations, which …… (illegible) placed in the paper book vide Pages-36 to 41. These changes have been highlighted during the course of hearing. We do not want to list out the amendments as the Revenue has not examined the same, clause by clause and come to any conclusion. Suffice to say that some of the amendments are material and substantive, one of them being holding ODIs and Twenty- 20, any other matches, etc.
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> 21. These amendments when read together leaves us in no doubt that certain substantial and material changes have taken place to the memorandum, as well as to the rules and regulations which permit commercial interest to administrators in IPL, Champion League and Twenty- 20. In our opinion, the Revenue authorities definitely have a right to examine the question whether these changes in the memorandum, rules and regulations are in consonance with the provisions of the Act so as to enable the assessee to continue to claim benefit as a charitable Institution under section 11, 12 and 13 of the Act.
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> 22. We are of the opinion that the benefits that flow from registration of an assessee under Section 12A, cannot be extended to the amended clauses of the memorandum and rules and regulations, otherwise an absurd situation will arise. If an institution obtains registration under section 12A, on a certain objects and bye-laws, examined by the

DIT and thereafter, that Institution amends its objects and regulations substantially, then to hold that the registration under section 12A would hold good for the amended objects and bye-laws would be against law and the scheme of the Act. Whether the amendment is substantial or otherwise, is also to be examined by the Revenue authorities and it is not for the assessee to unilaterally declare that the amendments are not drastic or substantive. If the assessee does not intimate the Revenue of the amendments on the ground that there is no statutory requirement, in our opinion, the assessee, as a consequence, cannot claim the benefit that flows under section 12A, for these changed objects; otherwise it would amount to a situation where the assessee shifts the goalpost midway and continues to claim benefit. There might be no statutory requirement for intimating the DIT of the changes in the memorandum and rules and regulations but if the assessee does not fulfill Its undertaking to furnish the changes, then he cannot claim automatic benefits under sections 11 to 13 of the Act, for those altered objects, rules and regulations. Benefits under the Act cannot be claimed unless the changes are vetted by the authorities.

23. ..... Hence, in our view, changes in the rules and regulations are also material and have to be intimated to the Revenue authorities for examination. Thus, we do not find any fault in the view taken by the DIT that the assessee should take steps by intimating the changes it has made to its memorandum and rules and regulations to the Revenue authorities and to get the same examined and approved so as to claim benefit under section 12A of the Act, for these objects also. The issue whether the changes in these objects vitiate the entire claim for exemption under sections 11 to 13, has to be examined by the Assessing Officer and it is the duty of the assessee to discharge the burden of proof that lies on it for claiming exemption.

27. Be that as it may, as already stated that the registration under section 12A dated 12th June 1996, has not been extended to the amended clauses of the memorandum and rules and regulations of the society. If the amended memorandum and rules and regulations of the society or the activities of the assessee are such that they are in violation of the provisions of the Act, then the Assessing Officer is free to make assessments in accordance with law. In other words, the Assessing Officer is not bound by the registration granted under section 12A, to the extent the memorandum and rules and regulations have been amended.

> 29. To sum up, we are of the opinion 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. It would be illogical to hold that once an Institution is registered under section 12A, no matter whatever may be the changes in the objects, rules and regulations, for any number of times, the Institution should be given the benefit of section 11 to 13 of the Act, in view of the original registration granted under section 12A. In our opinion, 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. Since the stand of the Revenue, as already stated, is that the letter dated 18th November 2009, is only advisory in nature and is not an exercise of a statutory power and that it is not a withdrawal or cancellation of registration under section 12A, we hold that the appeal is not maintainable under section 253 of the Act."

34. The ITAT, after concluding that the BCCI's Appeal before it "**was not maintainable**", exceeded its jurisdiction in recording the above observations virtually upholding the impugned communication/order dated 28 December 2009. The authority or the jurisdiction to uphold the impugned communication/ order dated 28 December 2009 would be derived by the ITAT upon concluding that the Appeal before it was maintainable. If, according to the ITAT, the Appeal before it was not maintainable, then we fail to comprehend how the ITAT derived jurisdiction to make the above observations, which virtually approved the impugned communication/ order dated 28 December 2009. Therefore, the above observations/findings are without jurisdiction and cannot be relied upon by the Respondents in the proceedings connected with the assessment of the BCCI or proceedings connected with the cancellation of BCCI's registration under Section 12A of the IT Act, 1961.

35. In **Tin Plate Co. of India Ltd. Vs. State of Bihar and others**[4] the Hon'ble Supreme Court was concerned with a case where the High Court, having dismissed a Writ Petition on the ground of alternative remedy not being exhausted, proceeded to express opinion and record some findings on the merits of the case. Based on such opinion and findings, the Joint Commissioner of Commercial Taxes (Appeals) rejected the assessee's Appeal. The assessee, therefore, filed a Review Petition before the High Court seeking *inter alia* deletion of the various observations touching upon the merits of the case while dismissing the Writ Petition on the ground of alternative remedy. The High Court dismissed the Review Petition.

36. The Hon'ble Supreme Court, reversed the High Court, holding that the observations made by the High Court in its judgment on the merits of the case *"were totally uncalled for and deserve to be set aside".* The ratio of this decision is that the High Court, after having declined to exercise its jurisdiction on the ground that the Petitioner had an alternate remedy, should not have made any observations touching upon the merits of the matter.

37. In **Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Ayyangar**[5], the Hon'ble Supreme Court was concerned with a case where the High Court, after concluding that the Civil Court had no jurisdiction over the suit, dealt with the cross objection filed concerning the adjustment of certain amount paid by the Respondent. The Hon'ble Supreme Court held that once the High Court reached the conclusion

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[4] (1998) 8 SCC 272

[5] AIR 1965 SC 338

that the revenue court alone had the jurisdiction over the suit and therefore in ordering the return of the plaint for presentation to the proper Court, the High Court could not have dealt with the cross objection filed by the Appellant with respect to the adjustment of certain amount paid by the Respondent. The Hon'ble Supreme Court observed: - "*When the Court had no jurisdiction over the subject-matter of the suit it cannot decide any question on merits. It can simply decide on the question of jurisdiction and coming to the conclusion that it had no jurisdiction over the matter had to return the plaint".*

38. In **Nusli Neville Wadia Vs. Ivory Properties and others**[6], the Hon'ble Supreme Court explained the scope of the expression "jurisdiction". The Court held that where court concludes that it had no jurisdiction, *it cannot decide such an issue on merits at all"*.

39. Applying the ratio of the aforesaid decisions of the Hon'ble Supreme Court to the facts of the present case, we hold that once the ITAT concluded that the Appeal before it against the impugned communication/order dated 28 December 2009 was not "**maintainable"**, there was no question of the ITAT evaluating the impugned communication/order on its merits or making any observations or recording any findings regarding its validity or otherwise. Therefore, such observations and findings are without jurisdiction and should not have been made.

[6] (2020) 6 SCC 557

40. This does not mean we have examined the merits of the above observations or findings recorded by the ITAT. We have only declared that the above observations/findings are without jurisdiction and, therefore, the same should not be treated as binding by the Respondents or others, mainly while deciding the appeal against the assessment order dated 30 December 2009 or in the proceedings initiated for the cancellation of BCCI's registration under Section 12A of the IT Act. All such issues, including the issue as to whether the BCCI, on account of modification of its objects is liable to have its registration under Section 12A cancelled or whether the BCCI is disentitled to benefits otherwise available to charitable institutions or trusts should be examined by the prescribed authorities on their own merits, independently and without being influenced by the above observations or findings recorded by the ITAT.

41. Accordingly, there is no point in deciding substantial questions of law at A, B and D as formulated in our order dated 05 November 2014. However, the substantial question of law at 'C' will have to be decided in favour of BCCI, though not in the precise terms of its formulation. Without going into the issue of whether the ITAT was correct in concluding that the BCCI's Appeal before it was not maintainable, we hold that since the ITAT did conclude that such Appeal was not maintainable, the ITAT exceeded its jurisdiction and was not justified in recording the above observations/findings (as set out in paragraph 33 above). Therefore, the above findings/ observations will have to be ignored by the Respondents, inter alia, when deciding the issue of the validity of the assessment order dated 30 December 2009 or when disposing of the show

cause notices issued to the BCCI for withdrawal or cancellation of its registration under Section 12 A of the IT Act, 1961. The income Tax appeal No.1041 of 2012 is disposed of in the above terms.

42. In so far as the challenge to the impugned communication/order 28 December 2009 in Writ Petition No. 1890 of 2020 is concerned, we have already noted the Revenue's stand that the said impugned communication/ order is neither an order for cancellation nor for withdrawal of the BCCI's registration under Section 12A of the IT Act, 1961. Mr. Chhotaray, the learned Counsel for the Respondents, reiterated this stance.

43. The ITAT in its order dated 30 March 2012 has held that the impugned communication/order dated 28 December 2009 (incorrectly referred to as letter dated 18 November 2009 in paragraph 29 of ITAT's order) is "….. *only advisory in nature and is not in an exercise of a statutory power and that it is not a withdrawal or cancellation of registration under section 12A…..*"

44. The Revenue Authorities have been conferred statutory powers in matters of assessment or even cancellation of registration granted under Section 12A of the IT Act, 1961. The IT Act also provides for a procedure to exercise such statutory powers. Mr Chhotaray did not show us any provision from the IT Act that empowers the statutory authorities to issue "*advisories*" or *non-statutory opinions intended to affect an assessee like the BCCI.* If a power is given to do a certain thing in a certain way, the thing must be done in that way or

not at all, and the other performance methods are necessarily forbidden.

45. Based on the contention that the impugned communication/order dated 28 December 2009 was not statutory and that it was only an advisory or further, that the impugned communication/order dated 28 September 2012 was not an order cancelling or withdrawing the BCCI's registration, the Revenue even persuaded the ITAT in holding that the BCCI's Appeal against the impugned communication/order was not maintainable. At the same time, based on such advisory/non-statutory exercise, the Revenue cannot proceed on the premise that the BCCI's registration stands cancelled or that the BCCI is not entitled to any exemption under Section 11 of the IT Act, 1961. The impugned communication/order dated 28 December 2009 cannot be non-statutory or an advisory to defeat an assessee's right of appeal. Still, based upon the same non-statutory order or advisory, the assessee's rights cannot be affected, or a situation created in which the assessee cannot claim an exemption or is liable to have its registration cancelled. The revenue cannot adopt such contradictory stances or blow hot and cold in the same breath.

46. Again, we emphasise that these matters could be independently considered whilst deciding the issue of exemption or even the issue of cancellation of registration. However, decisions on such vital matters cannot be solely based on some advisory or non-statutory communication, such as the impugned communication/order dated 28 December 2009.

47. Mr Chhotaray's entire emphasis was on the decision of the Allahabad High Court in **Allahabad Agricultural Institute** (supra). In that case, the assessing officer denied the exemption benefit under Section 11 by holding that the assessee had changed its objects post registration under Section 12A. This amounted to a breach of the term subject to which exemption could have been claimed. The assessee, therefore, appealed the assessment order and applied for a stay on recovery of the demanded tax. The assessing officer rejected this stay application by his order dated 20 February 2007. Therefore, the assessee challenged this order dated 20 February 2007, refusing stay of the demand by instituting a Writ Petition before the Allahabad High Court.

48. The Allahabad High Court was only concerned with the legality of the order dated 20 February 2007, declining stay of the demand pending adjudication appeal against the assessment order. In this context, some observations were made regarding the impugned assessment order in which exemption was denied to the assessee for having changed its objects and failed to intimate the registering authority of such changes. The Court held that on such facts, no case was made out to exercise discretion under Article 226 of the Constitution and interfere with the order dated 20 February 2007 declining stay of the demand. The Court held that the assessee had failed to demonstrate a *prima facie* case, and therefore, there was no error in declining the stay of the demand.

49. The observations in **Allahabad Agricultural Institute** (supra) must, therefore, be construed in the context of the above facts and the scope of a challenge to the order declining stay of demand pending adjudication of an appeal against the

assessment order. Based only on some of the observations therein and without appreciating the context in which such observations were made, there was no question of issuing the impugned communication/order dated 28 December 2009 by styling the same as a non-statutory letter or only an advisory.

50. Mr.Pardiwalla referred us to the decision of the Coordinate Bench dated 11 December 2018 disposing of Income Tax Appeal No. 689 of 2016 [**CIT (Exemptions), Mumbai Vs. M/s Bhansali Trust**]. In the said matter, the Revenue complained about the assessee amending its objects but not intimating the changes to the Revenue Authorities, and the ITAT incorrectly distinguished the decision in **Allahabad Agricultural Institute** (supra). However, the Revenue's contention that the ITAT incorrectly distinguished the decision in Allahabad Agricultural Institute (supra), was not accepted by the Coordinate Bench in its order dated 11 December 2018.

51. **Novopan India Ltd. Hyderabad** *(supra) or* **Saife Hospital Trust** *(supra)* undoubtedly hold that the onus is on the assessee to prove that its case is covered by the exception or exemption prohibition. However, that is not the issue at present. Based upon the impugned communication/order dated 28 December 2009, which the Revenue accepts is only an advisory or non-statutory communication, the Revenue cannot decide matters of exemption, etc. Such issues must be decided by the prescribed statutory authorities, who must exercise their powers as prescribed by the law.

52. For all the above reasons, we dispose of the Writ Petition No. 1898 of 2018 by quashing the impugned

communication/order dated 28 December 2009 without commenting upon the merits or demerits of the view expressed in the said impugned communication/order but on the ground that the Revenue could not have issued the impugned communication/order, which it agrees, was only an advisory or a non-statutory exercise.

53. Once again, we clarify that the issues of the exemption or cancellation of registration on merits are left open because they will have to be decided by the prescribed statutory authorities in the manner prescribed under the statute without being influenced by either the impugned communication/order dated 28 December 2009 or the observations/findings recorded by the ITAT (as set out in paragraph 33 of this judgment and order) in its order dated 30 March 2012.

54. Accordingly, the Appeal and the Rule in the Writ Petition are disposed of in the above terms. There shall be no order for costs.

(Jitendra Jain, J) **(M.S. Sonak, J)**