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# **TAXATION AND SPORTING INCOME** **IN INDIA: AN IN-DEPTH ANALYSIS.**

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## **ABSTRACT:**

The excellence of Indian sports, particularly cricket, is unmatched. The Indian population is becoming more and more drawn to the new elite leagues, including the Indian Premier League (IPL), Pro Kabaddi League (PKL), Indian Super League (ISL), and Badminton Premier League (BPL), and large crowds of supporters can now readily be seen in the stadiums. Such competitions are not only made fascinating by the allure or presence of Indian and International stars, but the craze present in it also contribute significantly to the enormous amounts of money that are made. But question arises that how will all the variety of players' revenue International or and Domestic be taxed in India? The Income Tax Act of 1961 constitutes of Section 115BBA which establishes a tax framework for income earned by non-citizen and non-resident sports persons. The same discusses earnings from participating in any sport or game, from contributing an article to a publication, etc. It also includes the scope of guaranteed money payable to such an institution in connection with any game or sport performed in India, sports associations or institutions that are non-resident associations or institutions. There are various provisions and international arrangements which we would be dealing in the paper later. The paper would be dealing with how and why sports persons and organisations relating to sports are taxed. What are the models which are earning revenues through sports. How differently the residents, and non-resident sports persons are taxed. We would also look upon the international arrangements including DTAA and the Articles governing the sports persons and also the artists and performers. We would also be discussing upon certain judicial decisions with respect to organisations dealing in sports, and also certain cases involving the sports persons itself. We would also discuss about the nature of awards received and whether it is taxed or not. We would conclude by discussing certain aspects which may need amendments for better clarity on taxation of sporting income.

## **INTRODUCTION: SPORTING ERA.**

Sports has been an emerging field of talk and importance in India. It has vast contribution in the development of economy of India. If we compare with the developed countries, the level of sports investments in developing nations is remarkably lower. In this sense, it is not surprising that recreational activities like sports would not rank highly on a list of necessities for a country like India. Various published studies and reports have shown that there exists strong correlation between a country's financial growth and the sporting advancement. Additionally, it has been demonstrated through certain reports and examinations that a country's athletes are more likely to win gold medals at the Olympics in direct proportion to growth in population and per capita GDP<sup>1</sup>.

So, in this context, it should be obvious that sports and sporting events would gain increasing support and popularity from the Indian public not only as a test of ability and quality but also as an event which is exciting and recreational. And this is given the country's economic prosperity, rising salary levels, and growing public awareness. The increase in amount of interests commercially and financially to such events and competitors through methods of sponsorship would ultimately be a typical outcome of such an increase in sporting activity, which would lead to an increase in the livelihoods of the sports persons and an increase in prizes, cost of appearance for the athletes included. There are various games or sports which are gradually getting famous, but one of the popular sports which has gained maximum attention and popularity is the game of cricket. The amount of money earned through sponsorships, viewership, premium in this game is actually huge. This does not mean that other games or sports are not popular, but there has been gradual increase in their popularity also such as football, badminton, kabaddi, tennis, formula 1 races etc.

## **PLATFORMS AND MODELS INVOLVED IN REVENUE OF SPORTS:**

This is the setting of sports in India, which would be gaining more importance in the coming times because of certain generation of youth who are very much focused on the fitness and proper growth of their body and health. So, there would be huge amount of revenue generated through this field

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<sup>1</sup> Wladimir Andreff, 'The correlation between economic underdevelopment and sport'  
<http://www.tandfonline.com/doi/abs/10.1080/16184740108721902#.Vafnck0w-Uk> Accessed 14<sup>th</sup> April 2023

itself. Sports is actually an area which comprises of show of strength and skill, and gradually they have evolved into a business which has gained large inflow of capital due to the enormous sums of money involved in sponsorships, media broadcasting, etc., and such has led to a significant rise in revenue along with popularity. This shows that earnings from sporting income is actually of huge amount, and it is wrong to say that sporting income is very less to be counted for. It was observed in a report<sup>2</sup> that IPL which is India's most profitable and successful league of cricket brings in many crores of profit each year. This success of such a league increased interest in the creation of different sporting leagues for different sports every year. One such influenced league was that of ISL a football league which has also earned huge amount of revenue. All such leagues contain various platforms, players who may be domestic or international. All such revenue generated, and incomes earned calls for taxation, and how such is to be regulated and governed, The Income Tax Act of 1961 comes into play. Sports persons making a living out of sports they play or through endorsements and sponsorships, are obliged to pay income tax on their profits and this would depend upon the level of earning the sports persons do and such would be the same as other people earning the same income. Sports persons come under the category of professionals and thus the Income Tax Act 1961 would be applicable as they have a head of "Income form Business and profession". They fall under the term "assesses" which is similar to the other categories and heads.

Following are certain sources of sporting income:

- A. **Media Rights:** Media or also called the broadcasting rights comprise the right to transmit and display the relevant sporting events and produce them before both established and emerging medias, such as television, radio, theatres, and even the internet. A huge number of sports organisations have been deriving the majority of their revenue from the sale of broadcasting and media rights. This in return helps in generating the funds necessary to support major events, renovate sports arenas, and also aim to advance grassroots competition. We can consider the example of the Beijing Olympics games 2008 in which certain half of billions of amounts was paid by the supporters to gain exclusive right for the purpose of broadcasting the Olympics and some half went to the committee involved in organising, development of Olympics. Not only Olympics, but for all leagues and tournaments that are

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<sup>2</sup> Gaurav Laghate, "IPL's TV ratings on sticky wicket but advertisers unfazed", [https://www.business-standard.com/article/specials/ipl-s-tv-ratings-on-sticky-wicket-but-advertisers-unfazed-113032700175\\_1.html](https://www.business-standard.com/article/specials/ipl-s-tv-ratings-on-sticky-wicket-but-advertisers-unfazed-113032700175_1.html), Accessed 14<sup>th</sup> April 2023

being conducted throughout the world huge amount is earned through these rights. Every team of sport now also have another source of income or revenue stream by posting contents, and images online or in web which is quite popular and in demand by the public of India.

- B. **Sponsorships**: it is actually a consistent source of income for any organisation, establishment and even for the competitors and also providing opportunity to the companies a different channel to interact and do business with customers who may turn out very potential and valuable. We can take the example of IPL, who had DLF, VIVO and now TATA as their main sponsors. These sponsorships are present even in all the teams of any tournament or leagues.
- C. **Fees from tickets and other sources**: Ticket sales by public to watch any tournament, leagues by going to the stadium itself. Other sources can be such that of snacks, restaurants run by groups in their arenas, stock sales, and participation's packages provided by them to their followers are additional close sources of money. Another source can be that of franchise fees which means investing in a particular franchise or a team to secure ownership of such franchise or team. Example can be of Sharukh Khan owning the KKR team of IPL.

## **HOW IS TAX ASSESSED IN SPORTING INCOME?**

Sporting income is assessed not through any different act but through Income Tax Act 1961 only. It directly consists of provisions which deals with matters and instances regarding sporting income. Following heads will discuss the same.

### **SPORTING EVENTS:**

The Income Tax Act stipulates that any individual or person can totally be excluded or be excused from paying income tax on any income resulting from any sports or sporting event held in India. This exemption is provided for the main of supporting sports in India and promote sporting endeavours. Such exemption relies on endorsements announced by the government and also through the help of existing provision in the Income Tax Act 1961 and applying the guidelines in section 10(39)<sup>3</sup>, this can be done.

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<sup>3</sup> The Income Tax Act 1961

The Section explicitly provides for situation when the income generated would be completely exempted. Firstly, the event in question needs to be endorsed in the direction of any International body dealing with a specific sports. Secondly, various nations or more than one two nations should be present or has participated in such sports event. Thirdly, such sports event is notified or endorsed under the official gazette by the Central Government. This exclusion will only apply to income that is specifically from such events and will not apply to any other income that the organisers of such games or sporting events may obtain. Incomes exempt from taxation may include sponsorship payments, ticket sales, etc. We can take the example of Under 17 Women World Cup hosted by India where all the revenue as well as revenue derived from the National Supporters would be exempted under Section 10(39) of the act. This was according to Central Board of Direct Tax, and they also notified FIFA<sup>4</sup>. National supporters may include, Odisha Government, NTPC, Department of tourism etc.

### **LEAGUES AND ORGANISERS:**

There are various sports leagues turned professional, like the IPL, ISL and other such leagues that have emerged recently, and are mainly known for-profit endeavours and are thus logically not commonly agreed to be exempt from government regulation. Issue arises because of the lack of particular recognition from the government, which has frequently driven these leagues to adopt various complicated or sophisticated structures with many layered aspects, both internationally and in domestic. This in one hand helps in increasing the costs of consistency while on other hand lowers the overall tax liability. There is also the existence of certain bodies of sports or federation of sports whose motive is to work in a non-profit manner and thus, get the benefit of Section 12A<sup>5</sup>. The section allows for registration of such organisations which are mainly non-profit including charitable trusts, NGOs, religious institutions etc. This form of tax relief was provided with the main intention that such entities would aim to advance and work for social welfare and not focus on profit making.

Section 10(23) of the act was clarified through a circular of 1984 which aimed at giving an exemption from tax to certain associations and institutions for its income earned from control, supervision, encouragement of sports such as cricket, football, hockey or any other sports notified by the

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<sup>4</sup> <https://www.taxscan.in/cbd-t-notifies-income-tax-exemption-to-fifa/229782/> Accessed 14<sup>th</sup> April 2023

<sup>5</sup> supra note 3.

government. Relating to this we can consider the case of BCCI v. Principal Commissioner Income Tax<sup>6</sup>. In this case, the BCCI was registered under Section 12A of the Act. It is actually a society that was created in accordance with the Tamil Nadu Societies Registration Act. They had a certain Memorandum of Association in the beginning which was compatible for it to be registered under Section 12A to get exemptions from tax. After making revisions to its memorandum of association based on the Justice Lodha committee's suggestion, the Society later filed an application for a new registration in 2018. Such registration was denied by the Principal Commissioner. The application was denied on the grounds that IPL operations fall under the definition of "commercial activities" which is present in proviso<sup>7</sup> defined as "charitable activities," and thus wont be getting the benefit of exemptions. After this BCCI went for appeal in Income Tax Appellate Authority (ITAT). It was observed by ITAT that BCCI would be getting the benefit of tax exemption even though the IPL is a profitable league conducted by them. BCCI would be getting such benefit until their core goal of promoting cricket is maintained. It was also cleared by the ITAT that section of 2(15) referred by Principal Commissioner was wrong as it does not apply to registration under Section 12 AA of the act. So, the mere reason that IPL is earning huge number of profits, it would not deprive BCCI of its exemption under the provisions of the act.

Another provision which can be discussed here would Section 37 of the Act. Deductions can be claimed under this section if certain ingredients are fulfilled. The expenditure in question should not be a capital expenditure, expenses incurred was in course of business or the very reason of the business, such expense should not be a part of personal expenses. Such expenses should not fall under certain section i.e. 30 to 36 to be precise. Most importantly, such expenses incurred should not be violating any provisions of any law of the country nor it was for a purpose which can be considered as illegal. It was observed in the case of M/s. EPE Process Filters and Accumulators Pvt Ltd v. DCIT<sup>8</sup>, that distributing tickets of IPL to customers who were long standing and loyal only for the purpose of improvement in business relation and goodwill would fall under the ambit of business expenditure and would be considered for tax deduction under Section 37 of the Act. The tribunal noted that main motive was to improve goodwill and maintain a good customer relationship by the means of sports and such would also fall under the category of corporate social responsibility of the company.

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<sup>6</sup> ITA 3301/Mum/2019

<sup>7</sup> Section 2(15) of the Income Tax of India 1961.

<sup>8</sup> ITA 975/HYD/2016

It was observed by the apex court<sup>9</sup> that skilled-based games are to be taken into account for taxation. It was also stated that it would be the winner's responsibility to pay the tax. If the winner receives more than Rs. 10,000 in winnings, a 30% tax will be applied. It was also observed in the case of *Gurdeep Singh Sachar v. Union of India*<sup>10</sup> that usage of Dream 11 fantasy sports depends upon the user's talent in exercising their knowledge and judgement. The outcome is independent of whether a certain team wins or loses in the actual game on any given day. So, such game was considered as game of skill and not a game which would depend upon a chance.

It is also a fact that foreign direct investment has increased along with the rise in popularity of sports in India, and along with it India has also gained exposure to international athletic events, mainly because of the success in the Olympics. The GST rate for sports equipment is also 12%, whereas the GST rate for athletic, gymnastic, and physical fitness equipment is 28%, which promotes economic growth.

### **SPORTS PERSON:**

The next important point of discussion would be that since there has been an increase in the growth of various sporting events and leagues, it has simultaneously increased the income of almost every sports person. So, it needs to be determined what would be the tax incidence on them. We will be discussing the fundamental concepts of taxation for individual athletes. There is difference in taxation for the residents, and the non-resident sports person, which would be discussed below.

### **RESIDENT OF INDIA:**

The taxation laws of India mandates citizens to pay taxes on all of their income regardless of where it was obtained. There are number of scenarios that determines how the sports persons are to be taxed for the income they earn. It can fall under the head of incomes earned through business, profession, salary and even from income from other sources. The type of engagement made by the sports person determines the head under which he/she might be assessed. This can be understood by, if a person involved in sports plays under any club, federation of sports or any type of association then the income generated from such sports would be considered as "income from salary" and such would call for tax

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<sup>9</sup> *The Director General of Police v. Mahalakshmi Cultural Association*, (2012) 3Mad LJ 561

<sup>10</sup> MANU/MH/1451/2019

as per the slab rates prevailing. The employer involved for such sports person would be obligated to deduct the tax at source (TDS) over the salary that is to be received by the sports person. Another scenario would be when the sports person does not fall under any employment i.e. any club, federation, and associations but earns individually through participation in sporting events, or through advertisements, endorsements etc. In such scenarios the income earned would fall under the head of “income from business or profession” and such calls for tax as per the slab rates prevailing. Another scenario can be when the sports person get the benefit of tax deductions for the purpose of expenditures incurred through the course of professions which may include training, traveling, coaching etc. But these deduction benefits may be subjected to conditions and limitations of the act. Facts and circumstances of each case would depict what heads would come into play for the purpose of assessment of the assessee.

We can take the case of *The Commissioner of Income Tax v. Ms. Sania Mirza*<sup>11</sup>. Sania Mirza a professional tennis player was awarded with certain amount of monetary benefit. Such was stated in the ROI filing in the statement of affairs but such was not disclosed in the profit and loss account and thus not taxed. The assessing officer accepted<sup>12</sup> such report and later on reopened the assessment<sup>13</sup>. The assessing officer and the Commissioner of Income Tax provided penalty<sup>14</sup> on Sania Mirza for the fact that accurate particulars of the income was not disclosed rather there was concealment of income. On such report, the advocate of hers actually accepted such mistake and also stated the reason. The amount in question was actually kept and shown in the capital account, which was required to be shown under head of capital receipt. In this case, the issue that arose was considered to be from a bona fide mistake and thus the penalty imposed was taken back and no obligations of penalty existed. The disputed amount was provided back to be assessed. It was also observed in the case of *Virat Kohli v. Income Tax Officer*<sup>15</sup>, that any form of income that is earned by Virat from the source of brand endorsing would not fall under the head of revenue receipt but rather fall under capital receipt.

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<sup>11</sup> MANU/AP/1357/2012

<sup>12</sup> Section 143(1) of The Income Tax Act 1961

<sup>13</sup> Section 147 of the Income Tax Act 1961

<sup>14</sup> Section 271(1) (c) of the Income Tax Act 1961

<sup>15</sup> MANU/DEL/2366/2018

## **NON RESIDENT:**

In the case of non-resident, there are rules with regard to their taxation, and such are present in the provisions of Section 115BBA of the Income tax act 1961. Non-resident sportspeople and even who are also not citizens of the country has the obligation to pay taxes on their income generated in India. If a sportsperson is neither an Indian citizen nor a resident of the country, Section 115BBA allows for the tax assessment of revenues made through interest in India through the means of in-game, advertising, or magazines, journals, etc. Additionally, all those non-resident sports organisations and entertainers present who get payment for performances in India are also covered by this clause. All the mentioned category of people or organisation would be assessed in India at the rate of 20% and there would be no deductions provided to them with respect to any allowances and expenditure. It was also observed in the case of *Indcom v. CIT*<sup>16</sup>, that any payments given to the referees or umpires in a match wont be falling under the area of Section 115BBA because such individuals neither fall under the head of any sports person nor they are any form of non-resident associations or institutions relating to sports. Thus, any payment made to non-resident referee or umpire will not be falling under Section 194E and normal rate of taxation will be applicable to them.

A question may arise that when any cricketer or any other sports and even any performer per se from India plays in a country outside India, what would be status of taxation on the income earned from such play or performance. The specific provision in the treaties that India has signed with several nations governs the taxation rights of artists and sportsmen. This subject is becoming more significant due to the rise in the amount of worldwide stage performances, international music tours, and international sporting events, as well as the tremendous sums they generate. Sharing the taxing rights of athletes and artists would have been extremely challenging without this aspect covered in treaties. The rationale is that these people have highly mobile, diversified income that is frequently obtained across numerous nations. Such an artist or sportsperson will be subject to taxation in both his country of residence (COR) and his country of source (COS) according to the source rule. All this leads to certain disputes and here comes the help of Article 17 which helps in deciding the which country would get the taxation rights.

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<sup>16</sup> MANU/WB/0320/2011

Analysing the double taxation agreement is important for the non-residents and such is allowed because of presence of Section 90(2) of the Income Tax Act. The majority of the time, DTAA goes for article 17 in the model convention to govern foreign performers by sportsmen and entertainers. The most DTAA and the model convention that India has signed, both allow for the taxation of income received in the country of origin, which is why India is the subject of this analysis. According to the provisions of Article 17(1), additional income received by sportsmen in exchange for interviews, articles, press conferences, and other services will also be deemed to be closely related to their athletic performance and will be subject to taxation in the country of origin.

It is stated under clause 17(2) of the model convention, which states that the incomes of such organisations be taxed in the nation of source. Star organisations, or entities framed in low tax jurisdictions, to avoid taxes by redirecting the incomes from the sportspersons themselves and taxing them in the hands of such entities instead of the sportspersons. The portion of performance income that cannot be taxed in the hands of the individual entertainers can also be taxed at the level of the team under Clause 17(2), regardless of whether the team has a permanent foundation in that country.

### **TAX ON AWARDS IN INDIA:**

Another aspect of discussion can whether there is taxation even on awards provided to the sports person for their achievements. An income is something which you get from a definite source at frequent interval or regular basis and is of monetary value. Whereas an award is provided not as an already determined sum of money and is generally given wilfully. We can say that award is a form of capital receipt and not an income. To know more about this, we must be aware of the fact that does the Government approves such award given by any authority. If Government do not approve of the awards, then such awards received would be taxable. Example can be of KBC, Indian Idol, or any awards given in ICC Cricket tournaments. These category of subject matter falls under the head of "Income from other sources"<sup>17</sup>. Cash awards if received would also be taxed at 30%. Award would be provided after deducting the TDS at 30% if the income of such person is more than ten thousand. Award given in kind would also be taxed at market value of the award.

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<sup>17</sup> Section 56(2) The Income Tax Act 1961

There also exists awards which are tax free. Any awards provided by the government or some other authority after getting an approval from the Government would come under this category of exemption of tax<sup>18</sup>. Example can be of awards given to the Olympics, Asian games or commonwealth games winners. We can consider the example of Sachin. “Bharat Ratna” award given to him by the Government was exempted from tax whereas the award of “Wisden Cricketer” by any other foreign organisation was considered to be taxable.

A notable case of Abhinav Bindra v. DCIT<sup>19</sup> is an important case in this matter. Abhinav Bindra not being a professional sports person still won the Olympics for India for the first time since Independence. In return he received various awards and prizes by various governments, authorities and institutions. A circular number 447 was issued by CBDT which stated that awards received by sports person internationally would be exempted from tax but did not include the Rajiv Gandhi Khel Ratna award for tax exemption. Court was of the opinion that liberal interpretation and construction of the circular should be made in this regard all the awards, gifts etc of Abhinav Bindra should not be considered as income and should get the benefit of tax exemption.

## **CONCLUSION AND SUGGESTIONS:**

After discussing about the topics in depth we can come to certain conclusion about the need of having knowledge about this subject matter. This is necessary to know because sports has been and is still in the process of generating and contributing a huge amount of share to the Indian economy. Necessary and correct knowledge about the laws prevalent about the subject matter is important.

Even though there have been recent modifications and amendments in the taxation of sporting income in India, few changes that might be made to make the tax system for sports person and enterprises in the sports industry better. The following changes could be taken into consideration:

- **Clarification on tax treatment:** it is a necessity that the tax treatment of sporting income, for sports person who has different source of income for example sponsorships, endorsements and prize money be clearer and more explicit in stating when taxation and deductions would be applied.

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<sup>18</sup> Section 10(17A) The Income Tax Act 1961

<sup>19</sup> IT Appeal No. 2219 (Delhi) 2013

- **Simplification of tax compliance:** Complexity in compliance for tax assessment for sports persons is quite an important area to look upon. Simplification would lead to improvement in compliance rates.
- **Tax rates to be lowered:** The taxation of sporting income in India are considerably high. Highest rate of almost 30% is applicable to certain income which is above a certain threshold. Lowering the tax would help in attracting more sports person and sports-related businesses to bloom in India.
- **GST rates to be harmonized:** The GST rates varies as per the type of services which a particular sport involves. This leads to confusion and thus increases compliance costs. If there is harmonization of rates of GST, the tax regime would be simplified, and compliance costs would be reduced.

These are some of the suggestions that can be considered for the purpose of improving the taxation of sporting income in India. It is important for the government to look after the fact that there is growth in sports industry as huge portion of share in the economy comes from this industry. A balance between compliance of tax and promotion of growth of sports in India should be made by the Government.

