



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1130/PUN/2024

M.M. Patel Charitable Trust, Gat No.261, 262/107, Ashwini Medical College, At Post Kumbhari, Tal. South Solapur – 413 006 Maharashtra PAN : AAATM7736M	Vs.	PCIT (Central), Pune
Appellant		Respondent

Assessee by	:	Shri Kishor B. Phadke
Revenue by	:	Shri Ajay Kumar Keshari
Date of hearing	:	09.01.2025
Date of pronouncement	:	21.02.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This appeal at the instance of assessee is directed against the order dated 27.03.2024 passed by PCIT (Central), Pune u/s.12 r.w.s.12AA & 12AB(4) of the Income-tax Act, 1961 (in short 'the Act').

2. Assessee has raised following grounds of appeal :

"1. The Learned PCIT (Central) erred in assuming jurisdiction u/s 12A/12AA/12AB of the ITAct, 1961 and proceeding to cancel the registrations u/s 12A/12AA/12AB. Learned PCIT (Central) Pune ought to have appreciated that, 12A/12AA/12AB related jurisdiction, existing with CIT(Exemption) prior to the search, could not be transferred through order u/s 127 of ITA, 1961 by one CIT to another PCIT.

2. The Learned PCIT (Central), Pune erred in law and on facts in not dealing with many precedents of Honourable ITAT holding that, jurisdiction u/s 12A cannot be shifted /transferred through any order u/s 127 of the ITA, 1961.



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3. *The Learned PCIT-Central Circle, Pune erred in law and on facts in cancelling registration u/s 12A/12AA for the period from 1/4/2019 to 31/3/2021 without any cogent reasons.*

4. *The registration u/s 12A r.w.s. 12AB for the period from 1/4/2021 onwards is cancelled without issuing show cause notice for the same and without any cogent reasons.*

5. *The Learned PCIT (Central), Pune erred in law and on facts in holding that, activities of the Appellant are not genuine and funds are deployed for personal benefit of its members. Learned PCIT (Central), Pune erred in keeping heavy reliance on the statements recorded during search, without appreciating fact that the statements were recorded under peculiar circumstances and despite the fact of their retraction thereafter.*

6. *The Learned PCIT (Central), Pune also erred in law and on facts in holding that retraction affidavits of various persons have no credence and that, these retractions are "planned".*

7. *The Learned PCIT (Central), Pune also erred in law and on facts in not considering the statement of Mehul Patel recorded during the course of search wherein he has refuted all the allegation against the trust and flatly denied any involve of the trust.*

8. *The Learned PCIT (Central) also erred ignoring the facts that the assessment proceeding of search and seizer action have not yet reached finality and hence the action of cancellation of registration is a premature action in the absence of any assessment proceeding being concluded.*

9. *The appellant is engaged in pre and post search period is imparting education by running medical college, running charitable hospital for providing medical relief to patient's and activity are being carried out in accordance with all the conditions subject to which registration has been granted. Learned CIT (Central) action of cancellation of registration is therefore, premature action in the absence of any conclusive decision of fact finding authority.*

10. *The Learned CIT (Central) has erred in drawing conclusion that the appellant had made specified violation under clause f of explanation below section 12AB(4) of the act in the absence of any order, direction or decree under the relevant act.*

11. *Appellant craves leave to add/modify /amend/delete all / any of the grounds of appeal."*

3. Facts of the case in brief are that assessee is a Public Charitable Trust running a Medical College and Hospital under the name & style of 'Ashwini Rural Medical College Hospital and



Research Centre at Kumbhari, Dist-Solapur. It is registered under Bombay Trust Act, 1950 on 04.10.2000. Registration u/s.12A of the Act was granted to the assessee trust on 16.02.2001. Thereafter, provisional registration was again granted on 28.05.2021 for the period from A.Y. 2022-23 to A.Y. 2026-27 u/s.12A(1)(ac)(i) of the Act. A search & seizure action u/s. 132 of the Act was conducted at Mehul Group of cases on 25.08.2022 wherein the assessee trust was also covered. Allegedly various incriminating and loose documents were found and seized. Assessment proceedings were initiated by issuance of notice u/s.153A for carrying out the proceedings. During the pendency of the assessment proceedings, ld. AO in light of second proviso to section 143(3) of the Act referred to ld.PCIT (Central) as the case was centralised under PCIT(Central) subsequent to search u/s.132 of the Act. Based on the reference received from ld. AO dated 20.07.2023 a show cause notice was issued to the assessee trust on 21.07.2023 by ld.PCIT(C). In the said show cause notice, assessee was asked to reply about the issues arising out of the search proceedings which included partial receipt of staff salary doctors salary, PG stipend and capitation fee in cash by the trustee of the assessee trust. The details of the alleged cash receipt on account capitation fee, refund of staff salary, doctors salary, PG stipend and others during F.Yrs. 2019-20 to 2021.22 (A.Y. 2020-21 to 2022-23) are referred in the show cause notice which is appearing on page 7 of the impugned order. Reference was also made to the statements of various staff persons of the assessee trust recorded during the course of search where they have alleged to have admitted the fact of receiving cash towards capitation fee as well as the staff salary, doctor salary, PG stipend. Based on this information, assessee was asked as to why registration u/s.12A of the Act granted on 16.02.2001 should not



be cancelled. Assessee gave reply to the show cause notice making multifold contentions which mainly included that ld.PCIT had no jurisdiction to deal with the issue of cancellation of registration u/s.12AB(4). It was submitted that any adverse decision in this matter will pre-empt investigation because the issues on merits are pending in the assessment proceedings and there is no finding as such questioning the genuineness of the activities of the assessee trust and no valid proof of the allegation about the assessee trust and its employees of receiving cash against the expenditure incurred as well as capitation fees. Further in the reply dated 20.04.2024, it was submitted that there is no provision for cancellation of registration u/s.12A of the Act retrospectively since section 12AB has come into operation from 01.04.2021. Further vide reply dated 26.03.2024, assessee stated that the trust is running a Medical College, Charitable Hospital and Research Centre as per the objects of the trust and until and unless the activities of the trust are not held to genuine, section 12AA(3) of the Act cannot be made applicable. It was also stated that even in case during the course of assessment proceedings any additions are made by the AO, assessee will have sufficient opportunity to challenge the said addition but irrespective of such addition for the remaining amount of income earned by the assessee from carrying out the charitable activities, benefit of section 11 cannot be denied and the same has been held in plethora of decisions. However, ld.PCIT did not find any merit in the contentions made by the assessee.

4. So far as the legal issues raised by the assessee, it was decided by ld. PCIT (Central) holding as under :

“5. Before we proceed further, for the sake of understanding, it is beneficial to discuss the general principles of the Act regarding charitable activities and benefit of exemption.



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i. In order to get the benefit of exemption u/s 11 and 12 of the IT Act, the trust or institution needs to apply for registration u/s 12AA or 12AB of the Act. Income derived from the property held under the trust shall have to be applied for its 'objects' in India. Only then the exemption u/s 11 of the Act would be applicable to these registered entities.

ii. As per Sec 12AA of the Act, before granting registration the authority will have to satisfy itself about (a) the genuineness of the activities of the trust or institution and (b) compliance of such requirements of any other law for time being in force by trust or institution as are material for the purpose of achieving its objects. Thereafter, satisfying itself about the objects and genuineness of the activities of the trust or institution registration can be granted.

iii. If the concerned authority after granting registration is satisfied that either (a) the activities of such trust or institution are not genuine or (b) are not being carried out in accordance with the objects of the trust or institution, as the case may be, or on noticing the violations mentioned in section 12AA(4) of the Act, the registration of such trust or institution can be cancelled u/s 12AA(3)/ 12AA(4) of the Act.

iv. W.e.f. 01/04/2021, section 12AB of the Act was introduced for fresh registration of a trust or institution. Similar conditions were imposed on authority for granting registration as they existed u/s 12AA of the Act. However, for cancellation of the registration, section 12AB of the Act has introduced certain 'specified violations' for trust or institution w.e.f. 01/04/2022 which are defined in Explanation to section 12AB(4) of the Act as follows:

Explanation. For the purposes of this sub-section, the following shall mean "specified violation" :

(a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or

(b) the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public; or

(d) the trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

(e) any activity being carried out by the trust or institution,-



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(i) is not genuine; or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

(f) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality (; or]

(g) the application referred to in clause (ac) of sub-section (1) of section 12A is not complete or it contains false or incorrect information.

If such specified violations are established on enquiry, then subject to certain conditions, the registration can be cancelled.

v. Till the trust or institution is dissolved or ceases to exist, it is a live entity, and every activity of trust or institution will have to be seen from the perspective of being genuine and/or within the objects of the trust or institution. Activity having financial implications will have to stand the tests of being genuine as well as within the objects of the trust or institution. This means that the application of income claimed by the trust or institution on an activity must be genuine and the activity itself must be within the objects of the trust or institution. To elucidate further it can be said that if the application of income or the expenses claimed by the trust or institution are found to be bogus or fraudulent then such activity involving application of income cannot be considered as genuine activity or an activity as per the objects of the trust or institution. Further, even if the application of income is genuine but the activity per se is not as per the objects of the trust or institution then in both the cases, the said trust or institution would be liable for cancellation of its status of exemption.

vi. If it is a finding of fact that the trust or institution are involved in non-genuine activity or activity that is not as per the objects of the trust as well as specified violations u/s 12AB, then the trust or institution will have to face its consequences in terms of cancellation of registration as charitable entity.”

5. Thereafter, ld. PCIT has dealt with the issue of incriminating documents found and seized during the course of search regarding receipt of cash back from salaries, PF stipend, receipt of capitation fee from students, statement of the employees recorded during the course of search, retraction of statements of the trust authority and denial of trustee of the trust Mr. Mehul B. Patel



about the statements of the trust staff. Ld. PCIT also dealt with the issue of seized material and has referred to various statements of employees and Pendrive found at the residential premises of Mr. Balaji Pandurang Alli, Chief Accountant. Relevant finding of ld.PCIT dealing with the core contentions of the assessee reads as under :

FINDINGS OF ld. PCIT(Central) :

“6.1 Receipt of cash back from salaries and stipend:

As already discussed in Para 2 of the show cause notice, perusal of the material seized during the search action shows that the assessee trust received cash back from the stipend paid to PG students and from the salaries paid to the doctors and staff employed with the assessee trust. It is clearly reflected from the contents of the spiral black coloured 'Luxor Premium Diary' found from the desk of Account section of the assessee trust and as explained by the Accounts officer of the assessee trust i.e. Shri Umakant Ramchandra Dhange in his statement recorded u/s 132(4) of the Act. He also accepted in this statement that the trustees/management received cash back from the stipend paid to PG students and salaries paid to the doctors and staff. He also accepted that the capitation fee in cash was taken from the students over and above their regular fees. Further, the above modus operandi also gets strengthened from the excel sheet found & seized from premise of Shri Balaji Pandurang Alli, Chief Accountant of the assessee trust. Shri Balaji Pandurang Alli, in his statement recorded u/s 132(4) also explained the data found in the excel sheet and also confirmed the above modus operandi of the assessee trust. Shri Rajanbhai Chimanbhai Patel whose name was frequently appearing in the excel sheet prepared by Shri Balaji Pandurang Alli, has also accepted the same modus operandi and has stated that Shri Pandurang kallepalli & Shri Umakant Dhange used to hand over the cash to him which was finally handed over to Shri Mehul B Patel or Shri Dhaval Patel (trustee of the assessee trust). The above facts are supported by the evidences in the form of bank account statements and copies of bearer cheques issued by doctors, staff, PG students to Cosmos Bank which were obtained from the bank. It is also noted that numbers of cheques used for such withdrawal from the account of one doctor were consecutive, which indicated that cheque book was solely used to give back part of the salary in cash. Otherwise there is no reason as to why numbers of such cheques which were used during different months in a year would be consecutive. There is no denial of the fact that Institute may be disbursing the salary/stipend to the doctors, staff and the PG students. But the evidences collected clearly indicate that part of the salary was taken back by the Institute run by the assessee trust every month and actual salary paid to them was less than the amount which was entered in the books of accounts kept by the Institute. This clearly establishes that the funds of the



Institute were misappropriated by the trustee Shri Mehul B. Patel and other trustees for their personal purposes.

6.2 Receipt of Capitation fee from students

The other issue is related to the fact that the assessee trust is taking capitation fee from students in lieu of granting admission, which is in violation of various laws. Various incriminating documents have been found during search action to establish this fact.

6.2.1 During the search action at the residential premises of Shri Balaji Pandurang Alli, Chief Accountant of the assessee trust, a purple coloured pen drive was found. The data found in the pen drive was analyzed. This pen drive had various excel sheets related to the capitation fee received in cash from students and year wise detail of capitation fee received is as under:

<i>F.Y. 2019-20</i>	<i>Rs.1,72,75,000/-</i>
<i>F.Y.2020-21</i>	<i>Rs.6,33,85,000/-</i>
<i>F.Y. 2021-22</i>	<i>Rs.5,19,40,000/-</i>

The contents and facts of these excel sheets were confronted to Shri Balaji Pandurang Alli. In his statement recorded u/s 132(4) of the Act, he accepted that these excel sheets were found during search at his residential premises. He also accepted that these excel sheets were prepared and maintained by him on the instructions of the trustee Shri Mehul B. Patel. He also accepted that these excel sheets contained financial transactions related to the assessee trust carried out on various dates during the last four years.

6.2.2 Further, Shri Pandurang Kallepalli, cashier of the assessee trust in his statement accepted that the Institute received capitation fee in cash from students. He also accepted that he collected cash and handed over the same to Shri Rajanbhai Patel (employee of Mehul Construction Company Private Ltd) and Shri Vilas Jadhav (office boy at Mehul Construction Company Pvt.Ltd.) on the instructions of Shri Balaji Pandurang Alli, Chief Accountant and Shri Umakant Ramchandra Dhage, Accounts Officer of the assessee trust. He also accepted that the Institute/management run by the assessee trust was taking cash back from the salary paid to doctors. As stated by Shri Pandurang Kallepalli, these facts were confronted to Shri Vilas Shankar Jadhav, office boy at Mehul Construction Company Pvt Ltd. He accepted that he collected cash from Shri Pandurang Kallepalli & Shri Umakant Dhage and handed it over to Shri Rajanbhai Chimanbhai Patel.

6.2.3 As the name of Shri Rajanbhai Chimanbhai Patel was mentioned multiple times in excel sheets maintained and prepared by Shri Balaji Pandurang Alli, these facts were confronted to Shri Rajanbhai Chimanbhai Patel, who is an employee of Mehul Construction Company Private Ltd. In his statement recorded u/s 132(4) of the Act dated 27/08/2022, he accepted that Shri Pandurang Kallepalli & Shri Umakant Dhage used to hand over the cash to him. He collected cash in the range of Rs. 20,00,000/- to Rs. 50,00,000/- on regular basis on instructions of Shri Mehul B. Patel, trustee of the assessee trust & Mr.



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Dhaval Patel and then he handed over the same cash to Shri Mehul B. Patel or Shri Dhaval Patel. He also accepted that the cash was generated from capitation fee received from students of the Institute run by the assessee trust against Quota Seats. He also confirmed that cash amounting to Rs. 2,86,00,000/- as reflected in the excel sheet was received by him.

In the light of the above facts, it is evident that the assessee trust had received capitation fee from students.

7. The assessee trust has made its submissions in response to the show cause notices as discussed above. After perusal of the submissions of the assessee trust, it is observed that the assessee trust has raised the following contentions:

- a) Challenge the jurisdiction of the Pr. CIT(C) to deal with the issue of cancellation of registration u/s 12AB(4).*
- b) Retraction of statements of the trust authority and denial by the trustee Shri Mehul Patel from the statements given by the employees of the trust authority. Commissioner or*
- c) Seized material and its evidentiary value cannot be conclusive proof without supporting of independent evidence.*
- d) Challenge the retrospective cancellation of Registration of Trust u/s 12AA.*
- e) Specific conditions being violated by the assessee trust have not been mentioned.*
- f) Assessments in few cases of doctors employed with the assessee trust have been completed without any adverse inference.*

I have considered the various evidences seized during the search proceedings and the facts emerging from the statements of various personnel recorded during search along with the submissions of the assessee. The various contentions of the assessee are being discussed as under:

7.1 Challenge the jurisdiction of the Pr. CIT(C) to deal with the issue of cancellation of registration u/s 12AB(4).

7.1.1 The assessee trust foremost raised the legal issue and has challenged the jurisdiction of the Pr. CIT(C) to deal with the issue of cancellation of registration u/s 12AB(4). The assessee has submitted that the Pr. CIT(C) has no jurisdiction to decide about the issue of registration u/s 12AA of the I.T. Act. Accordingly, the Pr. CIT(C) has no jurisdiction for de-registration of the trust u/s 12AB(4) of the I.T. Act.

7.1.2 In this regard, it is noted that there are three Notifications issued by the CBDT under section 120 of the Act in respect of the jurisdiction of



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the income tax authorities which may be relevant to decide this issue. These notifications are as under: -

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7.1.3 As per the Notification No.52/2014, Commissioner of Income-tax (Exemption), Pune exercises jurisdiction over all cases of persons in the territorial area of state of Maharashtra excluding Mumbai & Navi Mumbai claiming exemption under section 10,11, 12 13A & 13B of the Income-tax Act, 1961 and assessed or assessable by an Income-tax authority at serial numbers 225 to 227 and 236 to 241 specified in the notification of Government of India bearing number S.O. 2752(E) dated the 22nd October, 2014.

7.1.4 The Income-tax authorities mentioned at serial numbers 225 to 227 and 236 to 241 specified in the Notification of Government of India bearing number S.O. 2752(E) dated the 22nd October, 2014 are Principal Commissioners of Income-tax Nagpur- 1, Nagpur-2, Nagpur- 3, Pune-1, Pune-2, Pune-3, Pune-4, Pune-5, Pune-6. Hence the jurisdiction of Commissioner of Income-tax (Exemption), Pune is limited to the cases of persons in the state of Maharashtra excluding Mumbai & Navi Mumbai claiming exemption under section 10, 11, 12 13A & 13B of the Act and which are assessed or assessable by an Income-tax authority at serial numbers 225 to 227 and 236 to 241 as mentioned above.

7.1.5 The Notification No. 70/2014 dated 13.11.2014 provides for the jurisdiction of Principal Commissioner of Income-tax (Central), Pune. As per clause (b) of the notification, the Principal Commissioners/ Commissioners of Income-tax (Central) or Joint Commissioners of Income-tax subordinate to them, shall exercise powers and perform the functions as stipulated in the Income-tax Act, 1961 in respect of such cases or classes of cases or such persons or classes of persons, assigned to Assessing Officers subordinate to them, under section 127 of the said Act, from the date of publication of the notification. Explanation to section 127 of the Act reads as under:

"In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued there under, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

7.1.6 Reading of the notifications along with the provisions of the Act, the following points can be observed:

i) The CIT(Exemption), Pune does not exercise any jurisdiction in respect of the persons claiming exemption under section 10, 11, 12 13A & 13B of the Act which have been assigned to the Assessing Officers subordinate to Principal Commissioner of Income-tax (Central), Pune under section 127 of the said Act.



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ii) It means that once an order u/s 127 of the Act is passed transferring the jurisdiction of the person, the transferee Income-tax Authorities as mentioned in section 116 of the Act shall exercise all the powers and perform the functions as stipulated in the Act in respect of all the proceedings which may be commenced after the date of such order in respect of any year.

iii) Further, it is pertinent to mention herewith that Notification No. 52 issued by the CBDT u/s 120(1) and 120(2) of the Act only authorizes the Commissioners of Income Tax (Exemption) to exercise and perform all the functions in respect of cases or classes of cases specified therein. But this notification nowhere provides that power to grant/refuse the registration or cancel the registration u/s 12AA shall also be exclusively vested in the Commissioners of Income Tax (Exemption) only and no other Commissioner or Pr. Commissioner can exercise such power. However, power to grant/ refuse the registration or cancel the registration u/s 12AA shall be governed by the provisions of the Income Tax Act which specifically gives this power to Pr. Commissioner or Commissioner. Once a case is transferred u/s 127 of the Act, Pr. CIT (Central), shall exercise all the powers and perform the functions as stipulated in the I.T Act in respect of the case so assigned to Assessing Officers subordinate to him.

iv) A bare reading of the provisions of section 120 reveal that an AO has been vested with the jurisdiction to assess the income of an assessee by virtue of the directions issued by the Board under sub-section (1) or sub-section (2) of section 120 of the Act. The direction u/s 120(1) is given by the Board, for the exercise of the powers and performance of the functions by all or any of the Income-tax Authorities, as specified u/s. 116 of the Act. As per sub-section (2) of section 120 of the Act, the Board may delegate its powers to Income-tax authorities as specified in section 116, for issuing the orders in writing, for the exercise of the powers and performance of the functions by all or any of the other Income-tax Authorities who are subordinate to it.

7.1.7 Thus, it can be said that once an order u/s 127 of the Act is passed transferring the jurisdiction of the person, the transferee Income-tax Authorities as mentioned in section 116 of the Act shall exercise all the powers and perform the functions as stipulated in the Act in respect of all the proceedings which may be commenced after the date of such order in respect of any year and such power includes passing the order registering a trust and also cancelling the registration.

7.1.8 Further, the CBDT vide letter F.No.173/6/2024-ITA-I dated 19/01/2024 has explained that jurisdiction of the Matter pertaining to cancellation of registration u/s 12AA/10(23C) of the Income tax Act, 1961 in Trust cases by Pr.CIT other than CIT(Exemption) wherein stated as under:



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"by virtue of provisions of clause (b) of the notification no. 70/2014, S.O. 2915(E) dated 13.11.2014, the PCIT(C) has been empowered to perform/exercise powers and functions stipulated in the Act in respect of such cases or classes of cases or such persons or classes of persons, which were assigned to AO subordinate to him, under section 127 of the Act."

7.1.9 Assessee has relied upon the decision of Mumbai ITAT in the case of Heart Foundation of India vs CIT in which it has been held that PCIT Central has no jurisdiction to decide about the issue of registration u/s 12AA of the Income Tax Act. In this regard, it is brought on record that the case of Heart Foundation of India was being assessed at Pune (PCIT(Central), Pune) and Mumbai ITAT had wrongly decided the issue after the assessee chose to file appeal there. Against this order of ITAT Mumbai, a Miscellaneous application has already been filed before ITAT Mumbai and also writ has been filed in Hon'ble High Court, which are pending as on date.

Thus, the contention of the assessee that the Pr.CIT(C) has no jurisdiction to decide about the issue of registration u/s 12AA/12AB of the I.T. Act is not acceptable and is therefore, rejected.

7.2 Retraction of statements of the trust authority and denial of trustee of the trust Shri Mehul B Jain from the statements of the trust authority.

7.2.1 The issue involved is that as already discussed in para 2 of the show cause notice, perusal of the material seized during the search action shows that the assessee trust received cash back from the stipend paid to PG students and from the salaries paid to the doctors and staff employed with the assessee trust. It is clearly reflected from the contents of the spiral black coloured 'Luxor Premium Diary' found from the desk of Account section of the assessee trust and as explained by the Accounts officer of the assessee trust i.e Shri Umakant Ramchandra Dhange in his statement recorded u/s 132(4) of the Act. He also accepted in this statement that the trustees/management received cash back from the stipend paid to PG students and salaries paid to the doctors and staff. He also accepted that the capitation fee in cash was taken from the students over and above their regular fees. Further, the above modus operandi also gets strengthened from the excel sheet found & seized from premise of Shri Balaji Pandurang Alli, Chief Accountant of the assessee trust. Shri Balaji Pandurang Alli, in his statement recorded u/s 132(4) also explained the data found in the excel sheet and also confirmed the above modus operandi of the assessee trust. Shri Rajanbhai Chimanbhai Patel whose name was frequently appearing in the excel sheet prepared by Shri Balaji Pandurang Alli, has also accepted the same modus operandi and has stated that Shri Pandurang kallepalli & Shri Umakant Dhange used to hand over the cash to him which was finally handed over to Shri Mehul B Patel or Shri Dhaval Patel (trustee of the assessee trust). The above facts are supported by the material evidences in the form of bank account statements and copies of bearer cheques issued by doctors, staff, PG students to Cosmos Bank which were obtained from the bank. It is also noted that numbers of cheques used for such withdrawal from the account of one doctor were consecutive, which indicated that cheque book was solely used to



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give back part of the salary in cash. Otherwise there is no reason as to why numbers of such cheques which were used during different months in a year would be consecutive. There is no denial of the fact that Institute may be disbursing the salary/stipend to the doctors, staff and the PG students. But the evidences collected clearly indicate that part of the salary was taken back by the Institute run by the assessee trust every month and actual salary paid to them was less than the amount which was entered in the books of accounts kept by the Institute.. This clearly establishes that the funds of the Institute were misappropriated by the trustee Shri Mehul B. Patel and other trustees for their personal purposes and also that the income of the trust was being applied for the purposes other than the objects of the assessee trust.

7.2.2 The assessee has raised the contention that the basis of the whole proceedings of the cancellation of the registration granted u/s 12AA of the Act on 16/02/2001 are based on the statements of various authorities/staffs and doctors of the trust recorded during the course of search action. As most of the statements taken during the course of search have been retracted, thus cancellation of the registration granted u/s 12AA of the act cannot be initiated on the basis of retracted statements.

7.2.3 In this regard, the assessee trust has only enclosed the list of individuals who had not accepted that he/she had refunded back the amount in cash which was received from the trust in term of salary/stipend. The assessee trust has not brought any documentary evidence that deny the facts and the evidences gathered by the investigation wing during the course of search proceedings. The contention of the assessee trust cannot be accepted because of the following points:

i) In the statement recorded on oath u/s 132(4) of the Act, Shri Pandurang Kallepalli accepted that the assessee trust received capitation fee in cash from students. He also accepted that he collected cash and handed over to Shri Rajanbhai Patel (employee of Mehul Construction Company Private Ltd) and Shri Vilas Jadhav (office boy at Mehul Construction Company Pvt. Ltd.) on the instruction of Shri Balaji Pandurang Alli, Chief Accountant and Shri Umakant Ramchandra Dhage, Accounts Officer of the assessee trust. He also accepted that the Institute/ management run by the assessee trust was taking cash back from the salary paid to doctors.

ii) The statement of Shri Pandurang Kallepalli was confronted to Shri Vilas Jadhav (office boy at Mehul construction Company) and Shri Rajanbhai Patel (employee of Mehul Construction company) who also accepted that the Institute/ management run by the assessee trust was taking cash back from the salary paid to doctors. Further, in the statement recorded on oath, Shri Rajanbhai Chimanbhai Patel admitted that Shri Pandurang Kallepalli & Shri Umakant Dhage used to hand over the cash to him on regular basis, which was collected by way of the above modus.



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(iii) During search u/s 132, the statements of four doctors, one staff and four PG students were recorded in which they accepted that they parted with a portion of their salary every month in favour of the management through bearer cheques. They have admitted giving cash back from salary/stipend during the search action u/s 132 of the I.T. Act, 1961 dated 25.08.2022.

iv) The denial by other doctors, staff and students that they gave back the part of salary is incorrect on the face of it as during the post search investigation, cash withdrawals of specific amounts such as Rs.68,800/-, Rs.34400/-, Rs.27,700/-, Rs. 25000/-etc., were found from their bank account statements. It is a fact that livelihood of these doctors, staff was dependent on institute and its management. They cannot be expected to give a statement which might implicate the management and jeopardize their jobs. The retraction of their statements is naturally an afterthought and is not supported by the evidence gathered during search.

v) A perusal of the Panchnama prepared at the time of search in the case of the assessee at the premises of Ashwini Medical College and Hospital, Solapur clearly mentions that all these statements have been recorded in the presence of independent witnesses, statements have been recorded without any undue influence any or threat etc. and the same have been duly read over and understood by the persons whose statements were recorded. The responsible person from the side of the assessee (Dean of the institution in this case) along with both the independent witnesses has duly signed the Panchnama. This establishes the fact that the various persons whose statements were recorded had given the statements under oath in the presence of independent witnesses without any coercion or threat and had stated the facts in their statements voluntarily. This also shows that the subsequent retraction is done at the instance of the assessee only.

vi) Moreover, the retraction letters/affidavits filed by these various employees have also been perused. Some interesting and noteworthy observations are tabulated below:

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From the above Table, it can easily be seen that all the three employees i.e. Shri Pandurang Kallepalli, Sh. Balaji Pandurang Ali & Shri Umakant Ramchandra Dhage have given similar affidavits and the same have been notarized on the same day. The wording of their retraction affidavits is exactly same. The statement of the fourth employee Mr. Rajanbhai C. Patel is also on the same lines and is exactly worded. Similar is the case with the doctors. The stamp papers have been procured in running sequence number, on same date, notarized on same date and wording is also same. This proves the fact that these affidavits have been filed in a planned manner under the guidance, control and influence of their employer which is the assessee trust in order to generate evidence



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in favour of the assessee trust. In view of this, there is no reason to give any credence to these retraction affidavits.

vii) As already discussed, the seized documents and bank statements corroborate the fact that cash was being taken back from the various employees after disbursal of salaries/stipend. It clearly establishes that the income of the assessee trust was not wholly applied towards its objectives and was in fact being diverted for the benefit of individuals associated with it and thus, it can be concluded that the assessee trust was indulging in specific violation as defined in Explanation to section 12AB(4) of the Act. Moreover, since the application of income earned as discussed above by the trust or institution has been found to be fraudulent, therefore, its activities cannot be considered to be carried out as per the objects of the trust. Accordingly, the trust is liable for cancellation u/s 12AA of the Act also for the registration granted u/s 12A.

7.3 Seized material and its evidentiary value cannot be conclusive proof without support of independent evidence.

7.3.1 The assessee trust raised the contention that the seized material and its evidentiary value cannot be conclusive proof without the support of independent evidence and submitted that seized material represents print out taken from the seized pen drive from the residential premises of Shri Balaji Pandurang Ali which cannot be independently verified and are not supported by any conclusive proof. The contention of the assessee is not acceptable due to the following reasons:

(i) The assessee trust itself has not brought on record any document which ruled out the facts and evidence gathered by the investigation wing during search or post search. The assessee trust has not submitted any evidence to counter the facts/entries found recorded in the Excel sheet which was maintained by Shri Balaji Pandurang Ali.

(ii) Based on the post search investigation, it has been concluded that the withdrawals of fixed amounts in cash by bearer cheques within 2-3 days of credit of salary by employees of institute corroborates the modus operandi adopted by the institute to inflate salary expenses. The above facts are further supported by the evidences in the form of bank account statements and copies of bearer cheques given by doctors, staff, PG students in Cosmos bank which were obtained from the bank. It is also noted that numbers of cheques used for such withdrawal from the account of one doctor were consecutive, which indicated that cheque book was solely used to give back part of the salary in cash by way of cash withdrawal.

(iii) There is no denial of the fact that the institute may be disbursing the salary to the doctors, staff, PG students as prescribed by the rules in these regards. But the evidences collected clearly indicate that part of the salary was taken by the management of the college every month and actual salary paid to



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them was less than the amount which was entered in the books of accounts kept by institute. The only conclusion which can be drawn is that funds of the institute were misappropriated by the trustee Shri Mehul Patel and other trustees for their personal purposes.

(iv) It is apparent that the institute is being run by Shri Mehul Patel and his family members as a family venture. The funds of the institute have been diverted for personal use of Mr. Mehul Patel and his family members/trustee. The books of account of the society were manipulated and window dressed to hoodwink the department. These funds could have been used for educational and health service purposes, to improve the quality of education and health and for reducing the education and health service cost for the weaker sections of the society. However, the members of the society have used it as a tool to earn profits for their personal benefit. The institute has not applied its income wholly and exclusively to the aims and objects for which it is established.

(v) During post search investigation, the DDIT(Inv.) Unit-III(4), Solapur requisitioned various bank account statements. Further, copies of bearer cheques which were used to withdraw cash from accounts of salaried doctors, salaried staff and PG students were obtained from respective Banks. Following facts were found from these bank statements and copies of bearer cheques:

(a) There were regular cash withdrawals in the pattern of Rs. 68,800/- and Rs. 34,400/- in case of salaried doctors of the Institute run by the assessee trust. Also, regular cash withdrawals of Rs.27,500/- were found in cases of salaried staff of the Institute run by the assessee trust. From the bank account statements of PG students of the Institute run by the assessee trust, periodic cash withdrawals of Rs. 10,000/-, Rs.30,000/- and Rs.25,000/- were found.

(b) These cash withdrawals were within 2-3 days after the credit of salary / stipend in their respective bank accounts.

(c) Bearer cheques were used to withdraw cash. Signatures on the back side of bearer cheques were of persons i.e., Mr.Kisan Mittha, Mr.Narendra Irabatti, Mr.Mahesh Upase etc. These persons are the employees of the assessee trust.

(d) In the bank account statement of Dr. Vinayak Dhotre & Dr. Surekha Kaladi, doctors working in the Institute run by the assessee trust, it is found that there were regular withdrawals of cash of Rs.68,800/- within 2-3 days of credit of salary in their bank accounts.

(e) Further, copy of a bearer cheque was obtained from bank in which the signature of employee of assessee trust Mr. Narendra Irabbatti was found on the back side. It proves the fact that the employee named Mr.Narendra Irabbatti withdrew the cash from respective bank.



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- (f) *In the bank account statement of Mrs. Savita Kavalgi, staff working in the Institute run by the assessee trust, there was regular withdrawal of cash of Rs. 18,760/ within 2-3 days of credit of salary in her bank account.*
- (g) *In the bank account statement of Mr. Yogesh Kumar Patel, staff working in the Institute run by the assessee trust, there was regular withdrawal of cash of Rs. 27,700/- and Rs.28,700/- within 2-3 days of credit of salary in his bank account.*
- (vi) *Similarly, the issue with respect to charging of Capitation fees by the assessee trust from the students at the time of admission is supported by the following corroborative evidences:*
- (i) *During the search action at the residential premises of Shri Balaji Pandurang Alli, Chief Accountant, a purple coloured pen drive was found wherein excel sheets related to the capitation fee received in cash from students was found. In his statement recorded u/s 132(4) of the Act, he accepted that these excel sheets were found during search at his residential premises. He also accepted that these excel sheets were prepared and maintained by him on the instructions of the trustee Shri Mehul B. Patel.*
- (ii) *Further, Shri Pandurang Kallepalli, cashier of the assessee trust in his statement accepted that the Institute received capitation fee in cash from students. He also accepted that he collected cash and handed over the same to Shri Rajanbhai Patel (employee of Mehul Construction Company Private Ltd) and Shri Vilas Jadhav (office boy at Mehul Construction Company Pvt. Ltd.) on the instructions of Shri Balaji Pandurang Alli, Chief Accountant and Shri Umakant Ramchandra Dhage, Accounts Officer of the assessee trust. These facts were confronted to Shri Vilas Shankar Jadhav, office boy at Mehul Construction Company Pvt Ltd & Shri Rajanbhai Chimanbhai Patel and they accepted the same.*
- (iii) *In his statement, Shri Rajanbhai Chimanbhai Patel has accepted that he collected cash in the range of Rs. 20,00,000/- to Rs. 50,00,000/- on regular basis on instructions of Shri Mehul B. Patel, trustee of the assessee trust & Mr. Dhaval Patel and then he handed over the same cash to Shri Mehul B. Patel or Shri Dhaval Patel. He also accepted that the cash was generated from capitation fee received from students of the Institute run by the assessee trust against Quota Seats. He also confirmed that cash amounting to Rs. 2,86,00,000/- as reflected in the excel sheet was received by him.*

7.3.2 *Assessee has relied upon the case law of ITAT Mumbai in the case of Krishna D. Pawar vs ITO in which it has been held that*



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statement of college authorities is not sufficient to make addition in the hands of person giving capitation fee. This case is not relevant in the assessee's case as search was conducted in the case of assessee trust itself and all the material evidences have been found from the premises covered under search action in its case only.

Thus, the contention raised by the Assessee Trust that the seized material and its evidentiary value cannot be conclusive proof without support of independent evidence is not acceptable. These facts have been certified further by the statements given by the doctors, students & staff members and the persons responsible for collection and delivery of cash so received by way of capitation fees and/or cash back received from salaries/ stipends.

7.4 Challenge the retrospective cancellation of Registration of Trust u/s 12AA.

7.4.1 The assessee trust raised the contention that as per the provisions of section 12AA of the Act, cancellation of registration is possible on happening of any of the event contemplated in section 12AA(4)(a) and (b). There is no provision for cancellation of registration retrospectively with effect from the date of registration contemplated in the notice issued. The contention of the assessee is not acceptable due to the following reasons:

(i) Provisions of section 115TD of the Act which tax the entire accreted income upon cancellation of registration also suggest that the registration is to be cancelled from the time of violation itself irrespective of the year when such specific violation has been noted or detected.

(ii) At the time of granting registration, except for the stated objects and purpose of the trust, the fulfillment of other conditions for continuance of registration cannot be verified. It is imperative that the fulfillment of these conditions must be tested, when after grant of the registration, the violation of any condition is found or conditions of the registration itself get vitiated. Hence, cancellation of registration is required to be made for the period when the violation was done and not from the date when the violation was detected. If the withdrawal of registration was to be done only prospectively from the date of detection of violation then the exemption already availed for the period when there was violation which was detected subsequently would get allowed by default. It will prompt the unscrupulous trusts to violate the conditions of registration u/s 12AA with impunity till it is detected and withdrawn from a prospective date. This is neither the intention of the Act nor such interpretation is permissible, which allows the mischief to succeed even for the period for which the conditions are not found to be fulfilled on ground that the registration can be cancelled only prospectively w.e.f. the date of detection of violation.



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(iii) Hon'ble Karnataka High Court in a Writ Petition No. 3468-3472/2018 in the case of Navodaya Education Trust v. UOI has observed as under:

"As far as the withdrawal of the approval with effect from 01/04/2009 is concerned, even that cannot be assailed, because the evidence and material discussed in detail in the impugned order reflect such entries in the Books of Accounts which reflect illegality having existing on record right from the Financial Year 2010-11 onwards and therefore the illegalities and transactions offending the said provisions cannot be split or bifurcated for the period in question only after the search and seizure operations were carried out on 16.12.2015 and the illegality cannot be allowed to be perpetuated for the preceding periods for which such evidence pointing out the illegalities exist on record".

(iv) In the case of U.P. Distillers Association (IT Appeal 830 of 2017), Hon'ble Delhi High Court has held that the cancellation can be made from the retrospective date.

(v) Hon'ble ITAT Bangalore in the case of Vidya Sewa Sangathna v. CIT Hubli, 71 Taxmann.com 152 has held that by way of amendment introduced by Finance Act, 2010 with effect from 01.06.2010, Commissioner is empowered to cancel registration granted to assessee-trust under section 12A with retrospective effect subject to conditions specified in section 12AA(3).

7.4.2 Assessee had questioned that registration granted u/s 12A cannot be cancelled u/s 12AB of the Act. In this regard, assessee was issued another show cause notice on 20/03/2024 asking it to show cause as to why its registration granted u/s 12A of the Act may not be cancelled u/s 12AA(3)/12AA(4) of the Act from 01/04/2019 to 31/03/2021.

7.5 Specific conditions being violated by the assessee trust have not been mentioned:

The assessee trust has contended that the show cause notices does not mention any specific violations made by the assessee trust which makes it liable for cancellation of registration. In this regard, it is to be observed that in the show cause notice dated 21/07/2023, the nature of specified violations along with corresponding incriminating documents and relevant documents have been discussed elaborately. It is also mentioned that there is occurrence of specified violation as defined in clause (e) (ii) & (f) of the Explanation below section 12 AB(4) of the Act. For other violations, although specific sections (12AA/12AB) or provisions may not have been mentioned, but the violations done by the assessee trust along with corroborating evidence has been discussed in detail. Therefore, the contention of the assessee trust is found to be without any basis.

7.6 Assessments in few cases of doctors employed with the assessee trust have been completed without any adverse inference.



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The assessee has also submitted that in case of 08 doctors and employees working with the assessee trust, assessments have been completed by accepting returned income and no evidence of cash received back from the salary paid to doctors/stall has been found while passing the assessment orders.

The submission of the assessee trust has been considered. On perusal of the assessment orders of few doctors and employees submitted by the assessee, it is seen that the AO has held that in the returns of income, these doctors/employees had shown entire salary received from employer i.e. the assessee trust and no evidence of cash received by them from the assessee trust has been found. Out of these 08 doctors/employees referred by the assessee, statements of Dr. Chandrakant Sahebrao Waghmare and Dr. Ashok Kumar Rajput were recorded during the search proceedings and they had accepted that they had returned part of salary in cash to the Institute /management. It was also confirmed that they had handed over the blank bearer cheques with their signatures to Shri Balaji Pandurang Alli. It is pertinent to mention here that same modus operandi was confirmed by Dr. Nilesh Madhav Bhosale & Dr. Abdul Kayyum Shaikh and they have not retracted their statements. The evidence gathered by the Investigation team during the post search enquiry found that there were regular cash withdrawals in the pattern of Rs. 68,800/- and Rs. 34,400/ in case of salaried doctors of the institute run by the assessee trust and also regular cash withdrawals of Rs. 27,500/- in case of salaried staff of the institute.

Further, these cash withdrawal were made within 2-3 days after the credit of salary/stipend in their respective bank accounts. Moreover, it is also pertinent to mention here that in the assessment proceedings of these individual employees, the AO has observed that no evidence of cash received by these employees over and above their salaries from the assessee trust has been found. It is not mentioned that these employees have not paid back part of their salaries to the assessee trust.

In view of the above facts, the contention raised by the assessee trust is not acceptable.

8. To conclude, it is evident that the assessee trust is not applying its income wholly and exclusively for the objects for which it is established but using it directly or indirectly for the benefits of its trustees Shri Mehul B. Patel and other members of the trust. It also shows that the expenses claimed by the assessee trust have been inflated and subsequently, diverted for the purposes other than those related to the objects of the assessee trust. Thus, it can be concluded that the activities of the assessee trust are not being carried out in accordance with its aims and objects and also not in accordance with the conditions subject to which it was approved. In view of the above stated facts, it is clear that there are occurrence of specified violations as defined in clause (a) and also clause (e) (ii) of the Explanation below section 12 AB(4) of the Act. For the years prior to FY 2021-22, these violations are coming in the purview of Clauses (a) and (b) of Section 12AA(4) of the IT Act. As stated in the show cause notice also, the incriminating material found during search



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has reflected such violations during the financial years 2019-20 onwards (refer Para 2.4 above). Accordingly, the assessee trust is liable for cancellation of registration granted u/s 12A/12AA from FY 2019-20 to FY 2020-21 u/s 12AA(4) and subsequent to that i.e. for FY 2021-22 onwards, the registration granted u/s 12AB is liable to be cancelled u/s 12AB(4) of the Act.

6. Finally, Id.PCIT (Central) cancelled the registration u/s.12A/12AA for F.Y. 2019-20 to F.Y. 2020-21 and also the one granted u/s.12AB from F.Y. 2021-22 onwards and the final conclusion drawn by the Id. PCIT (Central) is reproduced below :

“In view of the above stated facts, it is clear that there is occurrence of specified violation as defined in clause (e) & (f) of Explanation below section 12 AB(4) of the Act since the assessee trust has not complied with the conditions mentioned at clauses m and p of Column 10 of Form 10AC vide which it was granted registration u/s 12A(1)(i)(ac) of the Act. Moreover, it is also established as discussed above in detail that the assessee has not carried out its activities for the objects for which it was constituted as it has not utilized its funds for its objects but for the personal benefit of its members. Therefore, its activities cannot be said to be genuine and it cannot be said that the assessee has carried out its activities in accordance with its objects. This fact makes the assessee trust liable for cancellation of registration as per the provisions of section 12AA(3) and 12AA(4) of the Act also(prior to 01/04/2021).

10. I am, therefore, of the considered opinion that the activities of the assessee trust cannot be held genuine as there is found to be diversion of income of the assessee trust for purposes other than the Objects of the trust. Moreover, there is violation of other laws as already discussed above. All these violations clearly come within the ambit of provisions of section 12AA(3) and 12AA(4) and clauses (a), (e)(ii) and (f) of Explanation below section 12AB(4) of the Act.

11. In view of the above facts and the legal position as discussed above and after taking into consideration the submission of the assessee, it is held that the activities of the assessee trust are not genuine and there are violations of other laws along with diversion of income for the purposes other than that of the assessee trust. As the evidences and material discussed in detail in this order reflect the assessee trust has been indulging in above discussed violations from F.Y.2019-20 onwards, hence, the registration of the assessee trust granted u/s 12A/12AA from F.Y. 2019-20 to F.Y. 2020-21 is hereby cancelled u/s 12AA(3) rws 12AA(4) with effect from 01/04/2019 till 31/03/2021 and subsequent to that i.e. from FY 2021-22 onwards, the registration granted u/s 12A rws 12AB is hereby cancelled u/s 12AB(4) of the Act.”

7. Aggrieved assessee preferred appeal before this Tribunal by raising various grounds extracted above in para 2.



8. Before us, Ld. Counsel for the assessee filed the Master synopsis of the case which include detailed submissions and the same is as follows :

“1.9. Old registration u/s 12A - Appellant has availed registration u/s 12A(2) of the ITA, 1961 on 16/2/01. Copy of registration certificate is given at Page 1 of Paper-Book-1.

1.10. New registration u/s 12AB - Appellant has also availed registration in the new regime applicable from 1/4/2021 onwards. Appellant was granted registration u/s 12A(1)(ac)(i) on 28/5/21. Copy of the 12A registration certificate is given at Page 2 of Paper-Book-I.

1.11. Search proceedings - Search proceedings were initiated on 25/8/2022 in case of Mehul Group, and during the said search, "a" was also included. The "a" trust has been ensuring proper tax compliances in a timely manner. During the course of search, some documents in hard copy form/ soft copy form (Diary page / Pen Drive, etc.) were seized by the I-T authorities.

1.12. Statements recording During the course of search, statements of various persons were recorded. These person in their statement, admitted that, practice of handing over part of salary / stipend to the "a" trust officials, through bearer cheques, exists. One of the persons interrogated during search proceedings admitted payment of higher fees (i.e. four times of regular fees). For institutional quota, charging of higher fees is permissible. However, majority of the statements were retracted thereafter through sworn affidavits, by giving detailed reasons. Retraction affidavits were made two months time from the date of search. Copies of search statements and retraction affidavits are filed in Paper-Book-II.

1.13. Cancellation of registration Based on the seized documents (soft form and Diary page), and based on various statements recorded u/s 132(4), assessment proceedings were initiated. During the course of assessment proceedings, learned PCIT-CC initiated proceedings for cancellation of registration granted u/s 12A and 12AB. Replies of "a" were sought for. Appellant filed it's objections on technical aspects as well as on merits. However, learned PCIT-CC proceeded with the show cause notices and cancelled registration granted u/s 12A as well as u/s 12AB.

1.14. Challenge to cancellation Appellant has raised various grounds of appeal, challenging the order of learned PCIT(Central). In support of the various grounds of appeal, Appellant has raised various contentions, which can be considered in three main issues i.e.:

a) Challenge to jurisdiction assumed by learned PCIT (not pressed)



- b) Challenge to powers available in section 12AB
c) Challenge to cancellation of registration on merits of the Appeal

2. Powers u/s 12AB(4)

[Key points / issues related to powers available u/s 12AB(4) are summarized as below]

2.1 Summary chart of original position of sections related to charitable trust, and changes in these sections from time to time, is enclosed herewith and marked as Annexure-1.

2.2 Earlier, Registration was granted u/s 12A/ 12AA.
w.e.f. 1/4/2021, Registrations is granted only u/s 12AB.

In the new section 12AB(4), no any direct/indirect power is available for cancelling registration u/s 12A. Learned PCIT has used such powers which are not bestowed upon him by the law.

(Similar situation arose in section 12AA, where, prior to year 2010, there was no power to cancel registration u/s 12A. Arguments were raised by I-T department that, cancellation of registration u/s 12A is an inherent power, and there is no need of any separate power to be granted. These arguments were rejected by the apex court in case of *Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. (2018) 90 taxmann.com 281 (SC)* observing that, order of grant/cancellation of registration of EXEMPTION, is a quasi-judicial order; and that; power for passing such order ought to be expressly granted by Legislature. In absence of express power, 12A registration can't be cancelled u/s 12AA.

Exactly similar factual matrix prevails now. Under section 12AB(4), only, registrations granted u/s 12AA and 12AB cases are covered for cancellation. In other words, u/s 12AB, no power is bestowed for cancellation of registration u/s 12A).

2.3 Cancellation of registration should be only for such years, for which, "specified violation" exists. In present case, alleged irregularity relates to AY 2020-21 onwards. Now, "Specified violation" are applicable from AY 2022-23 (and not for earlier years). For earlier years, criteria of "Specified Violations" can't be applied. This issue remained to be considered by learned PCIT.

2.4 Registration cancellation for "specified violations" is plausible only when, the PCIT is satisfied about the same. Point of PCIT, reaching a "satisfaction" stands at a higher pedestal, compared to earlier pedestal (say)

- ..AO has reason to suspect...
- .. AO has reasons suggesting escapement...
- ..AO is of the opinion..
- .. AO has reason to believe, etc.



In present case, point of "satisfaction" is not reached. Statements recorded during the course of search have been retracted within two months time after search. Copies of all retraction Affidavits were filed on record. Same have been summarily brushed asides. Conclusions have been reached on mere suspicion of alleged irregularities.

2.5 Issue of cancellation of registration u/s 12AB ought to be tested at the end of Assessment proceedings (especially when, the Assessment proceedings are ongoing). Reason being that, issues of alleged irregularity gets elaborated /explained in detail during the scrutiny proceedings. Cancellation of registration, prior to completion of Assessment proceedings is premature step.

2.6. Key issue - Powers exercised and used by learned PCIT(Central) Learned PCIT(Central) has issued two (2) Show-Cause notices to the Appellant before proceeding to cancel the registration u/s 12A and u/s 12A(1)(ac) (i) of the ITA, 1961. While so doing, following fatal errors have crept into the actions/decisions of the learned PCIT(Central). For the sake of simplicity, these two notices are dealt with separately as follows:

A. 1" notice issued u/s 12AB(4) dated 21/7/2023 Copy of the said notice is given at Page-8 of the Paper-Book. As per para-5 of the said notice, it appears, learned PCIT(Central) has alleged that "specified violations" enumerated u/s 12AB(4) have taken place in case of the Appellant. Now, as per facts, Appellant has received two registrations as under -

- (i) U/s 12A on 16/2/2001*
- (ii) U/s 12AB on 28/5/2021*

No power to cancel registration u/s 12A dated 16/2/2001 - From Para-1 and Para-7 of the said notice dated 21/7/2023, it transpires that, learned PCIT(Central) has targeted / objected to registration granted u/s 12A of the ITA, 1961 on 16/2/2001. Perusal of section 12AB(4) reveals that, power to cancel registration u/s 12A does not exist u/s 12AB(4). Hence, the conclusion of disturbance of 12A registration is besides the bestowed powers.

No mention of cancellation of registration granted u/s 12AB(1) in the notice dated 28/5/2021 - As further transpires, no specific reference to registration granted on 28/5/2021 exists in the said notice dated 21/7/2023. This leads to a fatal shortcoming, making the all subsequent actions/inferences bad in law. After all, act of grant of registration and act of cancellation of registration are, quasi-judicial processes. Presence or absence of particular section of registration, can't be assumed in the related notices. Hence, in absence of any mention of registration granted on 28/5/2021, cancellation of the same becomes totally incorrect.

Suspicion w.r.t. "specified violations" - Further, while alleging that Appellant has committed 'specified violations", learned PCIT(Central) has not taken cognizance of:



a. "denial" of Mr. Mehul Patel, Managing Trustee of the Appellant, as regards involvement of the Appellant / and any Trustee, in the alleged irregularities stated by the I-T authorities at the time of search itself

b. "retractions" of the employees of the Appellant within two months from search date (whose statements were recorded and relied heavily by the learned PCIT (Central))

c. "retractions" made by various doctors and students of the Appellant within two months from search date [whose statements were heavily relied upon by the learned PCIT(Central)]

d. Explanation / submissions made by Appellant that, no any unaccounted asset/property/cash, etc. was found in residential premises of "trustees"

Hence, the decisions based on the 1st notice dated 21/7/2023 are mere suspicions/assumptions/presumptions and hence, not as per law.

B. 2nd notice issued u/s 12AA(3) and u/s 12AA(4) dated 20/3/2024

Copy of the said notice is given at Page 25 of the Paper-Book. Perusal of the said notice reveals that, learned PCIT(Central) has used powers u/s 12AA on 20/4/2024.

It will be relevant to note wording of section 12AA(5) in this regard. The said sub-section reads as under

"12AA(5) - Noting contained in this section shall apply on or after the 1st day of April 2021."

From a literal reading of the above sub-section, it transpires that, the old procedure of registration/cancellation of registration, u/s 12AA, has ceased from 1/4/2021. Further, from reading of section 12AB, it transpires that, new procedure of registration / cancellation of registration has been triggered from 1/4/2021.

In consonance with the above section, reference to section 12AB(4) also needs to be made. As per the said section 12AB(4), powers have been granted to cancel registration granted u/s 12AB(1) as well as u/s 12AA(1)(b) of the ITA, 1961. As such, all pending 12AA application cases get migrated u/s 12AB(4) as regards the aspect of cancellation of registration. It transpires thus that, all cases of cancellation of registration granted u/s 12AA have been specifically transferred to section 12AB(4). Now, once this new mechanism triggers from 1/4/2021; the use of powers u/s 12AA(3) and 12AA(4) by the PCIT(Central) is incorrect and besides the law.

Secondly, the learned PCIT(Central) has made reference to "specified violations" u/s 12AB(4). The violations referred to u/s 12AA(3) and



12AA(4) are not "specified violations" per se, by its "title" as well as "contents".

As such, the powers assumed, and decisions based on 2nd notice dated 20/3/2024 are also not as per law.

C. Passing of a combined order (without prejudice to main challenges)
Learned PCIT(Central) has also erred in passing a combined order u/s 12AA and u/s 12AB. As per the legal principles, when, any quasi-judicial order is to be passed under a specific section, such as order ought to be independent of any order required to be passed under some other section. Now, both the sections, i.e. 12AA and 12AB required, an "ORDER" to be passed. Such an express mandate requires / deserves, separate orders to be passed. Yet, learned PCIT(Central) has passed a combined order, thus, mixing up of powers under two sections. It is usual / normal experience that, separate penalty orders are passed for violations u/s 271(1)(c) and 2718 and 271D and 271(1)(b)... and so on. An exercise of missing two separate orders under one common order, is besides the law and wholly incorrect.

D. Mis-match of authorities (without prejudice to main challenges)
From a collective perusal of sections 12AA/12AB, etc. it reveals that, power to cancel "registration" u/s 12A/12AA/12AB exists with the same authority which grants the same. A similar view emerges from the combined reading of CBDT notification dated 1/4/2021 and 9/5/2022. Copies of the said notifications are enclosed in the Paper-Book. As such, exemption granted by regular CIT/CIT(E) / CIT (CPC) cannot be cancelled by PCIT(Central) in any case

3. Merits of the case

3.1. Statements recording and their subsequent retraction

Copies of statement u/s 132 of the ITA, 1961 of employees, doctors, students are given at page 122 to 281 of Paper-Book-II. It is submitted that, statements were recorded under extreme pressure situation. Statements were misunderstood / misconstrued while passing the order dated 27/3/2024. It is submitted that the statements are retracted by majority of the persons. Copies of retraction of statements u/s 132 of the ITA, 1961 is given at Page 282 to 354 of the ITA, 1961. All retraction affidavits are brushed aside and not considered in their proper perspective.

3.2. Premature act to cancel 12A when assessment proceedings are ongoing

The learned PCIT, CC has assumed the jurisdiction for cancellation of 12A registration of the appellant. It is submitted, learned PCIT ought to have considered various issues as will transpire from assessment proceedings. Now, in the assessment proceedings, additions can be made to the income of the appellant, if any irregularities emerge. Further, from a better perspective, such irregularities (if any), ought to be restricted only to the issue involved. And in no case, the remaining income of the trust/society should be affected by way of denying the



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benefit of exemption u/s 11 & 12 of the Act. In this regard, the appellant would like to place reliance on *Shri Jairam Education Society vs Pr. CIT(Central)/ACIT(Central)-II* (ITA Nos.90 & 548/Ind/2019) wherein the Hon'ble ITAT, Indore Bench have held as follows:

15d. In view of the above discussion with regard to ground no.1 2 & 6 of the assessee's appeal, in light of the judgments and decisions referred herein above settled and judicial principles, we are of the considered view that firstly, Ld. Pr. CIT erred in cancelling the registration with retrospective effect from 01.04.2008 and secondly, we are also of the view that Ld. Pr. CIT erred in cancelling the registration u/s 12AA(3) and 12AA(4) of the Act without placing any material evidences which could indicate that the assessee society was not running for the charitable objects for which it was established and nor any doubt has been raised about genuineness of the activities carried out by the assessee society with regard to imparting of education and carrying out charitable activities. So far as, the issue arising out of the loose papers is concerned in this case alleging that the fund of the assessee society have been misappropriated by the members of the society or there is any ambiguity in the claim of expenses, it can well be taken care of at the time of assessing the income and if needed the additions can be made to the income of the assessee and the same should be restricted only to the issue involved. However in no case the remaining income of the trust/society should be affected by way of denying the benefit of exemption u/s 11 & 12 of the Act. We accordingly allow ground no.1 2 & 6 of the assessee's appeal.

Full copy of the above referred judgement is already submitted during the course of hearing.

3.3. Emerging trend of denial of exemption only to the extent of violations Appellant relies upon decisions of jurisdictional High Court in following cases -

-*Audyogik Shikshan Mandal* [2019] 101 taxmann.com 247 (Bombay)

-*Maharashtra Academy of Engineering and Educational Research* taxmann.com 290 (Bombay) 161

(Appellant has submitted copies of the above decisions during the course of hearing).

In these cases, Hon'ble Bombay High Court, after considering views of various other High Courts, has laid down that, exemption u/s 11 ought to be denied only to the extent of violative portion. Similarly, Appellant has referred to section 13(1) and 115BBI, wherein, withdrawal of exemption only for violative part is provided for. This changing principle of the I-T law has been glossed over by learned PCIT-CC.”



9. Further, ld. Counsel for the assessee referred to legal compilation of case laws running into 206 pages and also relied on the following decisions :

1. *Shri Jairam Education Society Vs. PCIT – ITA Nos.90 & 548/Ind/2019, dated 13.10.2021*
2. *CIT (Central) Vs. Shikshan Prasarak J Mandali (2017) 86 taxmann.com 7 (Bombay)*
3. *CIT(Exemptions), Pune Vs. Audyogik Shikshan Mandal (2019) 101 taxmann.com 247 (Bombay)*
4. *Maa Jagat Janani Seva Trust Vs. CIT(E) – ITA No.248/CTK/2023, dated 16.07.2024*
5. *Shri Shridevi Charitable Trust Vs. PCIT – ITA No.709/Bang/2023, dated 26.07.2024*

10. On the other hand, ld. Departmental Representative apart from supporting the detailed finding of the ld.PCIT as extracted supra has also referred to the following case law compilation in favour of the Revenue :

1. *Siddharth Gupta Vs. Principal Commissioner of Income-tax (2023) 150 taxmann.com 399 (SC)*
2. *Principal Commissioner of Income-tax Vs. Mehndipur Balaji (2023) 147 taxmann.com 201 (Allahabad)*
3. *Commissioner of Income-tax Vs. MAC Public Charitable Trust (2022) 144 taxmann.com 54 (Madras)*
4. *Nayyar Patel Vs. Assistant Commissioner of Income-tax (2022) 137 taxmann.com 149 (Kerala)*
5. *Bannalal Jat Constructions (P) Ltd. Vs. Assistant Commissioner of Income-tax (2019) 106 taxmann.com 128 (SC)*
6. *Sri Vidyaranya Seva Sangha Vs. Commissioner of Income-tax (2016) 71 taxmann.com 152 (Bangalore-Trib.)*
7. *U.P. Distillers Association Vs. Commissioner of Income-tax (2018) 99 taxmann.com 389 (Delhi)*
8. *Sinhgad Technical Education Society Vs. Principal Commissioner of Income-tax (2023) 149 taxmann.com 227 (Pune Trib.)*
9. *Travancore Education Society Vs. Commissioner of Income-tax (2016) 66 taxmann.com 362 (Kerala)*
10. *Navodaya Education Trust Vs. Union of India (2018) 90 taxmann.com 148 (Karnataka)*
11. *Karnataka Chamber of Commerce and Industry Vs. Commissioner of Income-tax (2021) 126 taxmann.com 21 (SC)*
12. *Dr. Bhim Rao Ambedkar Educational Society Vs. Commissioner of Income-tax (2017) 88 taxmann.com 524 (Allahabad)*
13. *Commissioner of Income-tax Vs. Batanagar Education and Research Trust (2021) 129 taxmann.com 30 (SC)*



14. *Young Indian Vs. Commissioner of Income-tax (2019) 111 taxmann.com 235 (Delhi Trib.)*

11. We have heard the rival contentions at length and perused the record placed before us. The assessee which is a Public Charitable Trust and running a Medical College, Hospital and Research Centre was subjected to search u/s.132 of the Act carried out on 25.08.2022 and certain documents alleged to be incriminating in nature were found and seized. Assessee trust enjoys registration u/s.12A of the Act granted on 16.02.2001 which was subsequently renewed u/s.12AB(1) of the Act w.e.f 01.04.2021. During the pendency of the assessment proceedings subsequent to carrying out of the search, ld. PCIT on the basis of a reference received from ld. AO under second proviso to section 143(3) of the Act carried out the proceedings so as to examine whether the assessee has made any 'specified violation' as defined in clause (f) of Explanation to section 12AB(4) of the Act and also issued show cause notice in this regard to the assessee as to why registration u/s.12A/12AA be not cancelled. In reply, the assessee made multifold contentions challenging the jurisdiction of the ld. PCIT of passing the order of cancellation u/s.12A, 12AA and 12AB(4) of the Act, the powers of the authority u/s.12AB(4) of the Act to cancel the registration granted u/s.12A of the Act, merits of the case contending that the allegations made against the assessee trust of receiving refund of cash in lieu of expenses incurred towards staff salary, doctors salary, PG stipend as well as receiving capitation fees are merely based on the statement of employees which have been subsequently retracted and the Pendrive and loose document found at the residential premises of employee has also been retracted at the subsequent stage and that the Managing Trustee of the assessee trust has denied



to be indulged into any of such alleged transaction in the statement given during the course of search. However, the assessee failed to succeed before ld.PCIT and now the assessee is in appeal before this Tribunal raising multifold contentions, mainly the following three issues :

- a) *Challenge to jurisdiction assumed by learned PCIT*
- b) *Challenge to powers available in section 12AB*
- c) *Challenge to cancellation of registration on merits of the Appeal*

12. Before us, ld. Counsel for the assessee has not pressed the issue challenging the jurisdiction assumed by ld.PCIT. Thus, Grounds of appeal No.1 and 2 raised by the assessee are dismissed as 'not pressed'.

13. Now we take up the second issue challenging the powers available in section 12AB of the Act. Ld. Counsel for the assessee while raising the issue of challenging the powers available in section 12AB of the Act made threefold contentions and the same are :

- (a) *that in absence of express powers provided u/s.12AB of the Act for cancelling the registration u/s.12A of the Act, notice issued on 21.03.2023 u/s.12AB(4) of the Act is invalid and void ab-initio.*
- (b) *that second notice issued on 20.03.2024 u/s.12AA(3)/ 12AA(4) is also void ab-initio as nothing contained in section 12AA(5) of the Act shall apply on or after 01st day of April, 2021.*
- (c) *that since no specific conditions were mentioned in the registration given u/s.12A and the renewed registration u/s.12AB(1) of the Act except for carrying out the genuine activities, ld. PCIT erred in cancelling the registration given u/s.12AB(1) of the Act alleging 'specified violation' without considering that the 'specified violation' word has been inserted from 01.04.2022 and the allegation against the assessee are for F.Yrs. 2019-20 to 2021-22.*

14. Now we take the first limb as to whether there are express powers provided u/s.12AB of the Act for cancelling the registration granted to the assessee u/s.12A of the Act for the



year 2001. We notice that Id. PCIT (Central) issued notice on 21.07.2023 u/s.12AB(4) of the Act, copy of which is placed from pages 8 to 24 of the paper book show-causing the assessee as to why the registration u/s.12A of the Act granted on 16.02.2001 should not be cancelled. For examining this aspect, we first need to go through section 12AB of the Act. Section 12AB of the Act provides for the procedure for fresh registration and the same has been brought into Statute by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions Act) (TOLA) 2021 w.f. 01.04.2021. Earlier section 12 was inserted by the Finance Act, 2020 w.e.f. 01.06.2020 but omitted by TOLA with retrospective effect from 01.06.2020. Section 12AB of the Act which is inserted w.e.f. 01.04.2021, the powers of cancelling the registration of the trust are provided u/s.12AB(4) of the Act which reads as under :

“(4) Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,—

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the Principal Commissioner or Commissioner shall,—

(i) call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;

(ii) pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;

(iii) pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;

(iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.



Explanation.—For the purposes of this sub-section, the following shall mean "specified violation",—

(a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or

(b) the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not enure for the benefit of the public; or

(d) the trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

(e) any activity being carried out by the trust or institution,—

(i) is not genuine; or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

(f) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality [; or]

(g) the application referred to in clause (ac) of sub-section (1) of section 12A is not complete or it contains false or incorrect information.]”

15. Now going through section 12AB(4) of the Act, we observe that section 12AB(4) only refers to the registration or provisional registration granted u/s.12AB(1)(a)(b)(b) and 12AA(1)(b) of the Act but there is no mention of section 12A of the Act. Now in absence of any express powers whether the ld.PCIT was justified to issue show cause notice u/s.12AB(4) of the Act for cancelling the registration u/s.12A of the Act. To adjudicate this issue, we would first like to refer the judgment of Hon’ble Supreme Court of India in the case of *Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. Vs. CIT (2018) 90 taxmann.com 281 (SC)* which is relevant as well as the ratio laid down therein. Hon’ble Apex Court has dealt with four questions and held as under :



“The main questions, that arise for consideration in this appeal, are four :

17. First, whether the CIT has express power to cancel/withdraw/recall the registration certificate once granted by him under Section 12A of the Act and, if so, under which provision of the Act?

18. Second, when the CIT grants registration certificate under Section 12A of the Act to the assessee, whether grant of certificate is his quasi judicial function and, if so, its effect on exercise of his power of cancellation of such grant of registration certificate?

19. Third, whether Section 21 of the General Clauses Act can be applied to support the order of cancellation of the registration certificate granted by the CIT under Section 12A of the Act, in case, if it is held that there is no express power of cancellation of registration certificate available to the CIT under Section 12A of the Act? and

20. Fourth, what is the effect of the amendment made in Section 12AA introducing sub-clause(3) therein by Finance (No-2) Act 2004 w.e.f. 01.10.2004 conferring express power on the CIT to cancel the registration certificate granted to the assessee under Section 12A of the Act.

21. In our considered opinion, the CIT had no express power of cancellation of the registration certificate once granted by him to the assessee under Section 12A till 01.10.2004. It is for the reasons that, first, there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted under Section 12A of the Act. Second, the order passed under Section 12A by the CIT is a quasi judicial order and being quasi judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power.

22. Indeed, the functions exercisable by the CIT under Section 12A are neither legislative and nor executive but as mentioned above they are essentially quasi judicial in nature.

23. Third, an order of the CIT passed under Section 12A does not fall in the category of "orders" mentioned in Section 21 of the General Clauses Act. The expression "order" employed in Section 21 would show that such "order" must be in the nature of a "notification", "rules" and "bye laws" etc. (see Indian National Congress(1) v. Institute of Social Welfare [2002] 5 SCC 685.

24. In other words, the order, which can be modified or rescinded by applying Section 21, has to be either executive or legislative in nature whereas the order, which the CIT is required to pass under Section 12A of the Act, is neither legislative nor an executive order but it is a "quasi judicial order". It is for this reason, Section 21 has no application in this case.



25. The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi judicial order. A quasi judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. (See Interpretation of Statutes, Ninth Edition by G.P. Singh page 893).

26. Relying upon the aforementioned rule of interpretation, this Court has held that the Government has no power to cancel or supersede a reference once made under Section 10(1) of the Industrial Disputes Act, 1947. [See- State of Bihar v. D.N. Ganguly AIR 1958 SC 1018). Similarly, on the same principle it is held that the application of Section 21 of the General Clauses Act has no application to amend or rescind or vary a notification issued under Section 3 of the Commissions of Enquiry Act for reconstituting the commission by replacement or substitution of its sole member except applicable for a limited purpose for extending the time for completing the enquiry. (State of Madhya Pradesh v. Ajay Singh AIR 1993 SC 825). It is also held while construing the provisions of Citizenship Act that the certificate of registration of citizenship issued under Section 5(1) C of the Citizenship Act cannot be cancelled by the authority granting the registration by recourse to Section 21 of the General Clauses Act. (Ghaurul Hasan v. State of Rajasthan AIR 1967 SC 107 and Hori Shanker Jain v. Sonia Gandhi AIR 2001 SC 3689). And lastly, while construing the provisions of the Representation of People Act, it is held that the Election Commission cannot, by recourse to Section 21 of the General Clauses Act, deregister or cancel the registration of a political party under Section 29A of the Act for the decision of the Commission to register a political party under Section 29A(7) of the Act is a quasi judicial in nature. [See Indian National Congress(1) (supra)]

27. It is not in dispute that an express power was conferred on the CIT to cancel the registration for the first time by enacting sub-Section (3) in Section 12AA only with effect from 01.10.2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence such power could be exercised by the CIT only on and after 01.10.2004, i.e., (assessment year 2004-2005) because the amendment in question was not retrospective but was prospective in nature.

28. The issue involved in this appeal had also come up for consideration before three High Courts, namely, Delhi High Court in the case of DIT (Exemptions) v. Mool Chand Khairati Ram Trust [2011] 11 taxmann.com 42/199 Taxman 1/339 ITR 622, Uttaranchal High Court in the case of Welhom Boys' School Society v. CBDT [2006] 285 ITR 74//2007) 158 Taxman 199 and Allahabad High Court in the case of Oxford Academy for Career Development v. Chief CIT [2009] 315 ITR 382

29. All the three High Courts after examining the issue, in the light of the object of Section 12A of the Act and Section 21 of the General Clauses Act held that the order of the CIT passed under Section 12A is quasi judicial in nature. Second, there was no express provision in the Act vesting the CIT



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with power of cancellation of registration till 01.10.2004; and lastly, Section 21 of the General Clauses Act has no application to the order passed by the CIT under Section 12A because the order is quasi judicial in nature and it is for all these reasons the CIT had no jurisdiction to cancel the registration certificate once granted by him under Section 12A till the power was expressly conferred on the CIT by Section 12AA(3) of the Act w.e.f. 01.10.2004.

30. We are of the considered view that the view taken by the abovementioned three High Courts in the respective cases is in conformity with law and we accordingly approve the said view taken by these High Courts in three aforementioned decisions.

31. In the light of the foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside and the order of ITAT is restored.

32. Needless to say, the CIT would be free to exercise his power of cancellation of registration certificate under Section 12AA(3) of the Act in the case at hand in accordance with law.”

16. The ratio laid down by the Hon’ble Apex Court in the case of Infrastructure Development Corporation (supra) is that in absence of any express power conferred to the CIT(A) in section 12AA(3) of the Act the registration granted u/s.12A of the Act cannot be cancelled and the same ratio is applicable on the present set of facts where registration u/s.12A has been cancelled in the proceedings carried out after 01.04.2021 u/s.12AB(4) of the Act. As we have extracted section 12AB(4) of the act in the preceding para, the same clearly deals with the registration or provisional registration granted under clause (a) (b) or (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be and not section 12A of the Act. It means that there is no express power provided u/s.12AB of the Act for cancelling the registration granted u/s.12A of the Act. Very same issue came up for adjudication before the Coordinate Bench, Cuttack in the case of *Maa Jagat Janani Seva Trust (supra)* wherein it has been held as under :

“5. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that a show cause notice for the purpose



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of cancellation of registration u/s.12AA of the Act came to be first issued by ld CIT(E) on 6.10.2022. A perusal of the order cancelling the registration shows that the ld CIT(E) has not given any reason for rejecting various explanation given by the assessee to various show cause notices issued. All that the ld CIT(E) says that the replies are in relation to observations made by the Assessing officer and has nothing to do with the reasons given for giving show cause notice for cancellation of registration. A perusal of the order of ld CIT(E) clearly shows that the reasons given for the show cause notice are the reasons which are considered by the Assessing Officer in the assessment order for the assessment years 2013-14 & 2014-15. The assessee has also given reply to various issues in the show cause notice. In any case, the show cause notice for cancellation of registration having been issued on 6.10.2022, ld CIT (E) could not have cancelled registration retrospectively w.e.f 1.4.2014 insofar as the provisions of section 12AA/12AB does not provide for the cancellation of registration with retrospective effect. This view of our finds supports from the decision of ITAT Bangalore Bench in the case of Amala Jyothi Vidya Kendra Trust (supra), wherein, from paras 6 to 6.10, the Co-ordinate Bench has held as follows:

“6. We have heard the rival submissions and perused the materials available on record. The main contention of the ld. A.R. is that the ld. PCIT cancelled the registration granted to the assessee w.e.f. the previous year i.e. 2017-18 relevant to assessment year 2018-19 by applying the provisions as stood on 29.12.2023, which cannot be applied for the violations of the provisions of section 12AA or 12AB of the Act. According to the ld. A.R., the ld. PCIT has cancelled the registration granted to the assessee since the ld. PCIT was satisfied that one or more specified violations have taken place. The specified violations are mentioned in explanation to section 12AB(4) of the Act as follows:

Explanation: For the purposes of this sub-section, the following shall mean “specified violation”,--

- a) Where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or
- b) The trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or
- c) The trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public; or
- d) The trust or institution established for charitable purpose created or established after the commencement of this Act, has



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applied any part of its income for the benefit of any particular religious community or caste; or

e) Any activity being carried out by the trust or institution—

(i) is not genuine, or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

f) The trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

6.1 The contention of the ld. A.R. is that, these provisions have been inserted by Finance Act, 2022 w.e.f. 1.4.2022 and if there is a violation in previous year 2017-18 relevant to assessment year 2018- 19, these provisions cannot be applied to the assessee's case. For clarity, we will go through the relevant provisions applicable to previous year 2017-18 relevant to assessment year 2018-19 as follows:

“12AA(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) 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 is noticed that, the activities of the trust or the institution are being carried out in a manner that the provisions of section 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then the Pr. Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institutions.

Provided, that the registration shall not be cancelled under this subsection if the trust or institution proves that, there was reasonable cause for the activity to be carried out in the said manner.”

6.2 This section has been amended by Finance Act, 2022 w.e.f. 1.4.2022 as follows:

12AB(4): Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of subsection (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,--



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- a) *The Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year;*
- b) *The Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or*
- c) *Such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year;*

The Principal Commissioner or Commissioner shall—

- i. *call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;*
- ii. *pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;*
- iii. *pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;*
- iv. *forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.*

Explanation: For the purposes of this sub-section, the following shall mean “specified violation”,

- a) *Where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or*
- b) *The trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or*
- c) *The trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public; or*



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d) The trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

e) Any activity being carried out by the trust or institution—

(i) is not genuine, or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

f) The trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

6.3 As per section 12AB(4) of the Act as applicable to assessment year 2017-18, the ld. PCIT if he is satisfied that activities of the Trust or institution are not genuine or not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording reasonable opportunity of being heard. As per section 12AB(5) of the Act, when trust or institution complied wholly or in part of the income of such trust or institution in violation of section 13(1) of the Act or if they complied with any other law, for the time being in force by the trust or institution as are material for the purpose of achieving its objectives as mentioned in section 12AB(1)(b)(ii)(B) of the Act. However, in the present case, the ld. PCIT invoked the provisions of section 12AB(4)(a)(ii) of the Act as stood in the assessment year 2022-23. The objection of the ld. A.R. is that for the cancellation of registration for the assessment year 2021-22, he could not invoke the provisions of section 12AB(4)(ii) of the Act which is introduced by Finance Act, 2022 w.e.f. 1.4.2022 and applicable for the assessment year 2022-23 onwards.

6.4 In the case of Isthmian Steamship Lines reported in 20 ITR 572 (SC) wherein the Hon'ble Supreme Court held that "it is a cardinal principle of the tax law that law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication".

6.5 In the case of Karimtharuvi Tea Estate Ltd. Vs. State of Kerala reported in 51 ITR 129 (SC) the same view was taken by the Hon'ble Supreme Court.

6.6 Further, the Hon'ble Supreme Court in the case of Shree Chowdhary Transport Company Vs. ITO reported in 426 ITR 289 (SC) wherein held as under:



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17.4 It needs hardly any detailed discussion that in income-tax matters, the law to be applied is that in force in the assessment year in question, unless stated otherwise by express intendment or by necessary of implication. As per section 4 of the Act of 1961, the charge of incometax is with reference to any assessment year, at such rate or rates as provided in any central enactment for the purpose, in respect of the total income of the previous year of any person. The expression “previous year” is defined in section 3 of the Act to mean “the financial year immediately preceding the assessment year”; and the expression “assessment year” is defined in clause (9) of section 2 of the Act to mean “the period of twelve months commencing on the 1st day of April every year”.

17.5 In the case of CIT v. Isthmian Steamship Lines (1951) 20 ITR 572 (SC), a 3-judge Bench of this court exposted on the fundamental principle that “in income-tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied.” This decision and various other decisions were considered by the Constitution Bench of this court in the case of Karimtharuvi Tea Estate Ltd. v. State of Kerala (1966) 60 ITR 262 (SC) and the principle were laid down in the following terms (at pages 264-266 of 60 ITR):

“Now, it is well-settled that the Income-tax, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.....

The High Court has, however, relied upon a decision of this court in CIT v. Isthmian Steamship Lines, where it was held as follows:

‘It will be observed that we are here concerned with two datum lines: (1) the 1st of April, 1940, when the Act came into force, and (2) the 1st of April, 1939, which is the date mentioned in the amended proviso. The first question to be answered is whether these dates are to apply to the accounting year or the year of assessment. They must be held to apply to the assessment year, because in income-tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied. The first datum line therefore, affected only the assessment year of 1940-41, because the amendment did not come into force till the 1st of April, 1940. That means that the old law applied to every assessment year up to and including the assessment year 1939-40.’



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This decision is authority for the proposition that though the subject of the charge is the income of the previous year, the law to be applied is that in force in the assessment year, unless otherwise stated or implied. The facts of the said decision are different and distinguishable and the High Court was clearly in error in applying that decision to the facts of the present case.”

(emphasis supplied)

17.6 We need not multiply on the case law on the subject as the principles aforesaid remain settled and unquestionable. Applying these principles to the case at hand, we are clearly of the view that the provision in question, having come into effect from April 1, 2005, would apply from and for the assessment year 2005-06 and would be applicable for the assessment in question. Putting it differently, the Legislature consciously made the said sub-clause (ia) of section 40(a) of the Act effective from April 1, 2005, meaning thereby that the same was to be applicable from and for the assessment year 2005-06; and neither there had been express intendment nor any implication that it would apply only from the financial year 2005- 06.”

6.7 Being so, we find force in the argument of ld. A.R. that in income-tax matters, law to be applied is the law in force in the assessment year unless otherwise stated or implied. In the present case, ld. PCIT is cancelling the registration granted u/s 12AA/12AB of the Act w.e.f. previous year 2020-21 relevant to assessment year 2021-22. In our opinion, the law as stated in the assessment year 2021-22 is to be applied and not the law as stood in the assessment year 2022-23.

6.8 Thus, we are of the view that no retrospective cancellation could be made u/s 12AB(4)(ii) of the Act as it has been provided or is seen to have explicitly provided to have a retrospective character or intended. Therefore, without a specific mention of the amended provisions to operate retrospectively, no cancellation for the earlier years could be made. In this regard, it is appropriate to place reliance on the judgement of Hon’ble Madras High Court on the question as to whether the cancellation will operate from a retrospective date in the case of Auro Lab Ltd. Vs. ITO (2019)411 ITR 308 (Mad) wherein held as under :

20. On the second question as to whether the cancellation will operate from a retrospective date, it was held that the amendment to section 12AA(3) is prospective and not retrospective in character. The courts reasoned that even when Parliament had plenary powers to enact retrospective legislation in matters of taxation, the amended section is not seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively, the cancellation cannot operate from a past date.



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21 On the third question of the effective date of operation of the cancellation order, it was held that the cancellation will take effect only from the date of the order/notice of cancellation of registration. Since the act of cancellation of registration has serious civil consequences and the amended provision is held to have only a prospective effect the effect of cancellation, in' the event the pending tax appeal is decided in favour of the Revenue, will operate only from the date of the cancellation order, that is December 30, 2010. In other words, the exemption cannot be denied to the petitioner for and up to the assessment year 2010-11 on the sole ground of cancellation of the certificate of registration.”

6.9 In this case, the ld. PCIT has cancelled the registration under the new provisions of the Act i.e. 12AB(4)(ii) of the Act, which specifically provides that cancellation can be done for such previous year and all subsequent previous years, which makes it clear that the cancellation cannot be retrospective, therefore, in view of the above discussion, we are of the opinion that cancellation of registration with retrospective effect is invalid in these cases. Since the ld. PCIT invoked the provisions of section 12AB(4)(ii) of the Act, which has been introduced by the Finance Act, 2022 w.e.f. 1.4.2022 so as to cancel the registration with retrospective effect from assessment year 2018-19, which is bad in law.

6.10 It is noted that coordinate bench of this Tribunal in both assessee's case for AY 2021-22 has taken similar view and as quashed the retrospective applicability of the new amended provision u/s 12AB(4)(ii) of the Act. We also note that same view has been taken by Coordinate bench of Mumbai in the case of Heart Foundation of India in ITA No.1524/Mum/2023 vide order dated 17 27.7.2023, wherein held that registration granted u/s 12A of the Act dated 21.7.1989 cannot be cancelled by ld. PCIT (Central) vide order dated 6.3.2023 w.e.f. assessment year 2016-17, by invoking the provisions of section 12AB(4)(ii) of the Act. Accordingly, we allow the primary ground nos.2, 3, 5 & 12 and order of ld. PCIT passed u/s 12AB(4)(ii) of the Act is quashed. “

6. Further, on perusal of provisions of section 12AB(4) of the Act shows that the said provision has been substituted by the Finance Act, 2022 w.e.f. 1.4.2022. Before 1.4.2022, the registration could have been cancelled u/s.12AB(5). However, the provisions of section 12AA and Section 12AB came into effect from 1.4.2015. Before that registration was done under section 12A of the Act. One needs to understand that the provisions of section 12A of the Act was amended to 12AA and then 12AB because registration scheme for Trust was to corollary to claim file and smile i.e. to file the registration as admittedly charitable institution. Subsequently, the provisions of exemption was brought in and opportunity was given to ld CIT(E) to deny the exemption, still the power for cancellation the registration was granted. However, the power to cancel the registration with retrospective effect is not provided in the Statute. This being so, as the registration in the present case, has been



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cancelled retrospectively, same is not permissible as the same is not provided in the Statute, the order passed by ld CIT(E) cancelling the registration retrospectively stands cancelled.”

17. Now from going through the above decisions of Coordinate Bench in the case of *Maa Jagat Janani Seva Trust (supra)* wherein catena of judgments have been referred and also the ratio laid down by the Hon'ble Apex Court in the case of *Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. (supra)* has been followed, we find that the same is squarely applicable on the facts of the instant case and therefore we are inclined to hold that since there is no express power provided u/s.12AB(4) of the Act for cancelling the registration granted u/s.12A of the Act, ld. PCIT (Central) grossly erred in issuing show cause notice u/s.12AB(1) of the Act on 21.07.2023. The said show cause notice is held to be invalid and *void ab-initio* and therefore finding of ld. PCIT (Central) is reversed and we hold that registration granted u/s.12A of the Act cannot be cancelled during the proceedings carried out u/s.12AB(4) of the Act.

18. The second limb of contention raised by the assessee challenging the powers available in section 12AB of the Act is that the show cause notice issued u/s.12AA of the Act on 20.03.2024 is also invalid. Ld. Counsel for the assessee stated that section 12AA(5) of the Act provides that nothing contained in section 12AA of the Act shall apply on or after 01.04.2021. From 01.04.2021 section 12AB of the Act has been inserted and the proceedings with regard to cancellation of registration u/s.12AA could be taken up only u/s.12AB of the Act. But in the instant case the proceedings for cancellation of registration have been initiated on 21.07.2023 and therefore even the registration u/s.12A cannot be cancelled u/s.12AA of the Act in the instant



case because the proceedings have been initiated u/s.12AB which have been brought into Act w.e.f. 01.04.2021. Therefore, the show cause notice u/s.12AA of the Act issued on 20.03.2024 for cancelling the registration u/s.12AA(3) and 12AA(4) of the Act for the period 01.04.2019 to 31.03.2021 is invalid and ab-initio as the Id.PCIT (Central) has issued the show cause notice dated 20.03.2024 in a section already stood discontinued from 01.04.2021 onwards. Thus, the assessee succeeds on this second limb of its legal ground challenging the powers available in section 12AB of the Act for cancellation of registration.

19. Now we take up the third limb where it has been contended by the Id. Counsel for the assessee that in the show cause notice dated 21.07.2023 the Id. PCIT has referred to '*specified violation*' committed by the assessee by virtue of which the assessee trust has not applied its income wholly and exclusively for the purpose for which it is established but using it directly or indirectly for the benefits of its trustees and other members of the trust. From perusal of section 12AB(4) of the Act extracted (*supra*) and specifically to section 12AB(4)(a)(ii) it has been provided that PCIT or CIT shall pass an order in writing cancelling the registration of such trust or institution after affording reasonable opportunity of bearing heard for such previous year and of subsequent previous years if he is satisfied that one or more specified violation have taken place. Now the word '*specified violation*' was not appearing in the original section 12AB(4) w.e.f. 01.04.2021 but there was an amendment brought into by the Finance Act, 2022 w.e.f. 01.04.2022 inserting the word '*specified violation*' and its definition. Now prior to 01.04.2022, there is no mention of the word '*specified violation*' with regard to cancellation of registration granted u/s.12A, 12AA and 12AB of the Act. In the



instant case, the allegation made by the Revenue authorities is with regard to cash received against staff salary, doctors salary, PG stipend through bearer cheque and also receiving capitation fee in cash during the period F.Yrs. 2019-20 to F.Y. 2021-22. The ‘*specified violation*’ as referred by Id. PCIT in the impugned order relates to three financial years. However, as observed above, the word ‘*specified violation*’ has been brought into Statute from 01.04.2022. Therefore, the same could not have been applied in the case of assessee as there is no ‘*specified violation*’ word in section 12AB(4) of the Act prior to 01.04.2022.

20. Now even though section 12AB(4) applies to the registration granted u/s.12AA of the Act as provided in section 12AB(4) but then we will have to look for the provisions of section 12AA(3) and 12AA(4) of the Act and for the sake of convenience they are reproduced below :

“(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) 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 the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.

(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) 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 is noticed that—

(a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or

(b) the trust or institution has not complied with the requirement of any other law, as referred to in sub-clause (ii) of clause (a) of sub-section (1), and the order, direction or decree, by whatever name called, holding that



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such non-compliance has occurred, has either not been disputed or has attained finality,

then, the Principal Commissioner or the Commissioner may, by an order in writing, cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.”

21. Now in the above sub-section (3) and (4) of section 12AA, there is no mention to any 'specified violation' but only refers to the genuineness of the activity carried out by a trust or institution, however, ld. PCIT has only referred to some 'specified violations during F.Yrs. 2019-20 to 2021-22 which was going on under scrutiny by AO. There were only few statements which were recorded during the course of search which are the basis of the alleged allegation and that too have been retracted and apart from that no other evidence and no accounted assets, unaccounted income were found during search at assessee's premises and therefore they are merely allegations and there is no concrete finding disproving the genuineness of activities of trust. Therefore, even sub-section (3) and sub-section (4) of section 12AA could not have been invoked in absence of any specified violation for the years under consideration.

22. To conclude we allow the legal ground raised by the assessee in Ground Nos. 2 and 3 and hold that since the show cause notices issued to the assessee on 21.07.2023 and 20.03.2024 are invalid and *void ab-initio* for want of express powers for cancellation of registration u/s.12A of the Act and also proceedings wrongly started u/s.12AA of the Act in view of the amendment brought in from 01.04.2021 and lastly the 'specified violation word being inserted from 01.04.2022 cannot be applied for the alleged violation made from F.Yrs. 2019-20 to 2021-22 and therefore hold that ld. PCIT (Central) grossly erred in cancelling



the registration granted to assessee u/s.12A of the Act on 16.02.2001 and also erred in cancelling the registration granted u/s.12A r.w.s.12AB of the Act granted on 28.05.2021. Thus registration u/s.12A and 12AB of the Act granted to the assessee trust are restored.

23. Though we have already allowed the legal issues raised by the assessee in Grounds of appeal No.2 and 3 and have reversed the finding of ld.PCIT (Central) of cancelling the registration granted to the assessee u/s.12A and 12A r.w.s 12AB of the Act, we will now proceed to deal with merits of the case with regard to the observation of ld. PCIT based on the seized document, and other loose sheets found during the course of search along with the Pendrive found at the residential premises of Chief Accountant of the assessee trust and proceeding to cancel the registration.

24. Ld. PCIT has referred to various documents in the impugned order which mainly includes the statement of various employees and also referring to Excel Sheet appearing in the Pendrive found at the residential premises of Mr. Balaji Pandurang Alli, Chief Accountant alleging that assessee trust has received following amounts in cash :

<i>Cash received during FY 2019-20 (in Rs.)</i>	
<i>Capitation fee</i>	<i>1,72,75,000/-</i>
<i>Staff salary</i>	<i>61,04,565/-</i>
<i>Doctor salary</i>	<i>3,61,22,275/-</i>
<i>PG stipend</i>	<i>22,44,836/-</i>
<i>Other</i>	<i>1,69,43,799/-</i>
<i>Total</i>	<i>7,86,90,475/-</i>

<i>Cash received during FY 2020-21 (in Rs.)</i>	
<i>Capitation fee</i>	<i>6,33,85,000/-</i>
<i>Staff salary</i>	<i>61,43,730/-</i>
<i>Doctor salary</i>	<i>5,67,76,964/-</i>
<i>PG stipend</i>	<i>39,18,700/-</i>
<i>Other</i>	<i>1,26,09,050/-</i>
<i>Total</i>	<i>14,28,33,444/-</i>



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<i>Cash received during FY 2021-22 (in Rs.)</i>	
<i>Capitation fee</i>	<i>5,19,40,000/-</i>
<i>Staff salary</i>	<i>73,46,405/-</i>
<i>Doctor salary</i>	<i>6,35,21,640/-</i>
<i>PG stipend</i>	<i>61,61,191/-</i>
<i>Other</i>	<i>2,82,75,300/-</i>
<i>Total</i>	<i>15,72,44,536/-</i>

25. Though during the course of search in the various statements of employees as well as Chief Accountant it was accepted that such type of transactions of receiving cash towards capitation fee and refund of cash in lieu of staff salary, doctor salary, PF stipend and others through bearer cheques has been carried out, but all these statement were subsequently retracted and Mr. Mehul B. Patel who is the main trustee of the assessee trust has also denied to have entered into any such transaction. Following submissions filed by the assessee to this effect before us as well as before the lower authorities :

“3. Statement of Shri Mehul Patel recorded during the course of search:

Your Honour will appreciate that the statement of Mehul B Patel was recorded during the course of search. Copy of the said statement is enclosed herewith as Annexure 2. In the said statement, Mr. Mehul Patel was asked on the various issue raised by Your Honour in the Notice. While replying on the issue, Mr. Mehul Patel has categorically denied his as well as Assessee Trust involvement in the matter. Under the circumstances, any decision on the basis of statement of various staff members, which are also, retracted explaining the circumstances in which the statements have been given, without properly appreciating the denial in the statement of Mehul Patel will be unjustified. Your Honour will appreciate that the denial statement of Shri Mehul Patel has not been proved wrong by the search party in the search proceedings or post search investigation. Thus, there are contradictory statement which needs to be property evaluated before any conclusion is drawn.

4. No concrete evidence as to various allegations made in the Notice:

Your Honour has made certain allegations based on the seized material. The seized material represents print out taken from the seized pen drive which was found at the residential premises of Shri Balaji Alli. The entries in the pen drive cannot be independently verified and are not supported by any conclusive proof or independent evidences and



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therefore it cannot be taken as basis for decision regarding registration of Trust u/s 12AB(4) of Income Tax Act. It is therefore submitted that the evidencary value of such entries may be subjected to evaluation and verification in the Assessment Proceedings as well as Appellate Proceedings to arrive at a reasonable and judicious decision about the correctness and completeness of the entries in the pen drive seized. Any abrupt decision based on such evidence will lead to miscarriage of justice.

5. Denial by Doctors, students and employees:

Your Honour will appreciate that the statements of various doctors, student and employees were recorded during the course of post search enquiry. In the said statements they have denied or to have refunded money to the Trust. This direct evidence of the denial should be preferred against any opinion/surmise based on stray jottings/entries recorded in the pen drive. Copies of sample statements are enclosed as Annexure 3.

6. Retraction/explanation regarding the statement recorded during the course of search:

Shri Balaji Alli in whose residential house the seized pen drive was found has explained in his statement and confessed that all the entries in the pen drive seized are not reflecting actual transactions. He further explained the purpose and need for making such memorandum/hypothetical entries. In light of this statement of Shri Balaji Alli explaining his earlier statement read with the denial statement of Shri Mehul Patel recorded during the course of search leads to conclusion that the jotting/entries in the pen drive are not dependable/ records any transactions. Similarly, retraction statements of employees, doctors and students are enclosed herewith vide Annexure - 4.

7. Decision on Capitation Fee:

We may refer to the decision of ITAT Delhi holding that statement of college authorities is not sufficient to make addition in the hands of person giving capitation fee. The relevant observations of the ITAT are reproduced below in case law of Krishna D. Pawar v. ITO (Mum.)(Trib.) (ITA No. 151/Mum/2022 dt. 25-4-2023 (AY. 2014-15).:

Here, the managing trustees of the concerned college had given details of capitation fees paid by students to the I-T department's investigation wing. In this case, the /TAT held: "Only on the basis of the scribbled note without any other oral! documentary evidence to support the allegation of capitation fees it is quite unsafe to fasten addition." It quashed the addition of Rs 95 lakh.

Copy of the decision is enclosed herewith as Annexure 5.

From the above an analogy can be drawn that the Trust cannot be held responsible for the statement made by its employees which are recorded under a peculiar circumstance and more so when the Trustee has refused the charges/allegations made by the employees, which is uncontroverted."



26. Now on going through the above statement of the assessee and also with the conjoint reading of the ld.PCIT in the impugned order, we notice that except the Excel sheet loose paper and a rough diary no other document has been found and the said Excel sheet is also found in the Pendrive of the Chief Accountant at his residential premises. There is no observation of the ld. PCIT that any other incriminating material indicating any undisclosed investment, unexplained asset and the assessee trust of being indulged in the alleged activity has been found and all that what is referred are statements which has been subsequently retracted. It is claimed that all the statements given by the staff members/Chief Accountant of the assessee trust were given during the course of search were under extreme pressure and the same stands retracted within two months of giving the original statements. Apart from the statements, no other incriminating material/loose document were found at the premises of the assessee trust. Whatever loose documents/Excel Sheet in the Pendrive which have been referred to by ld. PCIT were found at the premises of third person, i.e. employee of the assessee trust. The Managing Trustee of the assessee trust in the statement given during the course of search has not accepted the allegations levelled by the search team based on the statements of staff members and Mr.Mehul B. Patel stated that no cash has been received back from the staff members out of the stipend and nor against capitation fee. So what remains is just the preponderance of probability and a theory based on statements which have been retracted and the seized material found from the premises of third person on the basis of which ld. PCIT has alleged that the assessee has made '*specified violation*'. Apart from these observations, no other discrepancy has been noticed by ld. PCIT



in the genuineness of activities carried out. Now the issues on merit are already pending before the AO in the regular course of assessment proceedings carried out before issuance of notice u/s.153A of the Act. Before the conclusion of the assessment proceedings, ld. PCIT has proceeded to cancel the registration granted to the assessee u/s.12A and 12AB of the Act referring to the seized document and alleged *specified violation*'.

27. It has been consistently held by the Hon'ble Courts and Coordinate Benches that if the activities of the assessee are found to be genuine and in accordance with the objects of the trust, if there is any violation or any discrepancy in the activity of the assessee trust, then to the extent of such discrepancy or violation assessee trust could be subjected to addition but it cannot lead to cancellation of registration u/s.12A, 12AA and 12AB of the Act (as the case may be) unless and until the activities of the assessee trust are not found to be genuine.

28. Even though the quantum of addition based on the Excel sheet found in the Pendrive at the residential premises of Chief Accountant coupled with the statements of staff, doctors would be dealt with by the AO in the course of regular assessment, but we observe that ld.PCIT has only referred to these details but has not given any specified finding. It has been argued before the ld. PCIT that Pendrive was not found at the premises of the assessee trust. Details mentioned in such Pendrive has been stated to be made towards some memorandum of hypothetical entries by Mr. Balaji Pandurang Alli given in his retraction statement. The doctors, students and employees of the trust have also retracted the statements and have denied that they have refunded the money to the assessee trust. So the total gambit of the allegation of the assessee trust of having been involved in misappropriation of the



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funds of the trust are based on the statements of various staff, doctors who have retracted their statements. Further, there is no finding of Id. PCIT of having specifically referred to any other document which could prove that there is 'specified violation' of the assessee trust. So far as the observation that the bearer cheques were used to withdraw the cash from the account of staff, doctors salary and students, the bearer cheques are signed by a particular person and they themselves have retracted from their original statement. Therefore, this action of withdrawing the money is solely the action of the person looking after the accounts of the assessee trust directly and it cannot be inferred that the assessee trust has withdrawn the said amount from various account holders. Also no unaccounted assets, excess cash or bullion was found and seized.

29. On the strength of these facts that they are mere allegations against the assessee trust of diversion of funds but no concrete finding has been given by the Id.PCIT and that the matter is still pending for adjudication on merit before the AO, it was submitted that until and unless the activities are not found to be genuine, even if there are some instance of any violation giving rise to certain additions then the same can be taken care off by the AO in the assessment proceedings but registration u/s.12A/12AB of the Act cannot be cancelled. Very same issue has been dealt by the Hon'ble Karnataka High Court in the case of *CIT vs. Islamic Academic of Education reported in 229 Taxman 274 (Karn.)* and the Hon'ble High Court has held as under :

"The Hon'ble Karnataka High Court in the case of CIT Vs. Islamic Academic of Education reported in 229 Taxman 274 (Karn) held as under :-

In the instant case, the material on record shows that the Trust has established educational institution and imparting medical



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education. Every year, students are admitted. Huge investment is made for construction of buildings for housing the college, hostel and to provide other facilities to the students who are studying in the College. The College is recognized by the Medical Council of India, State of Karnataka and all other statutory authorities. Therefore, it cannot be said that the Trust is not genuine. Admittedly, the students are being admitted every year. Students are studying in all courses. Thus the object of the constitution of the Trust namely imparting of education is going on uninterruptedly. Therefore, it cannot be said that the activities of the Trust are not being carried out in accordance with the objects of the Trust. When the aforesaid two conditions are fully satisfied, on the ground that the trustees are misappropriating the funds of the Trust the registration of the Trust cannot be cancelled. If the trustees are misappropriating the funds, if they are maintaining false accounts, it is open to the authorities to deny the benefit under section 11 of the Income Tax Act, but that is not a ground for cancelation of registration itself. That is precisely what the Tribunal has held. Therefore, the substantial question of law is answered in favour of the assessee and against the revenue. There is no merit in this appeal.”

30. Now going through the above decision of Hon'ble Karnataka High Court, we find that the facts of the instant case are verbatim similar because in the instant case also no doubt has been raised about carrying out of the activities of the assessee trust as per the objects for which it has been registered and the education is regularly imparted at the Medical College, patients are being regularly treated at the Hospital and Research Centre are also running successfully.

31. Before us, various details giving an overview of the activities of running the Medical College, Hospital and Research Centre and the details of the staff, non-teaching staff, achievements of Under Graduate medical students and award of certificates, details of OPD patients and IPD patients as well as the treatments given to the in-patients have been filed before us. We would like to take note of the statistics supplied by the assessee which are as follows:



1.2. Details of teaching staff are as under-

Sr. No.	Faculty	No. of Faculty
1	Professor	31
2	Associate Professor	45
3	Assistant Professor	95
4	S.R.	60
5	J.R.	141
6	Tutor	58

1.3. Details of non-teaching staff are as under:

Sr. No.	Faculty / Staff	No. of Faculty
1	Technician	93
2	Clerk	82
3	lab attendant	21
4	Sweeper	155
5	Other	67
6	Library	8
7	Security	45
8	Nursing	378



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Sr. No.	Faculty / Staff	No. of Faculty
9	Pharmacist	15
10	Warden	2
11	Accounts	16
12	Other	15
	Total	897

1.4. Further, achievements of undergraduate medical students in Academic Feast for UG student are as under :

Sr.no	Name of the Student	Name of the Organizer	Award Name	Exam Year
1	Neelanjana Ghosh	MUHS – Nashik	First in Biochemistry – “Dr. Adinath Narayan Suryakar Gold Medal”	2015
2	Surbhi Pattanshetti	MUHS – Nashik	Fourth in I MBBS – in University	2016
3	Neelanjana Ghosh	MUHS – Nashik	First in F.M.T. – “Dr. Sudhakar Sane Gold Medal”	2016
4	Rushikesh Shinde	MUHS – Nashik	First in Microbiology & Third in II MBBS – in University	2017
5	Ruta Gaddam	MUHS – Nashik	First in F.M.T. – “Dr. Sudhakar Sane Gold Medal”	2017
6	Alfiya Perampalli	MUHS – Nashik	Fourth in I MBBS – “Anandrao Bhauji Saindane Gold Medal”	2019
7	Sakshi Patil	MUHS – Nashik	First in F.M.T. & Third in II MBBS – “Dr. Sudhakar Sane Gold Medal”	2019
8	Suryawanshi Hrishikesh	MUHS – Nashik	First in ENT. – “Federation of Maharashtra State Branches of the Association of Otolaryngologists of India Gold Medal” & Dr. Subhash R. Pandey Gold Medal	2019
9	Alfiya Perampalli	MUHS – Nashik	First in F.M.T. – “Dr. Sudhakar Sane Gold Medal”	2021

1.5. Award of certificates to undergraduate medical students on Successful completion of Research projects are as under:

Sr. No.	Name of the Student	Name of the Funding Agency	Guide Name	Department of Principal Investigator	Year of Award
1	Komal Gangar	ICMR – STS	Dr Sachin Mumbare	PSM	2015
2	Prateek Thanvi	ICMR – STS	Dr Umbardand	OBGY	2015
3	Saumitra Kulkarni	ICMR – STS	Dr Mangala P. Ghatole	Microbiology	2016
4	Parv Modi	ICMR – STS	Dr Rahul Deshpande	Gen. Medicine	2016
5	Onkar Kole	ICMR – STS	Dr. Prafulla Kamble	Physiology	2016
6	Ira Sameer Dhamdhare	ICMR – STS	Dr Manjunath Patil	Ophthalmology	2016
7	Likhita S.H.	ICMR – STS	Dr Prakash Dudhani	PSM	2016
8	Shubhashree Shridhar Page	ICMR – STS	Dr Reshma Mehta	Ophthalmology	2016



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Sr. No.	Name of the Student	Name of the Funding Agency	Guide Name	Department of Principal Investigator	Year of Award
9	Sonali Agrawal	ICMR – STS	Dr. Girish Raparti	Pharmacology	2017
10	Tanishka Bakshi	ICMR – STS	Dr. Suman Sardesai	OBGY	2017
11	Leander Gomes	ICMR – STS	Dr. Prafull Kamble	Physiology	2017
12	Aishwarya Kulkarni	ICMR – STS	Dr Nakate Dayanand	Pediatrics	2017
13	Mansi Kothekar	ICMR – STS	Dr. Manjunath Patil	Ophthalmology	2017
14	Zehra Murtuza Charania	ICMR – STS	Dr. Mangala Ghatole	Microbiology	2018
15	Vipra Vikram Vaidya	ICMR – STS	Dr. Tushar Bapat	Pharmacology	2018
16	Shravya Subodh Sirur	ICMR – STS	Dr. Pramod Bhalerao	Pharmacology	2019
17	Rudresh Mrutyunjay Mahindrakar	ICMR – STS	Dr. Feroz Sayyed	TB & Chest	2019
17	Raj Mehta	Indian Public Health Association (IPHA), Maharashtra Branch	Dr Chadrakant Waghmare	Pharmacology	2018
19	Apurva Patil	Indian Public Health Association (IPHA), Maharashtra Branch	Dr Nitin Bhoge	Psychiatric	2019

1.6. Details of OPD Patients and IPD Patients treated over the period of time are as under:

OPD Statistics

Year	Gen. Medicine	Skin & VD	TB & Chest	Psy	Paediatrics	Gen. Surgery	Ortho	Ophthal	ENT	OBGY	Dental	Casualty	Total
2012	35757	4767	--	255	19104	22367	17239	18809	6008	15135	2622	8660	150723
2013	37437	7181	4382	1187	23065	28722	24069	25065	8626	22975	2876	12311	197896
2014	44132	8988	5667	1925	25579	33762	28035	28474	11767	25071	3088	13701	230189
2015	48281	11057	6721	2055	29981	39692	34307	31807	14507	29466	2605	14716	265195
2016	52645	8316	4855	2505	30424	44245	35151	36384	11599	31773	2290	15210	275397
2017	52585	8968	5650	2978	29506	41546	34791	35595	12658	34085	2305	17202	277869
2018	58498	19552	5865	4160	33092	48107	39647	38529	33183	35698	2137	17118	335586
2019	71607	15801	12842	5334	42000	54073	43344	43846	17152	42979	2111	20003	371092
2020	47508	7815	6382	2903	23980	32337	26545	23491	9495	24359	819	18414	224048
2021	62630	11060	7768	3186	33383	44888	36680	35168	12822	34749	2481	21200	306015
2022	57637	16452	8646	5252	36917	45909	40075	35815	17422	39352	3604	23918	330999
2023	56964	24777	10915	7586	39341	48963	43080	29506	21507	43535	4654	28364	359192
2024	84196	29288	13282	19012	37107	68355	40126	30356	25336	40533	4753	32787	425131
Total	709877	174022	92975	58338	403479	552966	443089	412845	202082	419710	36345	243604	3749332



IPD Patient Statistics

Year	Gen. Medicine	Skin & VD	TB & Chest	Psy	Pediatrics	Gen. Surgery	Ortho	Ophthal	ENT	OBGY	Casualty	Total
2012	3548	78	20	20	1398	2935	1308	1229	551	1789	2153	15029
2013	3566	311	238	187	1100	3275	1352	2035	624	1695	2067	16450
2014	3121	271	231	192	1189	3920	1524	2432	1224	2345	2586	19035
2015	4214	251	327	237	1960	4456	2254	1944	1418	2918	2556	22535
2016	5485	356	333	307	2903	5099	2812	1858	1312	3146	2811	26422
2017	5688	452	360	335	3013	5374	3128	1881	1141	3559	3209	28140
2018	6180	1227	412	398	3293	5460	2960	3230	1131	3607	3399	31297
2019	6135	1272	1100	362	3412	5537	2943	3256	2422	4176	3620	34235
2020	5128	668	654	234	2362	4007	2184	1624	1250	2599	2396	23106
2021	6049	756	471	244	3543	5312	2762	2386	1773	4000	2541	29837
2022	6416	1085	449	378	4424	5687	3082	2956	1904	5030	2228	33639
2023	7724	2091	694	396	5146	6635	4235	3662	2095	7028	2362	42068
2024	6397	2258	564	520	4437	5212	4054	3146	2234	6142	2844	37808
Total	69651	11076	5853	3810	38180	62909	34598	31639	19079	48034	34772	359601

- 1.7. Further, the assessee trust also carries on IPF Scheme under Bombay Public Charitable Trust Act 1950. As per this act every charitable trust has to reserve 10% of the total beds for Indigent and Weaker Section patient and to provide 100% free treatment to Indigent patient and at concessional rate of 50% to weaker section patient. The summary of IPF facility provided from the beginning to till date are as follows,

Year	No. of Indigent Patients	Amt. Spent for Indigent Patients from IPF A/c	No. of weaker Section Patients	Amt. Spent for weaker Section Patients from IPF A/c	Total No. of Indigent & Weaker Patients	Total Amt. Spent From IPF A/c
2011-12	2,660	9,756,480	23	20,887	2,683	9,777,367
2012-13	3,978	12,181,510	3,552	11,242,615	7,530	23,424,125
2013-14	3,504	9,149,270	4,508	5,564,997	8,012	14,714,267
2014-15	2,232	7,415,880	4,528	5,529,400	6,760	12,945,280
2015-16	728	6,815,524	1,584	4,318,449	2,312	11,133,973
2016-17	822	3,570,378	219	1,355,362	1,041	4,925,740
2017-18	787	2,375,776	240	2,001,932	1,027	4,377,708



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Year	No. of Indigent Patients	Amt. Spent for Indigent Patients from IPF A/c	No. of weaker Section Patients	Amt. Spent for weaker Section Patients from IPF A/c	Total No. of Indigent & Weaker Patients	Total Amt. Spent From IPF A/c
2018-19	965	1,986,263	359	3,903,973	1,324	5,890,236
2019-20	654	1,352,717	240	2,646,830	894	3,999,547
2020-21	324	1,098,614	3	17,250	327	1,115,864
2021-22	567	5,171,430	1	12,000	568	5,183,430
2022-23	527	3,916,801	1	7,950	528	3,924,751
2023-24	756	5,465,445	-	-	756	5,465,445

1.8. Over and above the IPF scheme, the trust also provides healthcare services at free of cost or at discounted rates to the needy patients. The summary details of the same are as follows –

Sr. No.	Year	General Concession Given to the Patients amt. in Rs.
1	2011-12	1,11,89,657/-
2	2012-13	2,55,79,798/-
3	2013-14	99,42,942/-
4	2014-15	89,67,945/-
5	2015-16	67,98,062/-
6	2016-17	93,00,413/-
7	2017-18	93,62,063/-
8	2018-19	1,41,82,106/-
9	2019-20	1,98,49,499/-
10	2020-21	1,66,85,138/-
11	2021-22	3,68,54,505/-
12	2022-23	5,05,03,156/-
13	2023-24	4,83,06,975/-

All the above facts lead to the conclusion that the appellant has been following the objectives and the activities of the trust are genuine and in compliance with the objects of the trust.

32. Now going through the above details, it remains uncontroverted that assessee trust is carrying out genuine activities as per its objects forming part of registration certificate



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granted u/s.12A/12AB of the Act and running a Medical College, Hospital and Research Centre. Even ld. PCIT has not referred to any other discrepancy in the regular day to day activity of the assessee trust except to the loose documents found during the course of search and that to only pertaining to F.Yrs. 2019-20 to F.Y. 2021-22. Total focus of the ld. PCIT has been around these documents referred in the impugned order but other than these documents nothing wrong has been found in the regular day to day activity of the assessee trust. We also notice that the alleged documents are only confined to the staff salary, doctor salary and capitation fee but the assessee trust is carrying out many more activities and the expenses are of much more magnitude which involves the amount spent towards building construction, medicine, machines, college building and other expenses which are appearing in the audited books of account.

33. We find that similar set of facts as well as the issue came up for adjudication before the Coordinate Bench, Indore in the case of *Shri Jairam Education Society Vs. PCIT – ITA Nos.90 & 548/Ind/2019, dated 13.10.2021*. Relevant finding of the Tribunal is reproduced below :

“15. Apropos to Ground no.1, 2 & 6 assessee has challenged the cancellation of registration u/s 12AA of the Act retrospectively w.e.f. 01.04.2008 by invoking provisions of section 12AA(3) & 12AA(4) of the Act. We observe that the assessee society is registered under M.P. Society Registration Act 1973 and enjoying the benefit of section 12AA of the Act vide order u/s 12AA of the Act dated 20th March 2008. The proceedings u/s 12AA(3) & 12AA(4) of the Act were initiated subsequent to search proceeding carried out on Ramani Group on 30th August 2016. Certain loose papers were found having some details of salary payments, calculation of higher salary, cash payment, hand written details of income and expenditure which have been claimed by the assessee to be dumb documents and the detailed discussion with regard to these documents will be dealt by us in the subsequent paras. Based on these documents Ld. Pr. CIT has alleged that the funds of the society have been used for the benefit of members of the society and bogus expenditure has been claimed. Apart from these allegation based on the



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alleged loose papers no doubt has been raised at any point of time by the revenue authorities about the genuineness of charitable activity carried out by the assessee and the activities of imparting education to the students.

15a. For granting registration u/s 12AA of the Act ld. Pr. CIT/CIT has to be satisfied that the trust of society or institutions is running for charitable objects and activities is carried out are genuine in nature. In the instant case, the seized material relied upon does not establish that the activities of the assessee are not genuine and are not being carried out in accordance with objects. It is merely on the basis of certain loose papers found and seized during the search operation carried out in the case of Prakash Hari Ramani (related to Ramani group) at his residence that Ld. Pr. CIT(Central) preceded to cancel the registration granted earlier.

15b. We find that recently this Tribunal in the case of Chirayu Charitable Foundation (ITANo.179/Ind/2019 dated 09.02.2021 dealing with similar issue of cancellation of registration u/s 12AA of the Act on the allegation of genuineness of donation and their creditworthiness. This tribunal after placing reliance on various judicial pronouncements held that registration u/s 12AA of the Act cannot be cancelled unless it is established by material evidence that the activities of such trust or institutions or society are not genuine or are not being carried out in accordance with objects of the trust. The relevant portion of this order is reproduced below:-

36. We further observe that it has been consistently held by the Hon'ble courts and Co-ordinate benches that registration granted to charitable societies u/s 12AA of the Act cannot be cancelled by invoking provisions of Section 12AA(3) of the Act unless and until it is established by material evidence that the activities of such trusts/institution are not genuine or are not being carried out in accordance with the objects of the trusts or the reasonable opportunity of being heard is not granted before cancelling the registration.

37. The Co-ordinate Bench of Lucknow in the case of Fateh Chand Charitable Trust v. CIT (Exemptions) v. CIT (Exemptions) [2017] 83 taxmann.com 33 (Lucknow - Trib.) Hon'ble Tribunal while dealing with the issue of Cancellation of registration under Section 12AA (iii) of the I.T Act held that:

Para 13. "Having carefully examined the order of the Id. Commissioner of Income Tax (Exemptions) in the light of the rival submissions, we find that on receipt of certain information from the Id. Commissioner of Income Tax (Exemptions), Kolkata; Id. Commissioner of Income Tax (Exemptions) has issued notice under section 12AA(3) of the Act to the assessee on 13.11.2015 for compliance on 24.11.2015. On 24.11.2015 the assessee sought adjournment and hearing was adjourned to 27.11.2015. On 27.11.2015 the assessee has filed a detailed reply to the charges leveled against it in show cause notice. The assessee emphatically denied the allegations leveled against the assessee that it has



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received a donation of Rs.1 crore through cheque after making payment of the same in cash to M/s Herbicare Health Care Bio Herbal Research Foundation. The reply filed by the assessee is available at pages 19 to 25 of the compilation of the assessee running into 7 pages and in para 8 of it, the assessee has specifically asked the Id. Commissioner of Income Tax that in case there is any authentic material available with him which could throw some light on this issue, the same may be given to the assessee so that specific' reply on the same could be submitted on it, besides denying the allegations leveled against him. For the sake of reference, we extract para 8 as under:-

8. That your goodself has, in your notice dated 13/11/2015, alleged that the assessee has received a donation of Rs1,00,00,000/- from M/s Herbicare Health Care Bio Herbal Research Foundation in the A/Y 2011-12 by paying an amount of Rs.1,00,00,000/- in cash to M/s Herbicare Health Care Bio Herbal Research Foundation itself. This allegation is totally untrue as nothing of this sort has been written or mentioned in the confirmation, given by M/s Herbicare Health Care Bio Herbal Research Foundation. Herbal Research Foundation itself. This allegation is totally untrue as nothing of this sort has been written or mentioned in the confirmation, given by M/s Herbicare Health Care Bio Herbal Research Foundation.

Till date no evidence to the contrary has been made available to the assessee which could substantiate your honour's allegation that the amount of Rs.1,00,00,000/- was paid by the assessee in cash to the donor in exchange of donation received by cheque. However, in case, there is any authentic material available with your honour which could throw some light on this issue, the same may be given to the assessee so that a specific reply on the same could be submitted on it"

(ii) The Co-ordinate Bench of Mumbai in the Case of Lilavati Kirtilal Mehta Medical Trust, Bandra V. CIT (Central) -I, Mumbai [2019] 108 taxmann.com 272 (Mumbai - Trib.) the Hon'ble ITAT, Mumbai Held that :-

Now, we may go back to section 12AA(3) of the Act, which prescribes only two conditions under which the Commissioner is empowered to cancel the registration earlier granted u/s. 12A of the Act. In our view, the points brought out by the Commissioner in the impugned order are not in the context of the conditions prescribed u/s. 12AA(3) of the Act, but are relevant for the purposes of making an assessment of income.

11. In the present case, the case sought to be made out by the Commissioner is that the violation carried out by the assessee would lead to denial of exemption u/s. 11 & 13 of the Act and, therefore, the pre-requisite of section 12AA(3) of the Act is satisfied. In para 9 of the impugned order, the Commissioner records that the violation of section 11 & 13 of the Act would result in forfeiture of exemption not only for the year in which such



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transactions occur but also for the years when such arrangement continues to be in force. In our considered opinion, such an approach of the Commissioner is quiet misdirected and is inconsistent with the legal position on the subject contemplated u/s. 12AA(3) of the Act so as to cancel registration already granted. We may add here that we are not shutting out the case of the Revenue to examine whether or not there has been a violation of section 13 of the Act, but we are only trying to say that the same is not relevant for the purpose of cancellation of registration u/s. 12AA(3) of the Act. Of course, such matters can be dealt with in the course of assessment proceedings and, in our view, the same ought to be dealt with, if the situation so warrants. Presently, we are confining ourselves with examining the efficacy or otherwise of the action of the Commissioner in invoking section 12AA(3) of the Act and we find that the reasons advanced by the Commissioner are not germane. On this point, the learned representative for the assessee has relied on the following decisions to say that section 12AA(3) cannot be invoked by Commissioner for cancellation of registration merely for violation of provisions of section 11 and 13 of the Act by the assessee :—

- *CIT v. Apeejay Education Society* [2015] 59 taxmann.com 102 (Punj. Har.)
- *Cancer Aid & Research Foundation v. DIT (Exemption)* 86/49 taxmann.com 537 (Mum. - Trib.)
- *CIT (Exemptions) v. Cancer Aid & Research Foundation* Income Tax Appeal No.505 of 2015
- *Prabodhan Shikshan Prasarak Sanstha v. Dy. CIT* taxmann.com 33/[2015] 152 ITD 473 (Pune - Trib.)
- *Tamil Nadu Cricket Association v. DIT (Exemption)* 633/221 Taxman 275/[2013] 40 taxmann.com 250 (Mad.)

12. Therefore, in view of our aforesaid discussion, on the preliminary point itself, we find that the impugned order of the Commissioner cancelling the registration u/s. 12AA(3) of the Act is bereft of a valid jurisdiction.

(iii)The Hon'ble Karnataka High Court in the case of *CIT Vs. Islamic Academic of Education* reported in 229 Taxman 274 (Karn) held as under :-

In the instant case, the material on record shows that the Trust has established educational institution and imparting medical education. Every year, students are admitted. Huge investment is made for construction of buildings for housing the college, hostel and to provide other facilities to the students who are studying in the College. The College is recognized by the Medical Council of India, State of Karnataka and all other statutory authorities. Therefore, it cannot be said that the Trust is not genuine. Admittedly, the



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students are being admitted every year. Students are studying in all courses. Thus the object of the constitution of the Trust namely imparting of education is going on uninterruptedly. Therefore, it cannot be said that the activities of the Trust are not being carried out in accordance with the objects of the Trust. When the aforesaid two conditions are fully satisfied, on the ground that the trustees are misappropriating the funds of the Trust the registration of the Trust cannot be cancelled. If the trustees are misappropriating the funds, if they are maintaining false accounts, it is open to the authorities to deny the benefit under section 11 of the Income Tax Act, but that is not a ground for cancelation of registration itself. That is precisely what the Tribunal has held. Therefore, the substantial question of law is answered in favour of the assessee and against the revenue. There is no merit in this appeal.

(iv)The Hon'ble Allahabad High Court in the case of Red Rose School reported in (2007) 163 Taxman 19 (All.), wherein it is observed that:-

"CIT is entitled to see only the genuineness of objects and activities : It has been held that while refusing application under section 12A the Commissioner has to examine only two aspects, i.e., genuineness of the activities of the trust /institution and object of the trust / institution. Once there is no dispute about the genuineness of the activities; the Commissioner cannot take shelter of any other outer source for refusing registration under section 12A. The issue of registration under section 12A and the scope of enquiry at the stage of section 12AA was discussed, it was categorically held in the said decision that section 12AA does not speak anywhere that the CIT, while considering the application for registration, shall also see that the income derived by the trust or the institution is either not being spent for charitable purpose or such institution is earning profit. Profit earning or misuse of the income derived by charitable institution from its charitable activities may be a ground for refusing exemption only with respect to that part of the income but cannot be taken to be a synonym to the genuineness of the activities of the trust or the institution. While considering the registration under section 12AA, the scope of enquiry of the Commissioner would be limited to the aforesaid extent only."

(v)The decision of Krupanidhi Educational Trust Vs. DIT (E) – 152 TTJ 673, wherein it is held as under :-

The DIT(E) in the order u/s 12AA(3) of the Act, do not make out any case, which can show the activities of the assessee are not genuine or that the activities of the assessee are not being carried out in accordance with the objects of the trust or institution. The fact that the Assessee was paying commission to persons who solicit students for studying in



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the Assessee's institution cannot lead to the conclusion that the Assessee is not imparting education. Similarly purchase of a BMW car, borrowing of loans from Sindhi Financiers, non maintenance of regular books of accounts, violations of provisions of Sec.13(1)(c) of the Act in as much as the trustees were paid enormous salary are all by way of passing reference having no relevance to whether or not the Assessee was pursuing education as its main object. There are no facts brought out in the impugned order regarding the genuineness of the activities of the trust or as to whether the object of education was not pursued by the Assessee as its main and predominant activity. In fact, the order of the DIT(E) does not anywhere show that the assessee is not imparting education. The complaint of the revenue seems to be that education is being imparted but on commercial lines. The definition of Charitable Purpose is given in Sec.2(15) of the Act. The same refers to "relief to poor, medical relief, education and the advancement of any other object of general public utility". The proviso to Sec.2(15) of the Act introduced by the Finance Act, 2008 w.e.f. 1.4.2008 regarding excluding organizations where there is profit motive from the definition of charitable purpose applies only to the category of trusts which has as its object, the object of "advancement of any other object of general public utility". It does not apply to the other categories of charitable purpose viz., "relief to poor, education and medical relief". As rightly pointed out by the learned counsel for the assessee, eleemosynary element is not essential element of charity. It is also not a necessary element in a charitable purpose that it should provide something for nothing or for less than it costs or for less than the ordinary price. The surplus generated, if it is held for charitable purpose and applied for charitable purpose of the assessee, and then the Assessee has to be considered as existing for a charitable purpose. There are enough safeguards provided in Sec.12 and 13 of the Act to ensure that personal benefits of the persons in control of the trusts are not treated as having applied for charitable purpose and for being brought to tax like provisions of Sec.13(1) (c) of the Act which restricts unreasonable and excessive payments to certain category of persons connected with a trust or other institution. In such circumstances, the order u/s 12AA(3) of the Act, cannot be sustained.

(vi)The decision of Prabodhan Prasarak Shikshan Santhan Vs. DCIT-152 ITD 473 (Pune), wherein it is held as under :-

The Hon'ble Bombay High Court in the case of Sinhgad Technical Education Society v. CIT (Central) 2012) 343 ITR 23 (Bom) has held that "Every statutory provision which operates in respect of a trust, which has already been registered in the past is not necessarily retrospective. A provision is retrospective when it takes away a right which has vested or accrued in the past. The effect of the provision



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is to empower the commissioner to cancel the registration of the trust where he is satisfied that the activities of the trust are not genuine or are not being carried out in accordance with the objects of the trust or Institution. This could not by any stretch of imagination be regarded as retrospective alternation of the law. In the case before us, as per the amendment by the Finance Act, 2010, the Commissioner has claimed to be empowered to initiate steps for the cancellation of the registration of a trust or Institution where the activities of the trust or institution are not genuine or are not being carried out in accordance with the objects thereof even in relation to a trust which was registered under S.12A as it then stood." So basic requirement for invoking S.12AA(3) is that the activities of the trust are not genuine and are not being carried out in accordance with the objects of the trust. The CIT has recorded her findings in the order u/s12AA(3) that the trust is imparting knowledge at cost and therefore, not a charitable Trust within the purview of S. 2(15) of the Act, secondly, the appellant trust has contravened the provisions of Ss. 11(5) and 13(1) (c) of the Act. Thirdly, the trust is treated by the Chairman and family members /relatives as their private property and enjoyed by them for their benefits only. There is nothing on record to suggest that the Trust is not 'genuine'. In fact, the trust is carrying on Educational activities they are charitable in nature. The activities are carried out as per its objects. There is no infringement of any of the provisions contained in Ss.1 1(5) and 13 of the Act. The provisions of S.12AA(3) for cancellation/withdrawal of registration granted to it w.e.f. 11-2-1998 u/s 12A of the Act are not retrospective and therefore, the impugned order of the CIT passed u/s 12AA(3) is nothing but a review of its earlier order which is impermissible in law.

(vii)The decision of Rajasthan Vikas Sansthan Vs. CIT reported in 78 DTR 411 (Raj), wherein it is held as under :-

The registration can be cancelled on the ground that the activity of the trust are not genuine or are not being carried out in accordance with the object of the trust. In case there are violations as mentioned in s. 11 and 13 of the Act. Thus the AO while making assessment can deny the exemption to the trust. For getting the exemption u/s 11, registration is pre-requisite. However, registration is not a guarantee for exemption. In case the Trust fails to comply with the requirements as mentioned in s. 11 and 13 of the Act then exemption can be denied. In respect of failure mentioned in s. 11 and 13 in a particular year, it cannot be said that registration is to be cancelled. Surplus in educational activities is not relevant for cancelling the registration. The education itself is charitable object and if the surplus is utilized for the purpose of charitable activities then it cannot be said that registration is to be disallowed. The ground on



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which the registration cannot be refused, cannot be considered as a ground for cancelling the registration.

(viii) The Co-ordinate Bench of Cochin in the Case of M/s Kunhitharuvai Memorial Charitable Trust, KMCT Corporate office, Malabur Christian College Cross Road, Calicut V CIT (Central), Kochi (Order dated 16/01/2017 in Appeal No. 246/Coch/14) it was held that :-

Para 16. Having said so, let us examine the powers of the Commissioner to grant registration u/s 12AA and cancellation of registration u/s 12AA (3) of the Act. The power to cancel registration already granted u/s.12AA of the Act is contained in Sec. 12AA(3) of the Act and it reads as follows:

"(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution.

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard."

The provisions of section 12AA of the Act, deals with procedure for registration of trust/institutions. As per said section, the Commissioner shall look into the objects of the trust and its activities and satisfy himself about that the objects of the trust are charitable in nature and its activities are genuine and such activities are carried out in accordance with its objects. Sub-section (3) inserted with effect from 1st Oct., 2004 empowers the Commissioner to cancel the registration of a trust or institution granted under clause (b) of sub-section (1) when subsequent to grant of registration the Commissioner is satisfied that activities of trust or institution are not genuine or are not being carried out in accordance with objects of the trust or institution. Basic purpose of s. 12AA(3) is to check misuse of exemption under pretext of carrying out charitable activities when the same are not so. The CIT has to make out clear case for exercising powers u/s. 12AA(3). In this case, so far as object of trust is concerned, it is nowhere disputed that assessee is engaged in imparting education. Once an institution came profit" no other condition like application of income was required to be complied with. The mere existence of profit/surplus did not disqualify the institution. Breach of the conditions of the trust deed would not disentitle the institution from getting the benefit which the institution had been granted earlier being a charitable trust. Nowhere in her order, the CIT has taken any objection to the charitable and educational nature of the institution. In fact, the objects of the institution as declared in the trust deed do reflect that all are philanthropic or benevolent in nature, precisely, for the purpose of imparting education. Strange



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enough, there is no finding recorded by the CIT contrary to this fact. Rather, this is also not the case of the CIT that the institution is doing some other activity of earning profit other than the activity of running educational institutions. The established factual position is that the institution is not doing any other activity except running educational institutions. In such circumstances, the action of cancellation of registration cannot be upheld. As far as the object of the assessee is concerned, this is not the case of the Revenue that the assessee was not imparting education. Since the question about the imparting of education has not been doubted or challenged by the Revenue, the impugned order passed by the CIT is unsustainable in law. Strange enough again, there is nothing on record to prove even sightlessly that the purpose of imparting education was not fulfilled by this institute, thus the Revenue Department has failed to establish that there was any illegal activity or infringement of law so as to doubt the genuineness of the activities.

38. On perusal of the judgments and decisions referred herein above, we find that they are squarely applicable on the facts of the instant appeal and the issue raised before us and thus favours the assessee. Before concluding we would like to summarise our findings and observations in following manner:-

(i) As regards the alleged donations received from various concerns mentioned in the impugned order, we are satisfied with the identity of the alleged donors, genuineness of the transaction of giving donation to the assessee trust since most of the alleged donors are either charitable trusts or known to the Directors/ Promoters and the transactions being carried out through banking channel and we are also satisfied with the creditworthiness of the alleged donors as they have sufficient financial strength to provide the donation to the assessee trust,

(ii) As regards the alleged irregularity in education process noted by CBI the matter is still subjudice with the court and the order of Regulatory Authority namely Admission Fee Regulatory Committee stand stayed by the Hon'ble jurisdictional High Court vide stay order dated 23.7.2015 which is effective till date. The alleged irregularity is for one of the year in only one of the college run by the trust amongst other hospitals and colleges which are undisputedly providing charitable services in the field of medical and education.

(iii) The issue of irregularity in admission process is not part of the show cause notice dated 6.12.2018 issued to the assessee in connection with the cancellation of registration u/s 12AA(3) of the Act which shows that assessee was not granted reasonable opportunity of being heard on this issue which in itself makes the proceedings bad in law.



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(iv) The issues raised in the show cause notice dated 6.12.2018 issued by Ld. PCIT are not relevant for cancellation of registration u/s 12AA(3) of the Act. Such types of issues can be examined by the Assessing Officer during the course of regular assessment proceedings wherein on the basis of his examination/ investigation necessary view as permissible in law can be taken if violation of Section 11 and Section 13 of the Act by the assessee are observed. Ld. PCIT can only cancel the registration u/s 12AA(3) of the Act if it is found that the activities of the society/trust are either not genuine or are not being carried out in accordance with its object provided in bye laws.

(v) We also find that nothing on record has been brought before us by way of an independent enquiry by Ld. PCIT thereby collecting necessary evidence which can show that the activities of the assessee society are either not genuine or are not being carried out as per the objects of the society which were filed before the registering authority at the time of granting registration u/s 12AA of the Act. It is therefore established that the activities carried out by the appellant assessee society by way of running hospitals and medical colleges for the benefit of public at large and for the students are for charitable purposes only as provided in Section 2(15) of the Act.

39. We therefore in view of our above finding arrived at after examining the facts of the instant case and in the light of judgments referred herein above which are squarely applicable on the facts and issue raised before us are of the considered view that the impugned order of Ld. PCIT cancelling the assessee's registration granted u/s 12AA(1) of the Act deserves to be quashed. We accordingly order so and direct the revenue authorities to restore the registration u/s 12AA(1) of the Act granted to assessee society w.e.f. 1.4.2011. Accordingly all the grounds raised by the assessee are allowed.

15c. It is also a settled issue that the registration u/s 12AA cannot be cancelled from retrospective effect. For this view we place reliance on the judgment of Hon'ble Madras High Court in the case of Auro Lab v. ITO (2019) 102 taxmann.com 225 dated 23.01.2019 wherein Hon'ble Court held that "Since the act of cancellation of registration has serious civil consequences and the amended provision is held to have only a prospective effect the effect of cancellation, in the event the pending Tax Appeal is decided in favour of the Revenue, will operate only from the date of the cancellation order, that is 30.12.2010. In other words, the exemption cannot be denied to the petitioner for and up to the Assessment Year 2010-11 on the sole ground of cancellation of the certificate of registration." [emphasis supplied]



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15d. In view of the above discussion with regard to ground no.1 2 & 6 of the assessee's appeal, in light of the judgments and decisions referred herein above settled and judicial principles, we are of the considered view that firstly, Ld. Pr.CIT erred in cancelling the registration with retrospective effect from 01.04.2008 and secondly, we are also of the view that Ld. Pr. CIT erred in cancelling the registration u/s 12AA(3) and 12AA(4) of the Act without placing any material evidences which could indicate that the assessee society was not running for the charitable objects for which it was established and nor any doubt has been raised about genuineness of the activities carried out by the assessee society with regard to imparting of education and carrying out charitable activities. So far as, the issue arising out of the loose papers is concerned in this case alleging that the fund of the assessee society have been misappropriated by the members of the society or there is any ambiguity in the claim of expenses, it can well be taken care of at the time of assessing the income and if needed the additions can be made to the income of the assessee and the same should be restricted only to the issue involved. However in no case the remaining income of the trust/society should be affected by way of denying the benefit of exemption u/s 11 & 12 of the Act. We accordingly allow ground no.1 2 & 6 of the assessee's appeal."

34. Now going through the above finding of the Coordinate Bench, the crux of the issue is that if it is established that the assessee trust/societies is carrying out genuine activities as per the objects for which they have been established, then the issue arising out of any loose paper/documents/ incriminating material alleging that the funds of the society have been misappropriated or there is ambiguity in the claim of expenses, the same can be taken care of at the time of assessing the income and the additions involving such issues can be made but for the remaining income of the society, benefit of exemption u/s.11 of the Act cannot be denied.

35. As far as the decisions relied on by the ld. Departmental Representative are concerned, we have gone through all those decisions carefully and find that the sole substantive aspect in all those decisions is about the genuineness of the activities carried out by the trust and only in case it is find that the activities are not carried out as per the objects then the registrations have been



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cancelled. However, in the instant case as we have elaborately discussed above that the activities of the assessee trust are fully satisfying that it is running for the objects of the trust for which it has been registered and therefore even if at the end of the assessment proceedings certain additions are made with respect to the alleged allegation about receiving cash from part of the expenses incurred towards stipend, doctors salary or capitation fees then the AO can deny the benefit u/s.11 to the extent of such discrepancy but since in the present case considering the genuineness of charitable activities carried out by the assessee, we are of the view that registration u/s.12A and 12A r.w.s.12AB of the Act cannot be cancelled. Under these given facts and circumstances, we are inclined to follow the decision of Coordinate Bench in the case of *Shri Jairam Education Society Vs. PCIT (supra)* and the same being squarely applicable on the facts of the instant case hold that ld. PCIT erred in cancelling the registration granted to the assessee u/ss. 12A and 12AB of the Act solely on the ground of alleged documents even when the activities of the assessee trust are found to be genuinely carried out are charitable in nature and are in accordance with the objects of the trust and addition if any emanating out of the seized record can be taken care by the Assessing Officer in the assessment proceeding. Finding of ld. PCIT is set aside and the grounds of appeal No.s 5 to 9 raised by the assessee are allowed.

36. To conclude, we are inclined to hold that firstly the assessee deserve to succeed on the legal issues raised in Grounds of appeal No.3 and 4 and we hold that ld. PCIT erred in cancelling the registration granted to the assessee u/s.12A of the Act on 16.02.2001 and also erred in cancelling the registration granted u/s.12A r.w.s.12AB of the Act for period 01.04.2021 onwards.



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Accordingly registration granted u/s.12A of the Act and u/s.12A r.w.s.12AB of the Act stands restored. Further we also allow the Grounds of appeal 5, 6, 7, 8 and 9 raised by the assessee observing that since the assessee is carrying out genuine charitable activities as per the objects of the trust the ld. PCIT erred in cancelling the registration u/s.12A/12AB of the Act based on some statements recorded during the course of search but subsequently retracted and other seized material which were the subject matter of assessment proceedings undergoing at that point of time and therefore even if any addition is made by the AO, the benefits of registration u/s.12A/12AB of the Act shall continue to be enjoyed by the assessee for the remaining amount of income earned by it. Even the assessee succeeds on Ground of appeal No.10 because the '*specified violation*' allegedly made by the assessee trust cannot be said to be justified because the word '*specified violation*' has been brought into the Act from 01.04.2022 and the alleged violation are based on the documents and details for the F.Yrs. 2019-20 to 2021-22 which are prior to 01.04.2022. Accordingly, Grounds of appeal Nos. 1 and 2 raised by the assessee are dismissed and Grounds of appeal Nos.3 to 10 are allowed. Ground No.11 being general in nature needs no adjudication.

37. In the result, the appeal of the assessee is partly allowed.

Order pronounced on this 21st day of February, 2025.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21st February, 2025.
Satish



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आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.