

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 4779/Del/2025
(Assessment Year: 2024-25)

Richmond Educational Society, D-104, Sector-41, Noida, Uttar Pradesh	Vs.	DCIT/ ACIT, Central Circle, Ghaziabad
(Appellant)		(Respondent)
PAN: AABTR0992D		

Assessee by :	Shri Gaurav Jain, Adv Shri Tarun Channa, Adv
Revenue by:	Ms. Kranti, CIT DR
Date of Hearing	30/01/2026
Date of pronouncement	11/03/2026

O R D E R

PER M. BALAGANESH, A. M.:

1. This is an appeal preferred by the Assessee against the order passed by the Learned Principal Commissioner of Income Tax(Central), Kanpur [hereinafter referred to as the PCIT] dated 26-6-2025 under section 12AB(4)(ii) of the Income Tax ACT, 1961 [hereinafter referred to as the 'Act'] cancelling the registration of the Assessee Society granted under section 12AA/12AB of the Act for the AYs 2019-20 to 2024-25 and for subsequent assessment years.
2. The Ground No.1 raised by the Assessee stating that the Assessee Society had not committed any specified violation at all and hence cancellation of registration was unwarranted.

The Ground No.2 raised by the Assessee is challenging the action of the Learned PCIT (Central), Kanpur passing the order cancelling the registration instead of PCIT (Exemptions).

The Ground No.3 raised by the Assessee is challenging the action of the Learned PCIT's jurisdiction to cancel the registration of the Assessee Society retrospectively.

The Ground No. 4 raised by the Assessee is challenging the action of the Learned PCIT in assuming jurisdiction based on reference made by the Learned Assessing Officer who had made such reference without recording any satisfaction note as prescribed under the second proviso to section 143(3) r.w.s. 12AB(4)(b) of the Act.

The Ground No. 5 raised by the Assessee is challenging the retrospective application of second proviso to Section 143(3) of the Act when the same was inserted by the Finance Act 2022 with effect from 1.4.2022 and hence the same could not have been initiated for Assessment Years 2017-18, 2019-20, 2020-21, 2021-22 and 2022-23.

The Ground Nos. 6 to 9 raised by the Assessee are challenging the observations made by the Learned PCIT on merits to conclude that the Assessee had committed specified violation so as to warrant cancellation of registration.

The Ground Nos. 10,11 and 13 raised by the Assessee are only supplementing Ground No.1.

The Ground No. 12 raised by the Assessee is supplementing the Grounds 6 to 9 raised by the Assessee on merits.

The Ground No. 14 raised by the Assessee is general in nature and does not require any specific adjudication.

3. We have heard the rival submissions and perused the materials available on record. The Assessee is a registered charitable society established on 14-08-2006 under the Societies Registration Act, 1860 with the primary and predominant object of imparting education. Imparting education falls within the definition of charitable purpose under section 2(15) of the Act. The society was duly granted registration under section 12AA of the Act on 25-08-2009 by the Commissioner of Income Tax, Ghaziabad, which was further granted registration under section 12AB of the Act on 5-4-2022 for assessment years 2022-23 to 2026-27 in accordance with the amended provisions of the Act. The society had managed and operated three educational institutions imparting quality education to students from diverse socio-economic backgrounds, namely –

- a) The Millennium School, Sector 41, Noida
- b) The Sriram Millennium School, Sector 135, Noida and
- c) The Millennium School, Meerut

4. A search and seizure operation under section 132 of the Act was conducted on 11-07-2023 in the case of PTC group companies. A consequential search was also carried out in the case of the Assessee Society. The claim of the Assessee is that no incriminating material or evidence was found during the course of the search action on the Assessee Society so as to cast any doubt on the nature or genuineness of its principal activity of imparting education through various schools. Notwithstanding the above, the learned PCIT invoked the provisions of section 12AB(4) of the Act and issued show-cause notice dated 24-12-2024 under section 12AB(4) of the Act

proposing withdrawal of registration. Pursuant thereto, the learned PCIT passed the impugned order dated 26-06-2025 withdrawing the registration of the Assessee Society. The learned PCIT has cancelled the registration of the Assessee Society for assessment years 2019-20 to 2023-24 and for all subsequent assessment years on the basis of the following allegations relating to the transactions of the Assessee Society :-

- a) Alleged bogus salary to Mrs. Jasmine Gandhi
- b) Cash receipts in lieu of alleged bogus expenditure / bogus billing
- c) Advance of Rs. 20 crores paid to Shri Paramjit Gandhi for purchase of school building and
- d) Off the books cash transactions.

5. The main basis of the Learned PCIT to cancel the registration is on the premise that the aforesaid transactions directly or indirectly resulted in extension of benefit to certain trustees or related parties within the meaning of section 13(3) of the Act, thereby allegedly attracting the provisions of section 13(1)(c) of the Act. On the basis of such alleged violation, the Learned PCIT has further sought to invoke clause (a) of the Explanation to section 12AB(4) of the Act. Additionally, the Learned PCIT has alleged that by entering into the said transaction, the Assessee committed violation of Clause (e) of Explanation to section 12AB(4) of the Act on the premise that the activities of the trust were rendered non-genuine. The Learned AR before us vehemently argued that the show-cause notice or the subsequent notices issued by the Learned PCIT did not contain any specific reference to either Clause (a) or Clause (e) of Explanation to Section 12AB(4) of the Act, which were alleged to have been violated by the Assessee Society. The show cause notice dated 24-12-2024 and subsequent notice issued by the Learned

PCIT are enclosed in Pages 70 to 78 and Pages 101 to 102 of the Paper Book. Hence it was argued that the entire action of the Learned PCIT in cancelling the registration would get vitiated by lack of proper notice and breach of violation of natural justice.

6. It would be relevant to reproduce the provisions of section 12AB(4) of the Act in this regard :-

“Procedure for fresh registration.

12AB. (1) to (3)

(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 finality⁹⁸ [; or]*
- ⁹⁸[*(g) the application referred to in clause (ac) of sub-section (1) of section 12A⁹⁹ [***] contains false or incorrect information.*]
- (5) *The order under clause (ii) or clause (iii) of sub-section (4), as the case may be, shall be passed before the expiry of a period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) of sub-section (4).*

(emphasis supplied by us)

7. It would also be relevant to reproduce the provisions of section 13 of the Act for better understanding of the adjudication of the issue in dispute before us:-

“Section 11 not to apply in certain cases.

13. (1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

- (a) *any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;*
- (b) *in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular*

religious community or caste;

(bb) [***]

(c) *in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—*

(i) *if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, **any part of such income** enures, or*

(ii) ***if any part of such income** or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,*

directly or indirectly for the benefit of any person referred to in sub-section (3), such part of income as referred to in sub-clauses (i) and (ii):

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution :

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970;

(d) *in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—*

(i) *any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or*

(ii) *any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or*

(iii)

Provided that nothing in this clause shall apply in relation to –

.....

Explanation.—For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during

the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 [other than sub-clause (ii) of clause (a) thereof] of the Finance Act, 1972.

*(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or **any part of such income** or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—*

- (a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both;*
- (b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;*
- (c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;*
- (d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;*
- (e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;*
- (f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;*
- (g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):
Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;*
- (h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest.*

(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—

- (a) the author of the trust or the founder of the institution;*

- ³[(b) any person whose total contribution to the trust or institution, during the relevant previous year exceeds one lakh rupees, or, in aggregate up to the end of the relevant previous year exceeds ten lakh rupees, as the case may be;]
- (c) where such author, founder or person is a Hindu undivided family, a member of the family;
- (cc) any trustee of the trust or manager (by whatever name called) of the institution;
- (d) any relative of any such author, founder, ⁴[***] member, trustee or manager as aforesaid;
- (e) any concern in which any of the persons referred to in clauses (a), ⁵[***] (c), (cc) and (d) has a substantial interest.

(4) Notwithstanding anything contained in clause (c) of sub-section (1) but without prejudice to the provisions contained in clause (d) of that sub-section, in a case where the aggregate of the funds of the trust or institution invested in a concern in which any person referred to in sub-section (3) has a substantial interest, does not exceed five per cent of the capital of that concern, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such investment, by reason only that the funds of the trust or the institution have been invested in a concern in which such person has a substantial interest.

(5) Notwithstanding anything contained in clause (d) of sub-section (1), where any assets (being debentures issued by, or on behalf of, any company or corporation) are acquired by the trust or institution after the 28th day of February, 1983 but before the 25th day of July, 1991, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such assets, by reason only that the funds of the trust or the institution have been invested in such assets if such funds do not continue to remain so invested in such assets after the 31st day of March, 1992.

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), but without prejudice to the provisions contained in sub-section (2) of section 12, in the case of a charitable or religious trust running an educational institution or a medical institution or a hospital, the exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to persons referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3).

- (7)
- (8)
- (9)
- (10)
- (11)

Explanation 1.—For the purposes of sections 11, 12, 12A, 12AA, 12AB and this section, "trust" includes any other legal obligation and for the purposes of this section "relative", in relation to an individual, means—

- (i) spouse of the individual;*
- (ii) brother or sister of the individual;*
- (iii) brother or sister of the spouse of the individual;*
- (iv) any lineal ascendant or descendant of the individual;*
- (v) any lineal ascendant or descendant of the spouse of the individual;*
- (vi) spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);*
- (vii) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.*

Explanation 2.—.....

Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—

- (i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);*
- (ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.*

(Emphasis supplied by us)

8. It would also be relevant to reproduce the provisions of section 115BBI of the Act as under:-

“Specified income of certain institutions.

115BBI. (1) Where the total income of an assessee, being a person in receipt of income on behalf of any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any specified income, notwithstanding anything contained in any other provision of this Act, the income-tax payable shall be the aggregate of,—

- (i) the amount of income-tax calculated at the rate of thirty per cent on the*

aggregate of **such specified income**; and

- (ii) *the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of **specified income** referred to in clause (i).*

(2) *Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing the **specified income referred to in clause (i) of sub-section (1).***

Explanation.—For the purposes of this section, "specified income" means,—

- (a) *income accumulated or set apart in excess of fifteen per cent of the income where such accumulation is not allowed under any specific provision of this Act; or*
- (b) *deemed income referred to in Explanation 4 to the third proviso to clause (23C) of section 10, or sub-section (1B) or sub-section (3) of section 11; or*
- (c) *any income, which is not exempt under clause (23C) of section 10 on account of violation of the provisions of clause (b) of the third proviso of clause (23C) of section 10, or not to be excluded from the total income under the provisions of clause (d) of sub-section (1) of section 13; or*
- (d) *any income which is deemed to be income under the twenty-first proviso to clause (23C) of section 10 or which is not excluded from the total income under clause (c) of sub-section (1) of section 13; or*
- (e) *any income which is not excluded from the total income under clause (c) of sub-section (1) of section 11.*

(Emphasis supplied by us)

9. The Learned AR before us submitted that Clause (e) of Explanation to Section 12AB(4) of the Act per se is wholly inapplicable and could not have been validly invoked in the facts and circumstances of the instant case. The Learned AR submitted that Clause (e) of the Explanation to Section 12AB(4) of the Act makes it abundantly clear that the drastic power to cancel the registration could be exercised only in two narrowly circumscribed situations, namely –

- a) Where the activities of the Trust or Institution are found to be not genuine ; or

b) Where the activities are not being carried out in accordance with the conditions of registration.

9.1. It was submitted that the statutory emphasis provided under Clause (e) of the aforesaid provision is exclusively and unequivocally on the nature, character and conduct of the activities of the trust or institution and not on isolated transactions or disputed financial arrangements. It was submitted that even though search was conducted on the Assessee society, no incriminating material, document or evidence whatsoever was found during the course of the search to suggest that the activities of the Assessee society in relation to running and operating the school are sham, fictitious or colourable. Hence the first limb of Clause (e) of the aforesaid provision that activities of the trust Assessee Society are not genuine does not get satisfied.

9.2. The Learned AR before us tried to draw comparison with the erstwhile provisions of Section 12AA(3) of the Act as it stood prior to 2014, providing power to cancel the registration, with the existing provisions of the Act. He submitted that prior to 2014, the power to cancel registration was consciously and narrowly circumscribed by the legislature. Section 12AA(3) of the Act as it stood prior to the substitution of the new registration framework permitted cancellation of registration only upon the satisfaction of two specific and exclusive conditions, namely-

- a) Where the activities of the trust or institution were not genuine ; or
- b) Where the activities were not being carried out in accordance with the objects of the trust or institution.

9.3. The provision did not contemplate cancellation of registration for alleged financial irregularities, disputed transactions, or purported violations of the Act unless such allegations went to the very root of the genuineness of activities or deviation from the stated objects. It would be relevant to reproduce the relevant extract of Section 12AA(3) of the Act for ready reference :-

“Procedure for registration.

12AA. (1) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) or clause (ab) of sub-section (1)] of section 12A, shall—

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about,—

- (i) the genuineness of activities of the trust or institution; and*
- (ii) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects,*

and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause, he—

- (i) shall pass an order in writing registering the trust or institution;*
- (ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,*

and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A)

(2)

(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 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.*

(5) Nothing contained in this section shall apply on or after the 1st day of April, 2021.

(Emphasis supplied by us)

9.4. Accordingly, it was argued that the power to cancel registration on the ground that activities of the Society are not genuine is an exceptional power, which can be exercised only where the predominant and substantive activities of the Society are shown to be sham, fictitious, non-existent or a mere facade. It is settled position of law that so long as the core charitable activities for which the Society is established are real, ongoing and carried out in accordance with its objects, registration cannot be cancelled merely because certain transactions are questioned.

9.5. The Learned AR before us vehemently tried to make a distinction between an 'activity' and 'transaction' by stating that what is relevant to be seen at the time of registration of a society or sustenance of the registration of the society is the activities carried out by the said society and not to be carried away by few transactions carried out thereon. In this

regard, he submitted that there is a clear conceptual distinction between the 'activities' of a Society and the 'transactions' undertaken in the course of administering those activities. The expression 'activities' refers to the overall, substantive and continuing charitable functions carried out by the Society in furtherance of its stated objects, whereas, 'transactions' are incidental or ancillary acts through which such activities are operationalized. In law the genuineness of activities is required to be examined in a holistic and broad manner having regard to whether the Society is in substance carrying out its charitable objects. Mere issues or disputes relating to individual transactions do not by themselves lead to an inference that the activities are not genuine unless such transactions are shown to fundamentally undermine or negate the charitable character of the Society's functioning. Matters relating to the propriety or tax treatment of particular transactions are therefore ordinarily addressed at the assessment stage under the relevant provisions of the Act and do not automatically impinge upon the genuineness of the activities as such. He submitted that the order passed by the Learned PCIT proceeds on a fundamental legal fallacy by confusing isolated transactions with the activities of the society. Clause (e) of the Explanation to Section 12AB(4) of the Act targets cases where the activities themselves are not genuine and not situations where the revenue disputes the commercial prudence, necessity or propriety of particular transactions undertaken in the course of carrying out otherwise genuine activities. The genuineness of activities must be tested at a macro level that is whether the Society is actually carrying out its stated charitable objects. Allegations relating to valuation, mode of payment, benefit to specified persons or alleged misapplication of funds pertain to transactions which may invite examination under sections 11, 13 or 115BBI of the Act but cannot be elevated to a finding that the activities of the Society are non-genuine. He submitted that if the

fundamental distinction between the activities and transactions are not understood in the above mentioned manner, then it would render the statutory distinction between assessment stage consequences and registration stage consequences wholly otiose.

9.6. Per Contra, the Learned DR vehemently relied on the order of the Learned PCIT and stated that both the expressions 'activities' and 'transactions' are to be given the same meaning and genuineness of the activities of the Assessee Society need to be viewed only from the transactions undertaken by it. Hence she argued that there is no difference between the two and both the words convey the same meaning for the purpose of determining the genuineness of activities of the Assessee Society. Hence she argued that the Learned PCIT was duly justified in invoking the provisions of Clause (e) of Explanation to Section 12AB(4) of the Act in the facts and circumstances of the instant case.

9.7. The Learned AR in his rebuttal submitted only the predominant activity carried out by the society is to be examined and if the said predominant activity is found to be genuine and in accordance with the objects, registration cannot be cancelled at all merely on allegations of misapplication of funds or benefit to the related parties which are the subject matter of assessment proceedings. In support of this proposition, the Learned AR rightly placed reliance on the decision of Hon'ble Karnataka High Court in the case of CIT vs A S Kupparaju Brothers Charitable Foundation Trust reported in 205 taxman 9 (Kar) wherein it was held as under:-

“8. The necessity of a registration certificate under the Act has to be kept in mind while interpreting the Section 12AA. The necessity for such registration certificate is provided in Section 12A. if an assessee wants to claim the benefit under Sections 11

and 12 of the Income Tax Act, unless he has made an application for registration of the trust in the prescribed manner to the Commissioner and unless the said trust or institution is registered under Section 12AA, the assessee would not be entitled to the benefit of exemption from payment of tax under the Act in respect of the income of the trust. Therefore, the certification of registration is a sine qua non for an assessee to claim the benefit under Sections 11 and 12 of the Act in respect of the income of the trust. It is in this background, the Commissioner to whom an application is made under Section 12AA has to satisfy himself about the objects of the trust or institution and the genuineness of its activities before passing an order either granting registration or refusing to grant registration. In order to satisfy himself, it is open to him to call for such documents or information from the trust or institution and on production of such documents to satisfy himself about the genuineness of the activities of the trust or institution. He also has the power to make an enquiry in this behalf before passing of an order.

9. As is clear from the language employed in Section 12AA, first he should be satisfied about the object of the trust or institution and then the genuineness of its activities. In order to satisfy himself about the object of the trust what is required to be seen is the object as set out in a deed of trust. After satisfying himself about the object of the trust, it is open to him to see whether the activities of the trust is in conformity with the object as set out in the trust deed and on that basis he can come to the conclusion whether the said activities are genuine or a make believe one. It is in this background, the trust deed dated 21st December 1984 is to be looked into.

.....
.....

10. A perusal of the aforesaid object makes it very clear that all those objects are charitable in nature. In fact, the said fact is not disputed even by the revenue. But what is contended is that the activities of the trustees and the trust shows that it is not a genuine trust. It is in support of the said contention, the aforesaid activities of the trustees in treating the property as family property and dividing the same, executing a rectification deed, offering the property as a security for borrowing loan for businesses conducted by the trustees in their individual name and constructing buildings in the trust land and letting it out for rent and not collecting the rent from them are cited as instances to show the trust is not genuine.

11. It is in this context, it is necessary to know whether any of those activities in law has any value, Once the authors of the trust transferred the land, which belonged to them, to the trust and got it duly registered, the title of the property vests in the trust and the trustees and the original owners do not have any right over the title of the property. Even though the original owners were also appointed as trustees under the trust deed, the trustees hold the property for the benefit of the beneficiaries and the original owners have no manner of right, title or interest over the property after

execution of the trust deed. After converting the property into trust property where the trustees or the original owners meddled with the property in any manner it would no way affect the title of the trust to the said property. In this regard, it is useful to refer to the law on the point as set out in the judgment of the Apex Court in the case of Sri Agasthyar Trust v. CIT [1999] 236 ITR 23/ 103 Taxman 363 , the relevant portion reads as under:-

"It will be useful at this juncture to refer to the following passage from Tudor on Charities (6th Edn.). At page 131, it is stated as follows:

"When a charity has been founded and trusts have been declared the founder has no power to revoke, vary or add to the trusts. This is so irrespective of whether the trusts have been declared by an individual, or by a body of subscribers, or by the trustees."

When the founders of the trust have no power to alter or vary the terms of the Trust a trustee appointed to manage the properties of the Trust for securing its object can under no circumstances be regarded as having such a power specially when the original deed dated 28th November, 1941 does not bestow such power on him. Such a question also came up for consideration before the Madras High Court in Thanthi Trust v. ITO [91 ITR 261] Dealing with the question whether the founder of a trust had power to revoke the same, this Court observed as follows (pages 284-85):

"It is well established that the subsequent acts and conduct of the founder of the trust cannot affect the trust if there has been already a complete dedication, (vide Krishnaswamy Pillai v. Kothandarama Naicken [1914] 27 MLJ 582: Sunder Singh Mallah Singh Sanathan Dharam High School Trust v. Managing Committee, Sunder Singh Mallah Singh Rajput High School [1938] 1 MLJ 359 : AIR 1938 PC 73, and Gokuldoss Jamnadoss and Co. v. Lakshminarasimhalu Chetti [1940] 2 MLJ 409 : AIR 1940 Mad. 920), If a valid and complete dedication had taken place, there would be no power left in the founder to revoke and no assertion on his part or the subsequent conduct of himself or his descendants contrary to such dedication would have the effect of nullifying it. If the trust had been really and validly created, any deviation by the founder of the trust or the trustees from the declared purposes would amount only to a breach of trust and would not detract from the declaration of trust. Therefore, the subsequent-conduct of the founder in dealing with the funds of the trust long after the creation of the trust may not put an end to the trust itself."

We are in full agreement with the principle stated in the aforesaid passage and we hold that the trustee had no authority or jurisdiction to execute a fresh Trust Deed and the document dated 1st July, 1944 is of no consequence and is no more than a scrap of paper. The Trust as originally established by the Deed dated 28th

November, 1941 remained unchanged or unaffected by the later document dated 1st July, 1944."

12. *From the aforesaid statement of law, it is clear that once the authors of the trust transfers the title of the property to the trustees and creat a trust, they have no right to meddle with the property even if they have created partition deed, rectification deed and offered the property as security to the bank to raise funds. As pointed out by the Apex Court in the aforesaid judgment, they are of no consequence and is no more than a scrap of paper. All those transactions are void ab initio and in no way-affects the right of the trust. In all this, the trust is showing it as a trust property. It is treated as a trust property and it is not the case of any one of the trustees, that any one of the trustees has sold the property to any one. On the contrary, it is not in dispute that a school is being run. Now it is also not in dispute that after obtaining the requisite permission, an engineering college is being run with 3500 students imparting education, Apart from that they have started several other courses and imparting education. In deciding the genuineness of the trust what is to be seen is whether in terms of the objects set out in the trust deed whether the trust is carrying on its activities or not. If in the process of carrying on the trust activities if there is any misapplication of the property, misappropriation of funds that would not render the trust itself as non est. If the funds of the trust are misused, income of the trust is misutilised notwithstanding the fact that the certification of registration is granted under Section 12AA, the assessee will not be entitled to the benefit of exemption on that income from the provisions of the Act. The certificate of registration is only an enabling provision to claim exemption. By merely granting a certificate income is not exempted. That is only a first stage to claim exemption. The Commissioner of Appeals should not have confused these two aspects and seems to think as the trustees and his family members are treating the property as their own and misutilising the property it is not a genuine trust. When once it is admitted that in pursuance of the trust deed and in terms of the objects set out therein, schools and colleges are being run and educational institutions are being run as rightly held by the Tribunal, nothing more requires to be established to show that the trust in question is a genuine trust and therefore, the assessee is entitled to the registration under Section 12AA of the Act. As set out above, even if the registration is granted, the exemption from the provisions of the Income Tax Act in particular sections 11 and 12 is not automatic. It is only when the assessee satisfies the requirement of section 13, he would be eligible for exemption. That is a matter to be gone into by the Assessing Authority in respect of the returns filed every year and if according to them there is misappropriation of funds and it is hit by section 13 of the Act, certainly, they can deny the benefit of exemption. But that is not a ground to deny the registration in the instant case under Section 12AA, when admittedly the trust has been established to run schools and colleges for imparting education, which is a charitable purpose. In that view of the matter, we do not see any merit in this appeal. The substantial*

question of law framed in this appeal is answered in favour of the assessee and against the revenue. Accordingly, the appeal is dismissed.

(emphasis supplied by us)

9.8. Similar view was expressed by the Hon'ble Karnataka High Court in yet another case of CIT vs Islamic Academy of Education reported in 229 Taxman 274 (Kar), wherein it was held that once the object of the trust is imparting education which is a charitable purpose and carrying out of such activity in accordance with objects is not disputed by the revenue, the registration of the trust cannot be cancelled merely on the ground that trustees are misappropriating the funds of the trust. In such a scenario, it would be open to the tax authorities to deny the benefit under section 11 of the Act but that cannot be a ground for cancellation of registration itself.

9.9. The aforesaid decisions are directly applicable to the facts of the instant case and hence we are convinced that the first limb of Clause (e) of Explanation to Section 12AB(4) of the Act cannot be invoked in the present case as predominant and substantive activities of the Assessee Society namely, imparting education through duly recognised and continuously functioning educational institutions are real, ongoing and bonafide. Hence we hold that the invocation of first limb of Clause (e) of Explanation to Section 12AB(4) of the Act on the ground that activities of the Assessee Society are not genuine is wholly misconceived.

9.10. Now coming to the second limb of Clause (e) of Explanation to Section 12AB(4) of the Act namely that the activities are not being carried out in accordance with the conditions subject to which registration was granted, we find that the predominant object of the Assessee Society is

imparting education and the said activity is continued to be carried on by the Society. There is not even an allegation or whisper or finding in the order of the Learned PCIT that the Assessee Society has deviated from its stated objects. Hence the essential statutory requirement of non-compliance with registration conditions is wholly absent in the facts of the instant case. The various conditions stipulated on the Assessee Society while granting registration are listed in Form No. 10AC and we find that none of the conditions stipulated therein have been alleged, much less established, to have been violated in the impugned proceedings. The said conditions only impose a restriction on the Assessee Society not to make any distribution of surplus or assets to the specified persons under section 13(3) of the Act in the event of dissolution of the Assessee Society and not otherwise, meaning thereby – during the continuation of the activities of the Assessee Society, if there is any payment made to specified persons under section 13(3) of the Act which amounts to diversion of income of the Assessee Society, still the registration of the Assessee Society under section 12AB of the Act would not get disturbed as that was not the condition imposed for withdrawal of registration by the competent authority granting registration. On perusal of the order of the Learned PCIT, we find that the Assessee Society is not doubted about the activities carried on by it, rather the order is confined to certain alleged irregularities in specific financial transactions. Hence these alleged financial irregularities would not contribute to the conclusion that activities of the Assessee Society are not genuine or are not being carried out in accordance with its objects.

9.11. Hence we hold that invocation of Clause (e) of Explanation to Section 12AB(4) of the Act without any adverse finding on the genuineness

or nature of the Assessee Society's activities is wholly misconceived and action of the Learned PCIT in this regard is rejected.

10. The Learned PCIT had invoked Clause (a) of Explanation to Section 12AB(4) of the Act by stating that the Assessee had committed specified violation thereon. The provisions of Section 12AB(4) of the Act together with its Explanation are already reproduced hereinabove. On a plain and harmonious reading of Clause (a) of Explanation to Section 12AB(4) of the Act, it is very clear that the said provision could be invoked only where the income of the Assessee society is applied for purposes other than its stated charitable objects. The statutory trigger herein is thus restricted to diversion of income away from the objects for which registration was granted. For the purpose of grant, continuation or cancellation of registration, the determinative and decisive test is the predominant or principal activity of the Assessee Society. Registration can be denied or withdrawn only where such predominant activity itself is found to be doubtful, sham or ingenuine. The Learned AR argued that the drastic power of cancellation of registration could be attracted only when the very substratum of the Assessee Society's functioning is shown to be unreal or a mere façade. He even quoted certain illustrations in this regard, namely, where the principal object of a society is imparting education, but it is established as a matter of fact that the society is not engaged in educational activities at all and is, in substance, applying its income predominantly for medical activities, cancellation of registration may justifiably follow as the activities of the society therein were not carried out in consonance with the conditions with which registration was originally granted to it. Similarly, if a trust registered with the stated object of imparting education is, in reality, carrying on activities primarily in the nature of relief to the poor or other charitable purposes unrelated to

education, the registration may be liable to be withdrawn. In the instant case before us, the activities carried out by the Assessee Society of imparting education is not even doubted by the revenue at any point in time. The conditions with which registration under section 12AB of the Act was originally granted were fully complied with by the Assessee Society in the instant case. Accordingly, we hold that the provisions of Clause (a) of Explanation to Section 12AB(4) of the Act must have to be interpreted in a purposive and restrictive manner, so as to cover only such violations which strike at the very root of the objects for which the Assessee Society was constituted and registration was granted. In fact even after the extraordinary measure of a search conducted on the Assessee Society under section 132 of the Act, there is not a single finding or material to suggest that the Assessee Society has abandoned, diluted or diverted from its principal and predominant object of imparting education, or that its funds were applied towards any object other than education. Hence in the absence of any such allegation or evidence demonstrating the deviation from the predominant charitable object, the very jurisdictional foundation for invoking Clause (a) of Explanation to Section 12AB(4) of the Act fails. The only allegation stated by the Learned PCIT in his order is that the Assessee Society had carried out certain financial transactions which would fall in the category of an 'irregularity' as it extends benefit to certain related parties referred to Section 13(3) of the Act.

11. Let us now examine what according to the Learned PCIT is the benefit extended to the related parties referred to in section 13(3) of the Act, which according to Learned PCIT is a financial irregularity. The various financial irregularities classified by the Learned PCIT are as under:-

A. Salary paid to Ms Jasmine Gandhi – Rs 16 lakhs per month from October 2020 to September 2023 for 36 months falling in the Assessments Years 2021-22 to 2024-25. The allegation levelled on the Assessee Society is that these payments were made without obtaining any real services from Ms Jasmine Gandhi and that she had not even visited the schools for rendition of services. The Learned AR submitted that Ms. Jasmine Gandhi has got over 20 years of experience in the field of education and was named in top 25 women leaders in Indian Education Sector Award for 2018-19 and also received a BlackSwam Award for Women Empowerment by Asia One 4th Edition and many others. He drew our attention to pages 112 and 122 of the paper book containing the media / press coverage in this regard. The Learned AR submitted that Ms. Jasmine Gandhi was appointed as the Director of Academics and drew our attention to the appointment letter dated 2-9-2020 which is enclosed in pages 207-212 of the paper book. He submitted that Ms. Jasmine Gandhi had undertaken a systemic academic review of Noida campuses of the Assessee Society's schools resulting in structured improvement plans covering curriculum, mentoring and quality systems and had even given a report in this regard which is enclosed in pages 186-189 of the paper book. With regard to Meerut school assessment and closure, she had conducted a feasibility study of the Meerut school and recommended closure for non-viability. The report given by her in this regard is enclosed in pages 175-178 of the paper book. The allegation levelled on her that she had not visited the school is factually incorrect as entries in the registers maintained at the gate of the school premises of the Assessee Society show repeated in-person visits by Ms. Gandhi to both the campuses during the relevant period. The evidences in this regard are enclosed in

pages 193-203 of the paper book. The allegation that Ms. Jasmine Gandhi had not visited the school premises at all was made by Mrs. Uttara Singh, Principal of one of the school, in her statement recorded during the course of search. The Learned AR submitted that Mrs. Uttara Singh was only a Principal of one of the school, whereas Ms. Jasmine Gandhi was appointed to overlook the operations of the Society which encompassed all schools which did not necessarily involved interaction with Mrs. Uttara Singh. In fact, in the relied upon statement, Mrs. Uttara Singh confirmed meeting with Ms. Jasmine Gandhi on two to three occasions. The Learned AR submitted that later on a clarification / affidavit was also filed which is enclosed in pages 190 to 192 of the paper book in this regard. Hence, the revenue's reliance on the statement of Mrs. Uttara Singh gets vitiated based on the clarification / affidavit given at later stage. Mr S.K. Gupta, President had also filed the affidavit wherein he confirmed that no financial benefits were granted to Ms. Jasmine Gandhi unwarrantedly. This affidavit is enclosed in pages 204 to 206 of the paper book. The Learned AR submitted that all these facts clearly go to prove that Ms. Jasmine Gandhi was paid remuneration only for the actual services rendered by her and the Assessee Society had been immensely benefited out of her rendition of services. He submitted that there is no diversion of funds as alleged by the Learned PCIT. The Learned AR submitted that Ms. Jasmine Gandhi was not even a related party or a person referred to in section 13(3) of the Act. Hence, there cannot be any allegation that could be leveled on the Assessee society with regard to payment of salary to Ms. Jasmine Gandhi without obtaining any services from her.

B. Cash receipts in lieu of Bogus expenditure / Bogus billing -

During the course of search on the Trustee of the Assessee society, empty / blank / unsigned vendor invoices were found. Further, WhatsApp chats were required between Mr. Paramjit Gandhi and Mr. Samit Bajaj in the search of Mr. Paramjit Gandhi, which referred to two invoices relating to Noida Sector-41 (Rs.51,15,000) and Noida Sector-135 (Rs. 74,25,000) related to floor tiles, which the department linked to the Assessee Society. The Learned AR submitted in this regard that disallowance was made by the Learned AO in the assessment order for assessment year 2020-21 under section 37(1) of the Act in respect of this issue. For this purpose, he submitted that the Learned PCIT need not resort to cancel the registration of the Assessee retrospectively. Further, he submitted that the screenshots of WhatsApp chats merely depict a rough estimate / calculation relating to the tiles and labour charges and they do not constitute any evidence of procurement, billing or payment made by the Assessee Society. There is absolutely no relationship nexus brought on record by the revenue in this regard and during the period to which the chats allegedly relate, neither Mr. Paramjit Gandhi nor Mr. Samit Bajaj had any role, engagement, authority or association with the Assessee Society. The Learned AR submitted that this seized document was seized from the premises of the Trustee of the Assessee Society during his search in his individual capacity. Absolutely there was no cash trail found either in the search or brought on record with evidence by the revenue in this regard.

C. Advance of Rs 20 crores to Mr Paramjit Gandhi –

The Assessee paid Rs. 20 crores advance to Mr. Paramjit Gandhi for purchase of school infrastructure located at Noida Sector-41 and Noida Sector-135. The Learned AR submitted that there was a land and building owned by one company. The said land and building was taken on lease by the Assessee Society for use of school buildings and infrastructure at Noida Sector-41 and Noida Sector -135. The said company went into Corporate Insolvency Resolution Process (CIRP) and on 14-12-2020, Mr Paramjit Gandhi was approved by the order of the Hon'ble National Company Law Tribunal as the Successful Resolution Applicant for Educomp Infrastructure & Schools Management Ltd (later renamed as Jasrati Education Solutions Ltd). On 15-1-2023, the Assessee Society entered into a Memorandum of Understanding (MOU) with Mr Paramjit Gandhi for purchase of ownership, use and occupation rights in the building of school located at Noida Sector -41 and Noida Sector-135. The total agreed consideration for transfer of the buildings was fixed at Rs 60 crores and Society had to pay earnest money / advance of Rs 20 crores. MOU also stipulates that upon completion of conveyance and receipt of requisite statutory and regulatory approvals, the earnest money of Rs 20 crores would either be adjusted against the final consideration payable to the asset owning entity or in the alternative, be refunded. Later the Assessee Society received back Rs 10 crores from Mr Paramjit Gandhi, being part of the earnest money earlier advanced and balance Rs 10 crores was adjusted against the purchase consideration. The sale consideration for building of Noida Sector-135 was fixed at Rs 38,63,50,000 and for Noida Sector-41 was fixed at Rs 21,36,50,000 totalling to Rs 60 crores for which payments were made by the Assessee Society to

Jasrati Education Solutions Ltd. The Learned AR submitted that the Building Purchase Agreement is enclosed in Pages 434 to 442 of the Paper Book. Further the Assessee Society had taken loan from IDFC First Bank for purchase of the said buildings for which hypothecation deed dated 26-7-2024 was executed (enclosed in Pages 309 to 315 of the Paper Book) and loan sanction letter dated 23-7-2023 is enclosed in Pages 316 to 318 of the Paper Book. The Learned AR submitted that no addition was made by the Learned AO in the assessment order on this issue since the Assessee had not claimed the same as application of income. Mr. Paramjit Gandhi was not even a related party in terms of section 13(3) of the Act at the relevant period.

D. Off the books cash transactions –

The revenue contended that the Assessee Society made certain payments / receipts in cash outside the books of accounts not recorded in the financial statements. This was alleged on the basis of diaries marked BK-6 and BK-7 found and seized during the search from the custody of Shri Puneet Kumar who is an employee of the Assessee Society. The Learned AR submitted that the Learned AO had made addition under section 69C and section 69A of the Act for assessment years 2022-23 and 2023-24 in this regard. He submitted that the entries in diary pertain to the employee's father's transport business and the same has got absolutely no link with the transactions of Assessee Society at all. The affidavit of employee was also filed on record owning up the entire seized document confirming the entire transactions that it pertains to his father's transport business and not linked with the Assessee Society. However, the same was not accepted by the Learned AO and

additions made in the hands of the Assessee Society for the same. Further, the Learned AR submitted that the aforesaid transactions were not recorded in the books of accounts of the Assessee Society and accordingly not claimed as an application of income. It was also clarified that the said diary belonged to Shri Ashok Kumar Sharma, a private transporter and father of Shri Puneet Kumar Sharma, employee of the Assessee Society.

11.1. The Learned AR pointed out that none of the aforesaid alleged financial irregularities would hamper the predominant and core activity of imparting education by the Assessee Society. Hence the alleged financial irregularities would not stand in way of continuation of the registration granted to the Assessee Society.

12. We find a lot of force in the alternative arguments advanced by the Learned AR on without prejudice basis that any benefit, even if assumed to be extended to related parties, such an alleged violation does not fall within the scope of Clause (a) of Explanation to Section 12AB(4) of the Act. In this regard, the Learned AR rightly placed reliance on the provisions of section 13(1)(c) of the Act, which is a self-contained code by itself to deal with situations involving alleged benefit to specified persons. He submitted that the provisions of section 13(1)(c) of the Act prior to amendment by the Finance Act 2014 was confined only to denial of exemption to the extent prescribed for the relevant assessment year and does not extend to cancellation of registration. He referred to the provisions of section 13(1)(c) of the Act as it stood prior to amendment by the Finance Act 2014 and impressed upon us to drive home the point that the legislature has consciously provided a distinct mechanism and consequence under section 13 for alleged benefits to related parties, which is limited to

taxability of the diverted income alone and not the withdrawal or cancellation of registration. The Learned AR also placed reliance in support of the aforesaid proposition on the decision of Hon'ble Bombay High Court in the case of CIT (Exemptions) vs Audyogik Shikshan Mandal reported in 101 taxmann.com 247 (Bom HC), wherein it was held that where funds of assessee trust were utilized for purchase of car in name of its trustee, there was violation of section 13(2)(b) read with section 13(3); however, denial of exemption under section 11 should be limited only to amount which was diverted in violation of section 13(2)(b). The Learned AR also placed reliance on the Co-ordinate Bench of Mumbai Tribunal in the case of Lilavati Kirtilal Mehta vs CIT reported in 178 ITD 338 (Mum Trib). The relevant operative portion of the said order of the Tribunal is reproduced below:-

“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 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) [2014] 66 SOT 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 [2014] 44 taxmann.com 33/[2015] 152 ITD 473 (Pune - Trib.)*
- ◆ *Tamil Nadu Cricket Association v. DIT (Exemption) [2014] 360 ITR 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.

13. Now, we may come to the argument set up by the learned CIT-DR. According to him, the activities, which has resulted in violation of section 13 of the Act can be construed as activities carried out by the Trust, which are not in accordance with the objects of the Trust. In our considered opinion the argument set up by the CIT-DR is quite misconceived in as much as the activities that are required to be considered for the present purpose are the activities which are being carried out towards objects of the Trust. In the present case, as we have seen initially, the objects of the Trust are formation of hospital and Institutions for medical relief, etc. In fact, there is no finding by the Commissioner much less any material on record, which would show that the activities of the Trust are de hors its stated objects. The transactions, which are being understood by the CIT-DR as activities, cannot be considered to be the activities that are contemplated for the purposes of section 12AA(3) of the Act. At this stage, we may observe that the insertion of section 12AA(4) of the Act by the Finance Act, 2014 w.e.f. 01.10.2014 also cannot be lost sight of as our subsequent discussion would show. As noted earlier, sub-section (4) of section 12AA has expanded the situation for cancellation of registration by the Commissioner. In fact, the situation sought to be covered by section 12AA(4) of the Act revolves around the manner in which activities are carried out, including a case where the income or property of the trust is applied for specific persons like author of trust, trustees, etc; or investment of funds in prohibited modes, etc. The aforesaid are areas, which are contained in section 13 of the Act, which disentitles an assessee from the exemptions contained in section 11 and 12 of the Act. In other words, violation of section 13 of the Act is also sought to be covered by the Legislature by insertion of sub-section (4) to section

12AA of the Act as a ground for cancellation of registration. So however, the said provision is effective from 01.10.2014. Pertinently, we are dealing with the impugned order of the Commissioner dated 28th March 2014 and, therefore, the provisions of section 12AA(4) of the Act inserted w.e.f. 01.10.2014 would have no application. In fact, the insertion of section 12AA(4) of the Act on a subsequent date reinforces the legal position noted by us in earlier paras that in the impugned case what the Commissioner was required to satisfy the then existing conditions contained in section 12AA(3) of the Act in order to cancel the registration. Thus, the impugned reasons advanced by the Commissioner do not give him jurisdiction to invoke section 12AA(3) of the Act at the relevant point of time.

14. Therefore, we conclude by holding that having regard to the facts and circumstances of the case the Commissioner has wrongly invoked section 12AA(3) of the Act in as much as the requisite conditions contained therein are not fulfilled. Before parting, we may clarify that we have not examined the merits of the reasoning advanced by the Commissioner, which in any case, in our considered opinion, the Revenue is free to examine in the course of the relevant assessment proceedings carried out by the Assessing Officer, as advised in law.

15. In conclusion, we set-aside the order of the Commissioner and restore the registration originally granted to the assessee u/s. 12AA of the Act on 22.01.1979 (supra).

16. In the result, the appeal is allowed, as above.

12.1. Similar views were expressed by the Hon'ble Jurisdictional Delhi High Court in the case of DIT(E) vs Agrim Charam Foundation reported in 253 ITR 593 (Del) ; Hon'ble Karnataka High Court in the case of CIT vs Fr. Mullers Charitable Institutions reported in 363 ITR 230 (Kar) ; Hon'ble Bombay High Court in the case of DIT (E) vs Sheth Mafatlal Gagalbhai Foundation reported in 249 ITR 533 (Bom) ; Hon'ble Allahabad High Court in the case of CIT vs Red Rose School reported in 163 Taxman 19 (All). Even as per the provisions of section 164(2) of the Act read with its proviso, only such part of the income so diverted within the meaning of section 13(1)(c) or 13(1)(d) of the Act would be taxable in the hands of the trust / society. Even the CBDT had come out with a Circular No. 387 dated 6-7-1984 wherein they had stated that the legal precedents that were

rendered in the context of violation of provisions of section 13(1)(d) of the Act shall apply mutatis mutandis to violation of provisions of section 13(1)(c) of the Act also. This was rendered to clarify the tax position as the legislature was very clear with regard to grant of exemption under section 11 of the Act in the event of violation of provisions of section 13(1)(d) of the Act, wherein only such part of the violation would be denied exemption under section 11 of the Act and not the complete denial of exemption under section 11 of the Act. There were some confusion that was created with regard to denial of exemption under section 11 of the Act in the event of violation of provisions of section 13(1)(c) of the Act. Hence the CBDT came out with the aforesaid Circular No. 387 dated 6-7-1984 clarifying the tax position by treating violations of section 13(1)(c) at par with section 13(1)(d) of the Act while determining the claim of exemption under section 11 of the Act. For the sake of convenience, the relevant portion of the CBDT Circular No. 387 dated 6-7-1984 is reproduced below:-

“28.6 It may be noted that new sub-section (1A) inserted in section 161 of the Income-tax Act, which provides for taxation of the entire income received by trusts at the maximum marginal rate is applicable only in the case of private trusts having profits and gains of business. So far as the public charitable and religious trusts are concerned, their business profits are not exempt from tax, except in the cases falling under clause (a) or clause (b) of section 11(4A) of the Income-tax Act. As the maximum marginal rate of tax under the new proviso to section 164(2) applies to the whole or a part of the relevant income of a charitable or religious trust which forfeits exemption by virtue of the provisions of the Income-tax Act in regard to investment pattern or use of the trust property for the benefit of the settlor, etc., contained in section 13(1)(c) and (d) of that Act, the said rate will not apply to the business profits of such trusts which are otherwise chargeable to tax. In other words, where such a trust contravenes the provisions of section 13(1)(c) or (d) of the Act, the maximum marginal rate of income-tax will apply only to that part of the income which has forfeited exemption under the said provisions.

(Emphasis supplied by us)

12.2. In view of the plain statutory scheme of provisions of Section 13(1)(c) of the Act as it stood prior to the amendment by the Finance Act 2014,

read with the consistent and binding judicial interpretations thereof mentioned herein above, we hold that the legislature never intended violation of Section 13 to operate as a ground for cancellation or withdrawal of registration. The consequence contemplated under Section 13 of the Act is consciously limited to denial of exemption only to the extent of income alleged to have been diverted for the benefit of the specified persons leaving the registration of the trust intact. This distinction between assessment stage consequences and registration stage consequences has been uniformly recognized by the Hon'ble High Courts and Tribunals. Hence, we are in complete agreement with the arguments advanced by the Learned AR that any attempt to stretch an alleged violation of Section 13(1)(c) of the Act into a ground for cancellation of registration, would indeed amount to rewriting the statute and the same would obliterate the legislative demarcation between exemption and registration and result in manifestly disproportionate and unjust consequences. We find that this amendment by Finance Act 2022 provided a clear legislative shift aimed at rationalizing the law by aligning the consequence of such violations with their true nature and gravity, ensuring that cancellation of registration is not resorted to mechanically and is replaced by proportionate tax consequences wherever appropriate. This paved way for introduction of provisions of section 115BBI of the Act in the statute and section 12AB(4) of the Act together with its Explanation.

12.3. We find that the earlier framework under section 12AA(4) of the Act stood modified pursuant to the amendments brought in section 13(1)(c) of the Act by the Finance Act 2022, whereby a violation of section 13(1) of the Act, no longer results in cancellation or withdrawal of registration and the statutory framework consequence is confined to denial of exemption only

to the extent of the income so diverted. Prior to the amendments introduced by the Finance Act 2022, the Act contemplated cancellation or withdrawal of registration of a trust in cases where violations of section 13(1) of the Act were alleged. However, the legislature has consciously altered this position by introducing a clear statutory distinction between violations warranting denial of exemption and violations warranting cancellation of registration. Post-amendment, a violation of section 13(1) of the Act, does not per se result in cancellation of registration. Instead, the statutory consequence is restricted to denial of exemption only to the extent of the income so applied for the benefit of specified persons, while the registration of the trust continues to remain intact. **This intent is manifest from the amended scheme of sections 11, 12, 13 and section 12AB of the Act, wherein violations of section 13(1) of the Act are consciously excluded from the list of specified violations under the Explanation to Section 12AB(4) of the Act.** We find that post Finance Act, 2022, the provisions of section 13(1)(c) of the Act very clearly mention that if there is a benefit extended to specified persons referred to section 13(3) of the Act either directly or indirectly, then only such part of the income so diverted would be subjected to tax in the hands of the trust and to that extent, the exemption under section 11 of the Act would be denied, while the charitable character and registration of the trust would remain intact. For this, a specific section 115BBI of the Act has been introduced by the statute that the diverted amounts in terms of section 13(1)(c) of the Act shall get taxed at a maximum marginal rate of 30% on gross basis. Accordingly, once the statute itself limits the consequence of Section 13(1) of the Act violation, to taxation of the income so diverted, any attempt to invoke cancellation of registration on the same set of allegations amounts to imposing a consequence which the legislature has consciously chosen to exclude under the Post Finance Act 2022 regime. In fact, had it been

the intention of the legislature to continue cancellation or withdrawal of registration as a consequence of violation of Section 13(1) of the Act, then there was absolutely no necessity to introduce a specific statutory mechanism providing for denial of exemption only to the extent of income so diverted. Once the registration is cancelled or withdrawn, the trust ceases to be eligible for exemption altogether and the question of proportionate disallowance of income would not arise. In other words, once the registration is withdrawn, then the expression provided in Section 13(1)(c) of the Act that such part of the diverted income shall get taxed becomes otiose. That situation would never arise since the entire exemption would be denied once the registration is cancelled. Hence we are convinced that violations of section 13(1) of the Act are to be dealt with at the assessment stage only by denial of exemption to the extent of income so applied / diverted while the registration and charitable character of the trust are intended to remain undisturbed. This understanding of ours is even made very clear from the Memorandum Explaining the Provisions in the Finance Bill 2022 which clearly evidences the legislative intent to rationalise the law by restricting the consequence of such violations to taxation of the specified income at a special rate, and not by withdrawing registration. For the sake of convenience, the relevant portion of the Memorandum to Finance Bill 2022 is reproduced below:-

“Rationalisation of the provision of Charitable Trust and Institutions

Income of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or any trust or institution registered u/s 12AA or 12AB of the Act is exempt subject to the fulfilment of the conditions provided under various sections. The exemption to these trusts or institutions is available under the two regimes

- i. Regime for any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 (hereinafter referred to as trust or institution under first regime); and*

- ii. *Regime for the trusts registered under section 12AA/12AB (hereinafter referred to as trust or institution under the second regime).*

In the Finance Bill, it is proposed to rationalise the provisions of both the exemption regimes by-

- I. *ensuring their effective monitoring and implementation;*
- II. *bringing consistency in the provisions of the two exemption regimes; and*
- III. *providing clarity on taxation in certain circumstances.*

2. *Some consequential amendments are also proposed following the amendments of past few years. All the proposals are discussed below:-*

3. *Ensuring effective monitoring and Implementation of two exemption regimes*

3.1. *Books of account to be maintained by the trusts or institutions under both the regimes*

a) *Where the total income of any trust or institution under the second regime, as computed under this Act without giving effect to the provisions of section 11 and section 12 of the Act, exceeds the maximum amount which is not chargeable to income-tax in any previous year, it is required to get its accounts audited. Similar provision exists for the trusts or institutions under the first regime in the tenth proviso to clause (23C) of section 10 of the Act.*

b) *However, there is no specific provision under the Act providing for the books of accounts to be maintained by such trusts or institutions. In order to ensure proper implementation of both the exemption regimes, it is proposed to amend clause (b) of sub-section (1) of section 12A of the Act and tenth proviso to clause (23C) of section of the Act to provide that where the total income of the trust or institution under both regimes, without giving effect to the provisions of clause (23C) of section 10 or section and 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed.*

c) *These amendments will take effect from 1st April, 2023 and will accordingly apply to the assessment year 2023-24 and subsequent assessment years.*

[Clauses 4 and 6]

3.2. *Penalty for passing on unreasonable benefits to trustee or specified persons*

a) *Under section 13 of the Act, trusts or institution under the second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. In order to discourage such misuse of the funds of the trust or institution by specified persons, it is proposed to insert a new section 27IAAE in the Act to provide for penalty on trusts or institution under both the regimes which is equal to amount of income applied by such trust or institution for the benefit of specified person where the violation is noticed for the first time during any previous year and twice the*

amount of such income where the violation is noticed again in any subsequent year. The proposed section seeks to operate without prejudice to any other provision of chapter XXI. Thus, if any penalty is leviable under any of the other provisions of this chapter, in addition to the proposed penalty, that penalty would also be applicable.

b) The proposed new section seeks to provide that, if during any proceeding under the Act, it is found that a person, being any trust or institution under the first or the second regime, has violated the provisions of twenty-first proviso to clause (23C) of section 10 (proposed to be inserted by the Finance Bill and discussed in subsequent paragraphs) or clause (c) of sub-section (1) of section 13, as the case may be, the Assessing Officer may direct that such person shall pay by way of penalty,

(i) a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13 where the violation is noticed for the first time during any previous year; and

(ii) a sum equal to two hundred percent of the aggregate amount of income of such person applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13, where violation is noticed again in any subsequent previous year.

c) These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

[Clause 76]

3.3 Reference to the Principal Commissioner or Commissioner (PCIT/CIT) for the cancellation of registration/approval:

a) The following issues related to the process of approval or registration, or cancellation or withdrawal thereof, have been noticed, namely:-

(i) Registration or approval of non-genuine trusts or institution under automated approval system:

First and second provisos to clause (23C) of section 10 of the Act were substituted by new provisos by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 w.e.f. 01.04.2021. These provisos provided that the application for the approval of any trust or institution under the first regime, shall be made to the jurisdictional Principal Commissioner or Commissioner and such Principal Commissioner or Commissioner shall grant approval after examination of the application. Earlier such applications were required to be filed before the prescribed authority. Similarly, provisions of clause (ac) of sub-section (1) of section 12A provide that application for the trusts or institution under the second regime shall be made to the principal Commissioner or Commissioner. The provisional registrations or provisional approval or re-registrations or approvals in certain cases, under these clauses, are granted in an automated manner and the respective rules have been amended accordingly. It is essential to ensure that non-genuine trusts or institutions do not

get exemption provided by these provisions.

(ii) *Differences in the provisions related to reference for the cancellation of trusts under the both the regimes:*

Provisions of sub-section (3) of section 143 provide that no order under this sub-section shall be made, denying the benefits of clause (23C) of section 10, unless the Assessing Officer has intimated the Central Government or prescribed authority the contravention of the provisions of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 and approval granted to such trust or institution has been rescinded. There is no such provision in cases of trusts or institutions under second regime.

(iii) *No time limit prescribed for the PCIT/CIT to decide on references for the withdrawal of approval:*

For the trusts or institutions under the first regime, the provisions for making reference by the Assessing Officer to the Principal Commissioner or Commissioner are contained in the first proviso to sub-section (3) of section 143 and the time limitation for the completion of assessment is extended as per the provisions of clause (iii) of Explanation 1 to section 153. Presently, there is no time limit for such Principal Commissioner or Commissioner to decide on such reference.

b) *In order to address the above issues, it is proposed to amend the provisions of section 12AB and fifteenth proviso to clause (23C) of section 10 of the Act as follows:*

(i) *Sub-section (4) of section 12AB of the Act is proposed to be substituted with a new sub-section (4) to provide that where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause of sub-section (1) of section 12AB 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;*

(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 violation 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 violation;

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

(II) The term "specified violation" is proposed to be defined by inserting an Explanation to sub-section (4) of section 12AB of the Act to mean the following violation :-

- a) where any income of the trust or institution under the second regime has been applied other than for the objects for which it is established; or*
- b) the trust of institution under the second regime 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 it in respect of the business which is incidental to the attainment of its objectives; or*
- c) the trust or the institution under the second regime 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 under the second regime 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;*
- e) any activity being carried out by the trust or the institution under the second regime,
 - 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 the institution under the second regime 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) of section 12AB, 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.*

III) Sub-section (5) of section 12AB of the Act is proposed to be substituted with a new sub-section (5) to provide that that the order under clause (ii) or (iii) of sub-section (4) shall be passed before expiry of the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) of subsection (4);

IV) Similarly, the fifteenth proviso to clause (23C) of section 10 of the Act is proposed to be substituted to provide that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of the said section

10 is approved under said clause and subsequently—

- 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 fund or trust or institution or any university or other educational institution or any hospital or other medical institution or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence of any specified violation;
- ii. pass an order in writing cancelling the approval of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, on or before the specified date, 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 violation has taken place;
- iii. pass an order in writing refusing to cancel the approval of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, on or before the specified date, 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 (iii), as the case may be, to the Assessing Officer and such fund or trust or institution or any university or other educational institution or any hospital or other medical institution;

V) It is also proposed to insert an Explanation 1 to the fifteenth proviso to clause (23C) of section 10 of the Act to provide that for the purposes of this proviso, "specified date" shall mean the day on which the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) expires.

VI) The term "specified violation" is also proposed to be defined by inserting an Explanation (Explanation 2) to the fifteenth proviso to clause (23C) of section 10 of the Act to mean the following: -

- a) where any income of trust or institution under the first regime has been applied other than for the objects for which it is established; or
- b) the trust or institution under the first regime has income from profits and gains of business is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or
- c) any activity being carried out by the trust or institution under the first regime—
 - A. is not genuine; or
 - B. is not being carried out in accordance with all or any of the conditions

subject to which it was notified or approved; or
(d) the trust or institution under the first regime has not complied with the requirement of any other law for the time being in force, 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.

Consequentially sub-section (3) of section 143 of the Act is proposed to be amended by deleting the reference to trusts or institution under the first regime in the first proviso and delete the existing third proviso.

It is also proposed to provide by inserting an Explanation (Explanation 3) to the fifteenth proviso to clause (23C) of section 10 of the Act that where a reference, under the first proviso to sub-section (3) of section 143, has been made on or before the 31st March, 2022 by the Assessing Officer for the contravention of certain provisions of clause (23C) of section 10 of the Act, such references shall be dealt with in the manner provided under the said Explanation.

VII) It is proposed to insert another proviso in sub-section (3) of section 143 of the Act providing that where the Assessing Officer is satisfied that any trust or institution under first or second regime has committed any specified violation, as defined in the Explanation 2 to fifteenth proviso to clause (23C) of section 10 or Explanation to sub-section (4) of section 12AB, as the case may be, he shall,

- (a) send a reference to the Principal Commissioner or Commissioner to withdraw the approval or registration, as the case may be; and
- (b) no order making an assessment of the total income or loss of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall be made by him without giving effect to the order passed by the Principal Commissioner or Commissioner under clause (ii) or (iii) of the fifteenth proviso to clause (23C) of section 10 or clause (ii) or (iii) of sub-section (4) of section 12AB

Consequentially, it is also proposed to amend the provisions of clause (iii) of Explanation to section 153 by deleting the reference to trusts or institution under the first regime and to insert a new clause (xiii) to provide that the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to sub-section (3) of section 143 or is deemed to have been made under Explanation 3 to the fifteenth proviso to clause (23C) of section 10, and ending with the date on which the copy of the order under clause (ii) or (iii) of fifteenth proviso to clause (23C) of section 10 or clause (ii) or (iii) of sub-section (4) of section 12AB, as the case may be, is received by the Assessing Officer shall be excluded in computing the period of limitation.

These amendments will take effect from 1st April, 2022.

[Clauses 4, 7, 40 and 48]

4. Bringing consistency in the provisions of two exemption the regimes

As mentioned earlier, there is a requirement for alignment of certain provisions of the two regimes as they both intend to grant similar benefit.

4.1 Accumulation provisions

i) *Under the existing provisions of the Act, a trust or institution is required to apply 85% of its income during any previous year. However, if it is not able to apply 85% of its income during the previous year, it is allowed to accumulate such income for a period not exceeding 5 years as per the following provisions, namely:*

- I. *sub-section (2) of section 11 of the Act for the trusts or institution under the second regime; and*
- II. *third proviso to clause (23C) of section 10 of the Act for trusts or institution under the first regime.*

ii) *However, the accumulation of income, as per the provisions of sub-section (2) of section 11 of the Act is allowed subject to the fulfilment of certain conditions while there are no such conditions specifically provided under the third proviso to clause (23C) of section 10 of the Act;*

iii) *Similarly, sub-section (3) of section 11 of the Act provides for the specific previous year in which the accumulated income will be subjected to tax in case of different types of violations. It, inter alia, provides that if the accumulated income is not applied within 5 years, it shall be taxed in the 6th year. While, on the other hand, there are no such specific provisions under clause (23C) of section 10 of the Act and therefore, if the accumulated income is not applied within 5 years, the same shall be taxed in the 5th year itself.*

iv) *In order to bring consistency in the two regimes, the following are proposed:-*

A. *It is proposed to amend the provisions of sub-section (3) of section 11 of the Act to provide that any income referred to in sub-section (2) which is not utilised for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart under clause (a) of sub-section (2) of section 11, but not utilised for the purpose for which it is so accumulated or set apart.*

B. *It is proposed to insert Explanation 3 to the third proviso to clause (23C) of section 10 of the Act to provide that for the purposes of determining the amount of application under this proviso, where eighty-five per cent of the income referred to in clause (a) of the third proviso, is not applied, wholly and exclusively to the objects for which the trust or institution under the first regime is established, during the previous year but is accumulated or set apart, either in whole or in part, for application to such objects, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—*

- a. *such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the*

income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

- b. the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) of section 11; and*
- c. the statement referred to in clause (a) of Explanation 3 is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year;*

(C) It is proposed to insert a proviso to the proposed Explanation 3 to the third proviso to clause (23C) of section 10 of the Act to provide that in computing the period of five years referred to in sub-clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

(D) It is also proposed to insert an Explanation (Explanation 4) to third proviso to clause (23C) of section 10 to provide that any income referred to in the proposed Explanation 3 shall be deemed to be the income of the previous year in which the following takes place—

- a) the income is applied for purposes other than wholly and exclusively to the objects for which the trust or institution under the first regime is established or ceases to be accumulated or set apart for application thereto, or*
- b) the income ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5) of section 11, or*
- c) the income is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of the proposed Explanation 3,*
- d) the income is credited or paid to any trust or institution under the first or second regime.*

For the circumstances referred to in clause (c), it is proposed that the income shall be deemed to be the income of previous year which is the last previous year of the period, for which the income is accumulated or set apart under sub-clause

(a) of clause (iii) of the proposed Explanation 3, but not utilised for the purpose for which it is so accumulated or set apart.

(E) It is proposed to insert an Explanation (Explanation 5) to third proviso to clause (23C) of section 10 of the Act to enable the Assessing Officer to allow trusts or institutions under the first regime in circumstances beyond their control to apply such accumulated income for such other purpose in India as is specified in the application by such person subsequent to fulfilment of specified conditions. These other purposes are required to be in conformity with the objects for which the trust or institution under the first regime is established. If it is done, the provisions of Explanation 4 to third proviso to clause (23C) of section 10 shall apply as if the purpose specified by such person in the application under this Explanation were a purpose specified in the notice given to the Assessing Officer under clause (a) of the proposed Explanation 3

of the third proviso to clause (23C) of section 10.

(F) It is proposed to insert a proviso to proposed Explanation 5 to third proviso to clause (23C) of section 10 of the Act to provide that the Assessing Officer shall not allow the application of any accumulated income, as referred to in the proposed Explanation 3, to be credited or paid to any trust or institution under the first or second regime, as referred to in clause (d) of proposed Explanation 4 to the third proviso to clause (23C) of section 10.

v) These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

[Clauses 4 and 5]

4.2 Bringing consistency in the provisions relating to payment to specified person

i) Under section 13 of the Act, trusts or institutions under the second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. It is proposed to insert twenty first proviso in clause (23C) of section 10 of the Act to provide that where the income or part of income or property of any trust or institution under the first regime, has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall be deemed to be the income of such person of the previous year in which it is so applied. The provisions of sub-section (2), (4) and (6) of section 13 of the Act shall also apply to trust or institution under the first regime.

ii) This amendment will take effect from 1 st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

[Clause 4]

4.3 The provisions of section 115TD to apply to any trust or institution under the first regime.

i) Chapter XII-EB was introduced by the Finance Act, 2016. It provides for the taxation of accreted income of the trust in certain cases. A society or a company or a trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a specific provision in the Act was brought about for imposing a levy in the nature of an exit tax which is attracted when the organisation is converted into a non-charitable organisation or gets merged with a non-charitable organisation or a charitable organisation with dissimilar objects or does not transfer the assets to another charitable organisation. Accordingly, a new Chapter XII-EB consisting of Sections 115TD, 115TE and 115TF was inserted in the Act.

ii) The provisions of the Chapter XII-EB have been made applicable to only the trusts or institutions under the second regime. However, the provisions are not applicable to any trust or institution under the first regime.

iii) Hence, it is proposed to amend the provisions of section 115TD, 115TE and 115TF of the Act to make them applicable to any trust or institution under the first

regime as well.

iv) *These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.*

[Clauses 31, 32 and 33]

4.4 Filing of return by person claiming exemption under clause (23C) of section 10 of the Act

i) *According to clause (ba) of sub-section (1) of section 12A of the Act, If a trust or institution under the second regime does not furnish return of income in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section, then provisions of sections 11 and 12 are not applicable. There is no similar provision in the other regime.*

ii) *Hence, it is proposed to insert twentieth proviso to clause (23C) of section 10 of the Act to provide that for the purpose of exemption under this clause, any trust or institution under the first regime is required to furnish the return of income for the previous year in accordance with the provisions of sub-section (4C) of section 139 of the Act, within the time allowed under that section.*

This amendment will take effect from the 1st April, 2023, and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

[Clause 4]

5. Providing clarity on taxation in certain circumstances

There are various conditions prescribed for availing exemption under the two regimes. There is a need for clear provisions in the Act listing out how income is to be computed in case of non-compliance. Hence, it is proposed to provide for the same so that there is no dispute and the law is applied consistently.

5.1 Allowing certain expenditure in case of denial of exemption

i) *Different provisions mandate denial of exemption to the trusts or institutions under both the regimes. Some of the provisions under which exemption is not available for its violation are as follows:*

- a) *Having commercial receipts in excess of 20% of the annual receipts in violation of the provisions of proviso to section 2(15);*
- b) *Not getting the books of account audited;*
- c) *Not filing the return of income presently specifically provided under the second regime only;*

ii) *There is presently lack of clarity on computation of taxable income in case of nonavailability of exemption in these cases. For example, if the exemption is denied to the trust or institution for the late submission of the audit report, its entire receipts may be subjected to taxation and no deduction for any application may be allowed.*

iii) *In order to bring clarity in the computation of the income chargeable to tax in such cases, the following amendments are proposed: -*

(a) *It is proposed to insert sub-section (10) in section 13 of the Act to provide that where the provisions of sub-section (8) are applicable to any trust or institution under the second regime or such trust or institution violates the conditions*

prescribed under clause (b) or clause (ba) of sub-section (1) of section 12A, its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of the following conditions, namely :-

- a) such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed;*
- b) such expenditure is not from any loan or borrowing;*
- c) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income in the same or any other previous year; and*
- d) such expenditure is not in the form of any contribution or donation to any person.*

(b) It is also proposed to insert an Explanation to sub-section (10) to section 13 of the Act to provide that for the purposes of determining the amount of expenditure under this sub-section, the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

(10) It is also proposed to insert sub-section (11) to section 13 of the Act to provide that for the purposes of computing income chargeable to tax, under sub-section , no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of the Act.

(d) Similarly, it is proposed to insert twenty second proviso to clause (23C) of section 10 of the Act to provide that where any trust or institution under the first regime violates the provisions of the eighteenth proviso or violates the conditions prescribed under tenth or twentieth proviso, its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of such trust or institution, subject to fulfilment of the following conditions:

- (i) such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed ;*
- (ii) such expenditure is not from any loan or borrowing;*
- (iii) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income in the same or any other previous year; and*
- (iv) such expenditure is not in the form of any contribution or donation to any person.*

(e) It is also proposed to insert an Explanation in the twenty second proviso to clause (23C) of section 10 of the Act to provide that for the purposes of determining the amount of expenditure under this proviso, the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or

profession”.

(f) It is also proposed to insert twenty third proviso in clause (23C) of section 10 of the Act to provide that for the purposes of computing income chargeable to tax under twenty second proviso, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of the Act.

These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

[Clauses 4 and 8]

5.2 Taxation of certain income of the trusts or institutions under both the regimes at special rate

Following incomes of the trusts or institutions are chargeable to tax, under different provisions of the Act:-

(a) The trusts or institutions under the first or second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. For the trusts or institutions under the second regime, clause (c) of sub-section (1) of section 13 of the Act provides that the entire exemption shall be denied to the trust irrespective of the amount of benefit passed on. For trusts or institutions under the first regime similar provisions is proposed by way of insertion of twentieth proviso to clause (23C) of section 10 of the Act.

(b) It is mandatory for any trust or institution under the first regime, to keep their funds in the specified modes. Third proviso of clause (23C) of section 10 of the Act specifically provides that the funds of such trusts or institutions shall be maintained in these specified modes. For the trusts or institutions under the second regime, clause (d) of sub-section (1) of section 13 of the Act provides that the exemption shall be denied to the trust irrespective of the amount of investment in non-specified modes.

(c) Further, the trusts or institutions under both the regimes are required to apply at least 85% of their income during the year. Where the trust is not able to apply 85% of the income, it may accumulate such income for maximum 5 years. Sub-section (3) of section 11 of the Act specifically provides for the trusts or institutions under the second regime that such accumulated income, which could not be applied within the period of accumulation (maximum 5 years), shall be deemed to be the income of the trust. Similarly, for the trusts or institutions under the second regime, there is a specific provision under clause (2) of Explanation 1 to sub-section (1) of section 11 of the Act providing for the accumulation of income for a period of one year. Subsection (1B) of section 11 of the Act provides that if the income accumulated under clause (2) of Explanation 1 to sub-section (1) of section 11 of the Act could not be applied within the time allowed; it shall be deemed to be the income of the trust.

(d) The trusts or institutions under the first regime are also required to apply at least 85% of their income during the year. Where such trust is not able to apply 85% of its income during the year and does not accumulate such income, entire income of such trust shall be subjected to tax where the trust is approved under the second proviso to clause (23C) of section 10 of the Act since third proviso to clause (23C) of section 10 of the Act mandates minimum 85% application of income unless such

income is accumulated.

Denying exemption to the trust, for small amount of income applied in violation to the provisions referred in clause (a) and (b) above creates difficulties to the trusts or institutions under both the regimes as there is ambiguity about the manner of taxation of such income. Further, there is need for special provision to ensure that the income applied in violation is taxed at special rate without deduction. Accordingly, in order to rationalise the provisions, the following amendments are proposed:-

- (a) It is proposed to amend clause (c) of sub-section (1) of section 13 of the Act to provide that only that part of income which has been applied in violation to the provisions of the said clause shall be liable to be included in total income.*
- (b) It is also proposed to insert twenty first proviso in clause (23C) of section 10 to specifically provide that where the income of any trust under the first regime, or any part of the such income or property, has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall be deemed to be income of such person of the previous year in which it is so applied. The provisions of sub-section (2), (4) and (6) of section 13 of the Act shall also apply to it.*
- (c) It is proposed to amend clause (d) of sub-section (1) of section 13 of the Act to provide that only the that part of income which has been invested in violation to the provisions of the said clause shall be liable to be included in total income.*
- (d) It is proposed to insert Explanation 4 in third proviso to clause (23C) of section 10 of the Act to specifically provide that income accumulated which is not utilised for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart.*
- (e) All the above income are also required to be taxed at special rate. Hence, it is proposed to insert new section 115BBI in the Act providing that where the total income of any assessee being a trust under the first or second regime, includes any income by way of any specified income, the income-tax payable shall be the aggregate of—*
 - (i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of specified income; and*
 - (ii) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of specified income referred to in clause (i).*
- (f) The sub-section (2) of this new section seeks to provide that no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act in computing specified income.*
- (g) Explanation to the proposed section defines "specified income" to mean:-*
 - (i) income accumulated or set apart in excess of fifteen percent of the income where such accumulation is not allowed under any specific provisions of the Act; or*
 - (ii) deemed income referred to in Explanation 4 to third proviso to clause (23C) of section 10 or sub-section (3) of section 11 or sub-section (1B) of section 11; or*

(iii) *any income which is not exempt under clause (23C) of section 10 on account of violation of the provisions of clause (b) of third proviso of clause (23C) of section 10 or not to be excluded from total income under the provisions of clause (d) of sub-section (1) of section 13;*

(iv) *any income which is deemed to be income under the twenty first proviso to clause (23C) of section 10 or which is not excluded from total income under clause (c) of sub-section (1) of section 13; or*

(v) *any income which is not excluded from total income under clause (c) of sub-section (1) of section 11.*

(vi)

These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

(Clauses 4, 8, 28)

(Emphasis supplied by us)

12.5. We find that Clauses (a) and (b) of Section 13(1) of the Act have been in pari materia to Clauses (c) and (d) of Explanation to Section 12AB(4) of the Act evidencing a conscious legislative alignment between the two provisions. As stated earlier, the Clauses (c) and (d) of Section 13(1) of the Act have not been brought in Explanation to Section 12AB(4) of the Act which defines 'specified violation'. Hence the legislative intent is very clear that any violation of provisions of sections 13(1)(c) or 13(1)(d) of the Act would not fall within the ambit of 'specified violation' as defined in Explanation to Section 12AB(4) of the Act.

12.6. Thus we have no hesitation to hold that there was no specified violation committed by the Assessee Society in the instant case and hence the action of the Learned PCIT in cancelling the registration of Assessee Society under section 12AB of the Act is bad in law and legally unsustainable.

13. The Learned AR submitted that the show-cause notices dated 24-12-2024, 19-02-2025 and 11-06-2025 issued by the Learned PCIT for proposed cancellation of the Assessee's registration suffer from a fundamental jurisdictional defect inasmuch as none of the notices specify the particular clause of the Explanation to Section 12AB(4) of the Act under which the alleged 'specified violation' is said to fall. The notices merely contain general and omnibus allegations without identifying whether the case of the assessee is sought to be covered under Clause (a), (b), (c), (d), (e), (f) or (g) of the Explanation to Section 12AB(4) of the Act. In the absence of such specification, the assessee was left completely in the dark as to precise statutory charge it was required to meet, thereby vitiating the very assumption of jurisdiction under Section 12AB(4) of the Act. He submitted that the requirement of expressly invoking a specific limb of the statutory provision is not an empty formality, but a mandatory jurisdictional precondition. The Explanation to Section 12AB(4) of the Act exhaustively enumerates distinct and mutually exclusive 'specified violations', each carrying different factual and legal connotations. Unless the Learned PCIT forms a prima facie satisfaction as to which exact Clause is attracted and communicates the same to the assessee in the show-cause notice, the initiation of proceedings is rendered arbitrary, vague and unsustainable in law. A notice which does not disclose the precise statutory charge is no notice in the eyes of law. In this regard, we find that the learned AR rightly placed reliance on the Coordinate Bench decision of this Delhi Tribunal in the case of Aggarwal Vidya Pracharni Sabha, Faridabad v. PCIT Central in ITA No. 1308/Del/2023 dated 8-1-2024 wherein it was held as under:-

“17.1 Furthermore, here in this case, the exercise of power u/s 12AB(4) of the Act seems to also not have been done in accordance with law. As what comes up further is that, if at all, PCIT, Gurgaon was acting under clause (a) to Section 12AB(4), then, before issuing the notice dated 08.09.2022, itself the ld. PCIT, Gurgaon should have first formed his opinion that the assessee had

committed one or more of a 'specified violation'. However, as we go through the relevant part of the impugned order we find that the ld. PCIT has not mentioned as to which amongst the various specified violations mentioned in Explanation attached to subsection (4) of section 12AB were attracted so as to show cause the assessee under sub-section (4) of section 12AB of the Act and ask for information by notice dated notice dated 08.09.2022. 17.2 Rather, in the opening paragraph at page 34 of the impugned order, the ld. PCIT mentions, "it was noticed that the assessee trust has committed one or more specified violation. Thereafter, information was called for from the assessee trust by this letter dated 08.09.2022." We are of the view that when Ld. PCIT was assuming jurisdiction under clause (a) to Section 12AB(4), then while calling for the documents or information under clause (i) of sub-section (4) of Section 12AB, the assessee should be notified as to for which of the 'specified violation' the Ld. PCIT is calling for the information or documents. The same is not coming from the impugned order that before issue of notice on 08/09/2022, calling for the documents or information under clause (i) of sub-section (4) of Section 12AB, Ld. PCIT, Gurgaon had actually 'noticed' one or more of such 'specified violation.'"

14. The Learned AR further submitted that the concept of 'specified violation' and the consequential power to cancel or withdraw registration on the basis thereof were introduced into the statute for the first time with effect from 1-4-2022 by way of insertion of Section 12AB(4) of the Act. Prior thereto, there existed no statutory framework defining, recognising or classifying any act or omission as a 'specified violation', warranting cancellation of registration. We find that this legislative position is not only evident from the plain language of the statute, but also stands expressly clarified in the Memorandum explaining the provisions of the Finance Bill 2022, which forms a legitimate and authoritative aid to construction of taxing statutes. In the present case, the Learned PCIT (Central) Kanpur has wrongly invoked the provisions of Section 12AB(4) of the Act to treat the alleged acts of the Assessee Society during financial years 2018-19, 2019-20, 2020-21 and 2021-22, relevant to assessment years 2019-20, 2020-21, 2021-22 and 2022-23, as 'specified violations', despite the

fact that the said provision was not on the statute book during those years. It is a settled principle that fiscal statutes creating new liabilities or disabilities must be construed strictly and prospectively, unless the legislature expressly provides otherwise. We find that there is no express or implied legislative intent to apply the concept of 'specified violation' to periods prior to 1-4-2022. Accordingly, the cancellation of registration of the Assessee Society for assessment years 2019-20, 2020-21, 2021-22 and 2022-23 on the basis of alleged 'specified violations' is without authority of law, arbitrary and liable to be quashed. Further we find that the provisions introduced with effect from a particular date cannot be applied retrospectively in the absence of express legislative mandate. Reliance in this regard is placed on the Co-ordinate Bench decisions of this Delhi Tribunal in the case of Lala Shersingh Memorial Jeevan Vigyan Trust Society vs PCIT (Central) reported in 175 taxmann.com 671 and Meenakshi Foundation vs PCIT reported in 175 taxmann.com 990 , among others and the decision of the Hon'ble Supreme Court (Constitutional Bench decision) in the case of CIT vs Vatika Township Pvt. Ltd reported in 227 Taxman 121 (SC) . Hence on this count also, the order passed by the Learned PCIT is liable to be quashed for the impugned assessment years.

15. The Learned AR also submitted that impugned order passed by the PCIT (Central), Kanpur is without jurisdiction as the order for cancellation of registration could be passed only by the authority who had granted it which in the instant case would be CIT(Exemptions). He placed reliance on the CBDT Notification No. 52 of 2014 dated 22-10-2014 wherein, it has been categorically clarified that cases of assessee claiming exemptions under Sections 11 and 12 of the Act fall within the exclusive

administrative jurisdiction of the CIT (Exemptions), Lucknow. He submitted that admittedly the assessee was always been assessed under the Exemptions Charge. The CIT (Exemptions), Lucknow who has valid and exclusive jurisdiction over the assessee for purposes of registration under Section 12AB of the Act did not and could not have transferred such jurisdiction to the PCIT (Central), Kanpur. He submitted that there exists no statutory provision under the Act enabling transfer of registration jurisdiction from the CIT (Exemptions) to a central charge authority. In the present case, the assessee was originally granted registration under Section 12AA of the Act, vide order dated 25-8-2009 by CIT, Ghaziabad. Pursuant to the amendment in law, the assessee was thereafter granted registration under Section 12AB of the Act vide order dated 5-4-2022 valid up to assessment year 2026-27 by the competent authority i.e. CIT (Exemptions). Subsequently pursuant to a search, an order under Section 127(2) of the Act dated 8-9-2023 was passed by the CIT (Exemptions), Lucknow transferring the assessment proceedings of the Assessee from the Assessing Officer, Exemption Circle, Ghaziabad to DCIT / ACIT, Central Circle, Ghaziabad. Thereafter, the impugned order dated 26-6-2025 was passed by the PCIT (Central), Kanpur under Section 12AB(4) of the Act, whereby the registration of the Assessee Society was cancelled for assessment years 2019-20 to 2023-24 and for all subsequent assessment years. The Learned AR has submitted that the impugned order is void ab initio for lack of jurisdiction in as much as the authority competent to grant, cancel or withdraw registration under Section 12A/ 12AA / 12AB of the Act is the Commissioner of Income Tax (Exemptions), Lucknow and not PCIT (Central), Kanpur. He submitted that the order passed under Section 127 of the Act nearly provides for **transfer of assessment jurisdiction** from one assessing officer to another assessing officer. Section 127 falls under Chapter XIII of the Act, dealing

exclusively with assessment machinery and does not extend to or govern statutory provisions relating to grant or cancellation of registration under Sections 12A / 12AA / 12AB of the Act, which operate in a different and distinct statutory field. He placed reliance on the decision of Co-ordinate Bench of this Delhi Tribunal in the case of Aggarwal Vidya Pracharni Sabha vs PCIT (Central) in ITA No. 1308 /Del /2023, dated 8-1-2024 in support of his contentions. The relevant operative portion of the said order is reproduced below:-

“9. After giving thoughtful consideration to the facts and circumstances of the case and to the submissions, it comes up that the admitted case of the Revenue is that there was no specific order under any provisions of the Act other than the order dated 26.10.2020 passed u/s 127 of the Act centralizing the case of M/s Aggarwal Vidya Pracharni Sabha consequent to a search and seizure action u/s 132(1) of the Act to vest Ld. PCIT, Gurgaon the powers to pass the impugned order. The ld. DR has relied on the Explanation attached to section 127 of the Act to submit that the word, ‘case’ has been defined for the purpose of section 127 and consequent to the centralization of the assessment, the ld. PCIT, Gurgaon had got powers to commence proceedings u/s 12AB(4) of the Act for cancellation of registration of the assessee. 9.1 In this context, the ld. counsel for the assessee has heavily relied on the CBDT Notification No.52/2014 made available at page 2 to 6 of the paper book submitting that in regard to powers u/ss 11 and 12 of the Act, the CIT (Exemptions), Chandigarh had specific jurisdiction and which could not have been transferred. Relying on the order u/s 127 of 26.10.2020, it was submitted that the order specifically mentions the transfer of case for carrying out post search investigation and meaningful assessment and not for any other purpose like cancellation of the registration. 10. Now to decide the question of valid exercise of jurisdiction by ld. PCIT, Gurgaon, it will be first relevant to reproduce the section 127 of the Act as follows:-

“Power to transfer cases.

127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him. (2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or

Principal Commissioner or Commissioner,— (a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order; (b) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place. (4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred. Explanation.—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.

10.1 Further, we consider it appropriate to reproduce relevant portion of Section 12AB and relevant part Rule 17A as under:-

“Section 12AB; "12AB. Procedure for fresh registration.—(1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

- (a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;*
- (b) where the application is made under sub-clause (ii) or sub-clause (iii) or subclause (iv) or sub-clause (v) of the said clause,— (i) call for such documents or information from the trust or institution or make*

such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of the trust or institution; and

(B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects; and

(ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item

(A), and compliance of the requirements under item (B), of sub-clause (i),— (A) pass an order in writing registering the trust or institution for a period of five years;

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;

(c) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought,

and send a copy of such order to the trust or institution.

(2) All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be an application made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.

(3) The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.

(4) Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) 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 after affording a reasonable opportunity of being heard.

(5) Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) 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 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 noncompliance has occurred, has either not been disputed or has attained finality, then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution."*

Rule 17A

“(5) On receipt of an application in Form No. 10A, the Principal Commissioner or Commissioner, authorised by the Board shall pass an order in writing granting registration under clause (a), or clause (c), of sub-section (1) of section 12AB read with sub-section (3) of the said section in Form No. 10AC and issue a sixteen digit alphanumeric Unique Registration Number (URN) to the applicants making application as per clause (i) of the sub-rule (1).

(6) If, at any point of time, it is noticed that Form No. 10A has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided under sub-rule (1) or (2) or by not complying with the requirements of sub-rule (3) or (4), the Principal Commissioner or Commissioner, as referred to in sub-rule (5), after giving an opportunity of being heard, may cancel the registration in Form No. 10AC and Unique Registration Number (URN), issued under sub-rule (5), and such registration or such Unique Registration Number (URN) shall be deemed to have never been granted or issued.

(7) In case of an application made under sub-clause (vi) of clause (ac) of sub-section (1) of 4 [section 12A as it stood immediately before its amendment vide the Finance Act, 2023,] during previous year beginning on 1st day of April, 2021, the provisional registration shall be effective from the assessment year beginning on 1st day of April, 2022.

(8) In case of an application made in Form No. 10AB under clause (ii) of the sub-rule (1), the order of registration or rejection or cancellation of registration under sub-clause (ii) of clause (b) of sub-section (1) of section 12AB shall be in Form No. 10AD and in case if the registration is granted, sixteen digit alphanumeric number Unique Registration Number (URN) shall be issued by the Principal Commissioner or Commissioner referred to in of sub-section (1) of section 12AB.

(9) *The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall:*

(i) *lay down the form, data structure, standards and procedure of ,-*

(a) *furnishing and verification of Form No. 10A or 10AB ,as the case may be;*

(b) *passing the order under clause (a), sub-clause*

(ii) of clause (b) and clause (c) of subsection (1) of section 12AB. (ii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the said application made or order so passed as the case may be.]

11. *Further, it will be appropriate to reproduce the order u/s 127(2) dated 26.10.2020 available at page No.1 of the paper book:-*

“ Order u/s 127 (2) of the Income Tax Act, 1961

Consequent to the search & seizure operations u/s 132 of the I.T. Act, 1961 in Dev Wines Group (D.O.S 19.02.2020), the Pr. Commissioner of Income Tax (Central), Gurugram vide letter F.No. Pr.CIT(C)/GGM/Cent./Dev Wines/2020-21/969 dated 24.08.2020 has been given concurrence and requested for centralization of the following cases related M/s Dev Wines Group to DCIT, Central Circle2, Faridabad for coordinated post search investigation & meaningful assessment.

Accordingly, in exercise of power conferred by sub-section (2) of Section 127 of the Income Tax Act, 1961 and under all other powers enabling me in this behalf, I, the Commissioner of Income Tax(Exemptions), Chandigarh hereby transfer the following case(s), particulars of which are mentioned hereunder in Columns (2) and (3) from the Assessing Officer mentioned in Column (4) therein, to the of the Assessing Officer mentioned in Column (5) –

SCHEDULE

<i>Sr. No.</i>	<i>Name and address of the assessee</i>	<i>PAN</i>	<i>From</i>	<i>To</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
1.	M/s Aggarwal vidhya Pracharni Sabha (Aggarwal College, Ballabgarh)	AABTA3409Q	Circle-2(E), Chandigarh	DCIT, Central Circle-2, Faridabad DLC-CC-136- 4

This order shall take effect from 26.10.2020.”

12. *We also consider it appropriate to reproduce the relevant part of the Notification dated 22.10.2014 providing for the territorial jurisdiction of CIT(E) in furtherance of*

powers given to the Board u/s 120 (1) and (2) of the Act, made available at pages 2 to 5 of the paper book:-

“NOTIFICATION
New Delhi, the 22nd October, 2014
(Income-Tax)

S.O. 2754 (E).—In exercise of the powers conferred by sub-section (1) and (2) of section 120 of the Income-Tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India, Central Board of Direct Taxes number S.O.880(E), dated the 14th September, 2001, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (ii), dated the 14th September, 2001, except as respects things done or omitted to be done before such supersession, the Central Board of Direct Taxes hereby –

SCHEDULE

<i>S. No.</i>	<i>Designation</i>	<i>Headquarters</i>	<i>Territorial area</i>	<i>Cases or classes of cases</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
	<i>Commissioner of Income-tax (Exemption), Ahmedabad</i>	<i>Ahmedabad</i>	<i>State of Gujarat, Union Territory of Daman and Diu, Union Territory of Dadra and Nagar Haveli</i>	<i>All cases of persons in the territorial area specified column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Income tax Act, 1961 and assessed or assessable by an Income-tax authority at serial numbers 1 to 20 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014.</i>
<i>4.</i>	<i>Commissioner of Income-tax (Exemption), Chandigarh</i>	<i>Chandigarh</i>	<i>States of Jammu and Kashmir, Himachal Pradesh, Punjab, Haryana and Union Territory of Chandigarh</i>	<i>All cases of persons in the territorial area specified in column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46)</i>

				and (47) of section 10, section 11, section 12, section 13A and section 13B of the Incometax Act, 1961 and assessed or assessable by an Income-tax authority at serial numbers 50 to 68 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014
--	--	--	--	--

.....
.....
2. This notification shall come into force with effect from the 15th day of November, 2014.

[Notification No. 52 /2014/F. No. 187 /38 /2014 (ITA.I)]

DEEPSHIKHA SHARMA, Director”

12.1 A reference was made by Ld. AR about the circular no 11 of 2022 dated 3rd June 2022, giving clarification regarding Form no 10 AC till the date of this circular and it will be relevant to reproduce para 1 of this circular here below;

“Circular No. 11 of 2022

F. No.370142/4/2021-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated: 3rd June, 2022

Sub: Clarification regarding Form No 10AC issued till the date of this Circular - reg.

Finance Act, 2022 has inserted sub-section (4) in section 12AB of the Income tax Act, 1961 (the Act) allowing the Principal Commissioner or Commissioner of Income-tax to examine if there is any “specified violation” by the trust or institution registered or provisionally registered under the relevant clauses of sub-section (1) of section 12AB or subsection (1) of section 12AA. Subsequent to examination by the Principal Commissioner or Commissioner of Incometax, an order is required to be passed for either

cancellation of the registration or refusal to cancel the registration. Similar provisions have also been introduced in clause (23C) of section 10 of the Act by substituting the fifteenth proviso of the said clause with respect to fund or institution trust or institution or any university or other educational institution or any hospital or other medical institution referred under sub-clauses (iv), (v), (vi), (via) of this clause and which have been approved or provisionally approved under the second proviso to the said clause. These amendments are effective from 1st April, 2022. In addition to the specified violations referred above, the power of cancellation has also been granted under sub-rule (5) of rule 17A and subrule (5) of rule 2C of the Income-tax Rules, 1962 (the Rules) to the Principal Commissioner or Commissioner authorised by the Board. This Circular only relates to cancellation of registration/approval or provisional registration/approval in the case of “specified violation”.

13. Now, as we go through the impugned order passed u/s 12AB(4) of the Act, the ld. PCIT mentions that consequent to the completion of assessment proceedings, certain facts were communicated to his office by the AO pertaining to AY 2014-15 to 2020-21 vide his letter dated 23.08.2022. This letter dated 23.08.2022 has been reproduced at page No.32 of the impugned order and it shows that this letter was issued in supersession of earlier letter dated 11.04.2022. Further, the subject of the letter is as follows:-

“Sub: Proposal for cancellation of registration granted u/s 12AA/12AB of the Act as per provisions of Section 12AB(4) of the Act in the case of ‘Aggarwal Vidya Pracharni Sabha’ ” – Reg. –

13.1 Then what comes up is that the ld. PCIT has made out a case that the powers he had exercised u/s 12AB(4) are by virtue of clause (a) to sub-section (4) of section 12AB on the basis of ‘noticing’ occurrence of specified violation. The ld. PCIT has considered himself to be empowered by virtue of Explanation attached to section 127, defining ‘case’, to commence proceedings under this Act u/s 12AB(4) after the order dated u/s 127 dated 16.10.2020.

14. Having considered the aforesaid, it comes up that the order of transfer u/s 127 dated 26.10.2020 is shown to be passed under sub-clause (a) to sub-section (2) of section 127 of the Act which gave powers to CIT(E) Chandigarh to pass order of transfer qua such ‘Assessing Officers’ who are subordinate to other the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Thus when we consider the definition of “Assessing officer” u/s 2(7A) of the Act, certainly PCIT, Gurgaon, who has passed the impugned order is not an ‘assessing officer’, and order passed dated 26.10.2020, under sub-clause (a) to sub-section (2) of section 127 of the Act only referred to transfer of jurisdiction of ‘assessing officer’ subordinate to CIT(E) Chandigarh to DCIT, Central Circle-2, Faridabad DLC-CC136-4 as assessing officer and not original jurisdiction of CIT(E) Chandigarh with regard to the subject matter as stands vested by order of CBDT dated 22/10/2014.

14.1 Further, what is material is that by the Notification dated 22.10.2014 the Board, exercising powers under sub-section (1) and sub-section (2) of section 120

vested powers to perform all the functions in respect of class of cases referred in the column No.5 of the Schedule of this Notification and had created a specific jurisdiction on territorial basis in regard to the provisions generally dealing with claim of exemptions u/ss 10,11,12, 13A and section 13B of the Act.

14.2 Thus as we refer to the Notification dated 22.10.2014, the clause (a) vested powers with Commissioners of Income-tax (Exemptions), for class or class of cases pertaining to section 10, section 11, section 12, section 13A and section 13B of the Act and clause (b), to issue orders in writing for the exercise of 'their' powers and perform all 'their' functions by Additional Commissioners of Income tax or Joint Commissioners of Income-tax and Tax Recovery Officers who are subordinate to them and that signifies that again this delegation of powers by CIT(E), Chandigarh could have been qua officers subordinate to CIT(E), Chandigarh only and not, in any way, gave powers to CIT(E), Chandigarh to pass an order u/s 127(2)(b) of the Act to transfer powers vested by Board to any other Tax Authority.

14.3 Next, as we refer to Section 12 AB and Rule 17A which have come into effect from 01.04.2021, and read it with the Circular no. 11 dated 3rd June 2022, it comes up that section 12AB(2) of the Act provides that the pending applications under clause (b) of sub-section (1) of section 12AA before the date on which section 12AB came into force shall be deemed to be applications made under sub-clause (4) of clause (ac) of sub-section (1) of section 12A on that date for grant of registration.

14.4 However, as far as provision of cancellation of the registration provided by sub-section (4) of section 12AA is concerned, sub-section (4) of section 12AB brings into place a completely new self-contained procedural code for conducting inquiry about 'specified violations', cancelling registration or refusing to cancel registration.

14.5 The Rule 17A, as clarified by Circular dated 3rd June 2022 provides that in addition to the 'specified violations', the power of cancellation has also been granted under sub-rule (5) of rule 17A and sub-rule (5) of rule 2C of the Incometax Rules, 1962 to the Principal Commissioner or Commissioner authorised by the Board. The authorisation u/s 12AB or Rule 17A if have to be construed, by virtue of Board's Notification dated 22.10.2014, then we pointed out during the hearing, to ld. DR that this Notification dated 22.10.2014 does not mention specifically that the powers which can be exercised by ld. PCIT u/s 12AB(4) of the Act and which have come into effect from 01.04.2021 would also be exercised by virtue of this Notification dated 22.10.2014 or that further jurisdiction u/s 12AB of the Act could be transferred to other authorities as per this Notification. The query was left unsatisfied and no other Notification or Circular was brought to our notice.

15. Thus, at one end, in the absence of any specific reference of section 12AB in the Notification dated 22.10.2014 or there being subsequent authorisation by any Circular or Notification of the Board, we conclude that at the time of passing the order u/s 127 of the Act on 26.10.2020, CIT(E), Chandigarh did not have powers to as such transfer his jurisdiction u/s 127(2)(a) of the Act, for the purpose of Section 12AB has come into effect from 01.04.2021. Accordingly, under no circumstance while passing order u/s 127 of the Act on 26.10.2020, CIT(E), Chandigarh could have transferred his powers u/s 12AB of the Act to any other authority.

15.1 On the other hand, ld. PCIT, Gurgaon by virtue of the Explanation defining the scope of 'case' for the purpose of section 127, did not have power vested in him to cancel registration u/s 12AB(4). The 'case' refers to assessment initiated as a consequence of search or consequential proceedings to such assessments only and cannot be extended to special powers of ld. CIT(E), Chandigarh. Thus, the assumption of jurisdiction on the basis of the order dated 26.10.2020 of CIT(E), Chandigarh is completely illegal and that makes the whole exercise of ld. PCIT passing the impugned order liable to be quashed.

16. Furthermore, if examine the legality of the procedure followed by ld. PCIT, Gurgaon to pass order u/s 12AB(4), by recourse to exercise of powers by virtue of clause (a) of sub-section (4) of section 12AB, it comes up that ld. PCIT, Gurgaon admits that a 'proposal' for cancellation of the registration of the assessee trust granted u/s 12AA of the Act was forwarded vide letter dated 23.08.2022 by the AO through the Range head. In this context, if we refer to second proviso to subsection (3) of section 143 of the Act, the same provides that if the AO is satisfied about any specified violation provided in sub-section (4) of section 12AB, the AO shall send a 'reference' to the PCIT or Commissioner to withdraw the approval or registration, as the case may be, and clause (b) to this proviso provides that no order making an assessment of total income or loss of such institution or trust shall be made without giving effect to the order passed by PCIT or Commissioner. In the case in hand, the ld. PCIT, Gurgaon has reproduced the part of letter dated 23.08.2022 which has observed about a 'proposal' of cancellation of registration u/s 12AB(4) and based upon the same, the ld. PCIT had initiated action. The assessment by said assessing officer was completed in September, 2021, so, before the letter dated 23.08.2022 the assessment proceedings stood culminated. Thus, there was no occasion for concerned AO to invoke 'reference' powers under second proviso to sub-section (3) of section 143 of the Act. To that extent Ld. PCIT observations are correct.

16.1 However, what is relevant here is that in any case the 'reference' by jurisdictional AO was to be made not to the PCIT or Commissioner, to whom this AO was subordinate but one authorised by board for the purpose of Section 12AB. The one who could grant or cancel the registration as per amended provisions which is not PCIT, Gurgaon, but, would be CIT(E), Chandigarh. Thus assumption of jurisdiction for cancellation of registration u/s 12AB(4) of the Act by virtue of aforesaid transfer of jurisdiction order u/s 127 of the Act is not conceivable.

17. At the same as we observed above that the assessment by said assessing officer was completed in September, 2021, thus, there was no occasion for concerned AO to invoke 'reference' powers under second proviso to sub-section (3) of section 143 of the Act. It appears that when confronted with the situation that the second proviso of section 143(3) having come into effect from 01.04.2022 is not applicable to the assessment initiated consequent to search and seizure operations u/s 132 of the Act carried out on 19.02.2020, the ld. PCIT, Gurgaon improved his case by claiming that he had exercised his powers by virtue of clause (a) of sub-section (4) of section 12AB, which entitles a Principal Commissioner or Commissioner to take cognizance on the basis of a 'specified violation' coming into his notice during any previous year. At the cost of repetition, we observe that reference in section 12AB is not to PCIT or Commissioner to whom the said Assessing Officer would be subordinate,

but, the CIT(E) who has been given special power for grant and cancellation of the registration as original jurisdiction.”

15.1. Hence in view of the above, the impugned order passed by the Learned PCIT (Central), Kanpur would be liable to be quashed on this count also.

16. In view of the aforesaid observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that the impugned order passed by the Learned PCIT (Central), Kanpur is liable to be quashed for more than one reason as detailed supra.

17. Accordingly, the various grounds raised by the Assessee are disposed of in the abovementioned manner.

18. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open court on 11/03/2026.

-Sd/-

(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

-Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 11/03/2026
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi