

**THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, DELHI
BEFORE SHRI S. RIFAUZ RAHMAN, ACCOUNTANT MEMBER &
MS.MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 1803/Del/2024

Lakhmi Chand Charitable Society, Elephanta Lane, Behind Sector-10/6 Market, New Golak Dham, Sector-10, Dwarka, New Delhi - 110075	Vs.	Principal Commissioner Of income Tax, Central-3 Room No. 325, 3 rd Floor, Income Tax Building, E-3 ARA Centre, Jhandewalan Extension, New Delhi - 110055
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAATL0457G		
Appellant	..	Respondent

Appellant by :	Sh. Ajay Vohra, Sr.Adv. Sh. Deepesh Jain, Adv. Sh. Vijay Singh, Adv.
Respondent by :	Sh. Subhra Jyoti Chakraborty, CIT, DR

Date of Hearing	30.05.2024
Date of Pronouncement	22.08.2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order passed by the PCIT, Central-3 dated 31.03.2024 under Section 12A r.w.Section 12AA and 12AB(4) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) whereby and whereunder

the registration of the appellant trust from Assessment Year 2015-16 to Assessment Year 2021-22 has been cancelled.

2. The appellant, a charitable society, is running a school in the name of G.D. Goenka Public School situated at Elephanta Lane, Near Golak Dham, Sector-10, Dwarka New Delhi, registered under Societies Registration Act, XXI of 1860 on 18.09.1996. The society was registered under Section 12A of the Act by and under the Registration No. DIT/97-98/L327/97/114 dated 22.08.1997. It has also obtained the approval under Section 80G of the Act on 02.06.2008. Further that after insertion of Clause (ac) in Section 12(1) of the Act the registration of the society was renewed under Section 12A(1)(ac)(i) of the Act w.e.f Assessment Year 2022-23 to 2026-27 on 31.08.2021 and further approval was also granted w.e.f Assessment Year 2022-23 to 2026-27 on 31.08.2021.

3. The brief facts leading to the issue are that a search and seizure operation under Section 132 of the Act was conducted on 14.10.2020 in the case of Manoj Kumar Singh and his close associates and few transacting parties with the said Shri Manoj Kumar Singh. The school run by the appellant was also covered in that search. On 04.01.2021 by and under the order issued by the CIT(Exemption), Civic Center, New Delhi under Section 127(2) of the Act, the, appellant's case was transferred from Circle Exemption-1(1) Delhi to the Central Circle 29, New Delhi for the purpose of coordinated investigation and meaningful assessment pursuant to search conducted under Section 132 of the Act on 14.10.2020. On

29.03.2022 the DCIT, Central Circle-29, New Delhi, concluded the assessment proceedings for Assessment Year 2015-16 to 2021-22 noting that the same is a fit case for withdrawal of registration under Section 12A of the Act as per sub-Sections 3 and 4 of Section 12A of the Act. The appellant challenged the said assessment orders by filing appeal before the First Appellate Authority, New Delhi under Section 246A of the Act pending before the Ld. CIT(A)-30, New Delhi.

4. Surprisingly, after finalizing the assessment proceedings on 29.03.2022 the Ld. AO sent a proposal for cancellation of registration on 04.05.2022 whereupon Ld. PCIT, Central-3, New Delhi issued show cause notice dated 05.07.2023 to the appellant but the same was withdrawn and thus proceeding for cancellation of registration was dropped. Thereafter, by and under a further letter dated 31.07.2023 the said AO made a corrected reference to the Ld. PCIT, Central -3, New Delhi for cancellation and/or withdrawal of registration of the appellant society under Section 12AB(4) of the Act. The said reference was served upon the appellant only on request made by the appellant on 19.03.2024 operative part whereof reads as follows:

“12.2”. In view of the above discussions, it is requested that for violation of the provision of Section 11(1)(a), Section 11(1)(d) and Section 13(1)(c) of the Act as detailed above, withdrawal/cancellation of registration under Section 12AB(4) of

the Act in the case of society Lakhmi Chand Charitable Society may kindly be considered.”

5. Relevant to mention that the case made out by the respondent is this that based on appreciation of incriminating evidences gathered during search, enquiries made for assessment proceedings for Assessment Year 2015-16 to 2021-22 and the AO reached on satisfaction that appellant society has indulged in non-genuine activities and activities are not being carried out in terms of his aims and objects including diversion of income derived from property held by the society.

6. The said reference was forwarded to Ld. PCIT by and under the communication dated 04.08.2023 issued by the Ld. ACIT for cancellation of registration of the appellant under Section 12AB(4) of the Act on account of violation of provisions of Section 11(1)(a) Section 11(1)(d) and Section 13(1)(c) of the Act.

6.1. The Ld. PCIT thereafter, on 16.08.2023 issued a show cause notice which was intimated by and under letter dated 22.08.2023 for cancellation of such registration under Section 12A r.w.Section 12AA and 12AB(4) of the Act for Financial year 2014-15 and subsequent years whereupon the appellant filed a reply dated 07.02.2024. A further show cause notice dated 02.03.2024 was issued by the Ld. PCIT-3 Delhi, in the proceeding for cancellation of registration under Section 12A r.w.s 12AA and 12AB(4) of the Act reply thereto made by appellant was furnished on 06.03.2024. A

further show cause dated 15.03.2024 was issued by the PCIT and served upon the assessee whereupon reply was filed on 24.03.2024 by the appellant and finally the Ld. PCIT-3 cancelled the registration of the appellant from Assessment Year 2015-16 to 2021-22 with a further direction to this effect that even if the appellant firm found that specified violation is not in existence then also the consequential cancellation order would continue to operate independently by and under its order dated 31.03.2024 which is impugned before us.

7. The Ld. D.R. relied upon the order passed by the PCIT as challenged before us. A written submission has been filed by the Ld. D.R at the time of hearing of the matter too, the contents whereof is as follows:

“Facts of the case:

- Assessee is a society running a school in the name of GD Goenka Public School situated at Elephanta Lane, Near Golak Dham, Sector-10, Dwarka, New Delhi It was registered under Societies Registration Act on 18.09.1996 and under sec 12A of the act on 22.08.1997 It is also having approval u/s 80G of the act dt. 02.06.2008 (Pg 1)
- After insertion of clause (ac) in sec 12A(1), the registration of the society was renewed u/s 12A w.e.f. AY 2022-23 to AY 2026-27 dt. 31.08.2021. Further. approval u/s 80G was also granted w.e.f AY 2022-23 to AY 2026 27 dt.31.08.2021 (Pg 1)
- Search u/s 132 was conducted on 14.10.2020 in case of Manoj Kumar Singh (husband of one of the trustees of society), his close associates and a few transacting parties with whom Manoj Kumar Singh had entered into transactions. The school run by the society was also covered in this search (Pg. 2-3)
- Based on appreciation of incriminating evidences gathered during search, inquiries made and assessment proceedings for AY 2015-16 to AY 2021 22, AO reached on satisfaction that society has indulged in non genuine activities &

activities are not being carried out in terms of its aims and objects including diversion of income derived from property held under society (Para 2.2, Pg 3)

- In view of above, AO made a reference for cancellation/withdrawal of registration of society u/s 12A 1 was 12AA and 12AB(4) (Para 23, Pg 3)

Key Points emerging from documents and evidences detailed in show cause notice issued to society by PCIT (Central):(Para 3.3, Pg. 4)

- Diversion of society's fund/income derived from property held under society by booking bogus bills/expenses (discussed below in Gr 61, dealt in brief from Pg 66 93 and in detail from Pg 154-199)

sYear wise break-up of total bogus billing/Pg 193)

A.Y.	Amount (in Rs.)
2015-16	91,23,795
2016-17	4,41,09,596
2017-18	11,26,63,151
2018-19	4,28,79,898
2019-20	9,26,45,364
2020-11	12,37,94,591
2021-22 (Search Year)	39,08,961
Total	42,91,25,356

- Commission received in cash from the uniform and books vendors operating from school premises and the same has not been accounted for in books of accounts of society and rather, diverted to Manoj Kumar Singh which is clear violation of provisions of sec 13(1)(c). (AY involved 2020-21 & 2021-22) (Pg 195-200)
- Unsecured loan entries taken by the society and subsequent conversion of unsecured loans into Corpus Donation, received from 5 different companies from year 2008 to 2013 and converted into corpus donation during FY 2016-17, however status of these companies as per MCA is "Strike Off Case Law relied upon CIT(Exemptions) Vs Batanagar Education and Research Trust (2021) SC 129 taxmann.com 30. (AY involved 2017-18) (Pg 200-208)
- Unaccounted cash found from the premise of the school run by the society during search, which has been received as commission from the book vendor and uniform vendor of school (AY involved 2021-22) (Pg 208-211)

Ground-wise findings of PCIT(Central) vide order u/s 12A r.w.s 12AA & 12AB(4):

Gr. 2: Order passed without jurisdiction since jurisdiction exclusively vests in CIT(Exemption), Delhi (Pg 12 18)

- Jurisdiction by PCIT (Central) has been assumed in view of CBDT letter dt. 19.01.2024 bearing F.No. 173/6/2024 ITA-I in respect of cancellation of

registration u/s 12AA/10(23C) in trust cases by PCIT other than CIT(Exemption).

- As per order of registration (Form 10AC) dt.31.08.2021, it is clear that registration of society can be withdrawn by prescribed authority.
- Case of assessee society is currently assigned vide order u/s 127 with DCIT, Central Circle 28, Delhi who is sub-ordinate to PCIT (Central) 3, Delhi Thus, in view of para 2.3 and para 3 of CBDT letter dt. 19.01 2024, prescribed authority for cancellation of registration in this case is PCIT (Central)-3.

Gr. 2.1. Reliance on ex parte internal communication dt. 19.01.2024 issued by CBDT 10 assume jurisdiction, without appreciating that the said communication is not issued under any statutory provisions

- CBDT letter dt. 19.01 2024 has been dealt with from Pg 12-18
- Said letter draws its conclusion regarding jurisdiction on the basis of previously issued notifications by CBDT in pursuance to sec 120 of the Act viz. Notification No.52/2014, SO. 2754(E) dt. 22.10.2014, Notification No.50/2014, S.O. 2752(E) dt.22.10.2014 and Notification No.70/2014, S.O. 2915(E) dt. 13.11.2014 and thus, it has legal binding.

Gr. 3. No specified violation as defined in sec 12AB(4) which is sine qua non for withdrawal of registration (Pg 20, 258 29)

- Assertion of society that there is no specified violation since reference by AO deals with violation of conditions of sec 11(1)(a), 11(1)(d) and 13(1) and that it cannot be ground for cancellation of registration is against specific provisions of sec 12AB defining specified violation which, inter-alia, covers "application of income derived from property held under trust other than the objects of the trust. Diversion of income and giving personal benefits to specified persons u/s 13(1) cannot be said to be case of application for objects of the trust.

Gr. 3.1. Reference made of provisions of sec 12AA without appreciating that said section is not applicable wef. 01.04.2021 (Pg 19-20)

- Reference to sec 12AA has only been made since the registration granted earlier was governed by this section. Thus, reference to this section has been made along with currently applicable sec 12AB(4)
- Decision of SC in Ram Sunder Ram Vs Union of India &Ors. (2007 [9] SCALE 197) and N. Mani Vs Sangeetha Theatres &Ors (2004 12 SCC 278) highlight that proceedings are valid as long as jurisdiction exists.

Gr.4. Retrospective withdrawal of registration w.e.f AY 2015-16 is in violation of provisions of the act and settled legal position (Pg 25 28)

- Section 12AB was inserted w.e.f. 01.04.2021, however, prior registrations u/s 12AA were also brought under the ambit of this section.
- Wordings used in sec 12AB(4) "has noticed occurrence of one or more specified violations during any previous year" make legislative intent very clear about covering years prior to 01.04.2021
- Hon'ble ITAT, Delhi in Young Indian Vs CIT(Exemption) (ITA No.7751/Del/2017) has held that order of cancellation of registration even passed on subsequent date would take effect from the year when cause of action arose.

In the present case, search was conducted on 14.10.2020 and on the basis of various incriminating evidences, assessment was completed for AY 2015 16 to AY 2021-22.

Gr.5 Reliance on ex-parte material without confronting it to society and without providing opportunity to cross-examine various persons whose statements relied upon (Pg 31-36, 50-66, 145-154)

Gr. 5.2 Reliance on retracted statements and various inadmissible electronic data/evidence, excel sheets, etc which cannot constitute valid evidence as per Indian Evidence Act, 1872 (Pg 31 36, 93-145)

- A.O, during assessment proceedings, provided to assessee details of seized documents/evidences pertaining to society, as mentioned in assessment order for AY 2018-19 (Pg 31)
- A.O. again provided copies of relevant material to the assessee vide letter dt. 14.12.2023 and 15.03.2024, however certain documents/digital data was not provided as it was seized/impounded from the premise of other Persons and did not pertain to assessee and also were not used in the SCN issued to assessee (Pg 32)
- AO has also provided the certificate u/s 65B of the Evidence Act in respect of electronic data used against assessee. (Pg 34)
- Further, strict rules of Evidence Act are not applicable to income-tax proceedings in view of judgement of SC in Dhakeswari Cotton Mills Ltd Vs CIT (26 ITR 775) and Chuharmal Vs CIT (1988) 172 ITR 250. (Pg 35)
- Statements of close business associates and employees of school were recorded on 14.10.2020. Most of them filed their retractions without any documentary evidences. Manner and nature of retraction also establishes that it is not genuine but is part of collusive action undertaken by Manoj Kumar Singh/Pg 94) Case laws relied upon CIT Vs O Abdul Razak (Kerala HC) 201220taxmann.com 48, etc. (Pg 142-144)

- It is not the case where the action proposed is solely based on statements, rather it is on the basis of various evidences in form of documents, etc. which reveals that the assessee has diverted its funds through bogus billings and further, statements are not of unconnected persons(Pg 153) There is collusion, coercion and threat by Manoj Kumar Singh on the persons who have given statements, hence right to cross-examine does not come naturally in this case (Pg 153-154)

Gr. 5.1: Completion of proceedings without affording adequate opportunity and reliance on findings of A. O. in completed search assessments, which are disputed in appeal (Pg 4-7, 29-30)

- Contention of assessee that adequate opportunity was not given is invalid in view of various notices issued to it and opportunity given for furnishing replies. Date-wise communication with assessee is tabulated from Pg 4-7
- Assessee's contention that assessments of earlier years are yet to reach finality, being pending before CIT(A) is not acceptable as present proceedings are separate proceedings Noticing of specified violation may happen in the assessment proceedings or may be independent of it also.

Gr. 6.1: Wrong allegation that society has diverted income by recording non-genuine expenses securing bogus bills, and thus applying property of the trust for other than charitable objects (Pg 66-93)

- The assessee society diverted the income generated from the property held under society by booking bogus expenses (both revenue and capital) from AY 2015-16 to 2021-22 through Manoj Kumar Singh (de facto controlling and managing affairs of society) and his close associates Naveen Narang, Deepak Narang, Adhir Sachdeva and his trusted &key employee Devesh Singh.
- Devesh Singh(employee of Singh & Associates, prop. Manoj Kumar Singh) in his statement on oath stated that bogus expenditure bills are arranged by Deepak Narang and he used to hand over the bills to Pancham Ray after collecting the same from Deepak Narang (Pg 67).
- Deepak Narang in his statement accepted that bogus bills are arranged by him and the same is handed over to leto management through Devesh Singh. On receipt of said bills, payments are made by school through proper banking channels. Against said payment, cash is received. (Pg 67)
- Statements of some of the vendors (like Suresh Kumar Goyal and Vijay Kumar Gupta) who provided bogus billing were also recorded. (Pg 68)
- An excel sheet by the name "DN xlsx" was found from Laptop of Devesh Singh which contains details of transactions from the parties which are arranged by Deepak Narang and the same is recorded in books of school. Details of cash paid by Deepak Narang to Manoj Kumar Singh is also mentioned. (Pg 68)

- Similar excel filed named "My Data.xlsx" was also found from premise of Devesh Singh. (Pg 69)
- Similarly, bogus bills were also arranged by Naveen Narang & Adhir Sachdeva as evident from excel files found from premise of Devesh Singh. (Pg 69-73)
- On perusal of bills issued by 90 vendors, it is seen that these bills were merely having signature of issuing vendors and no other verification stamp or signature of members of the purchase committee of the school was found on the same as laid down in SOP of the school. (Pg 73)
- Comparison of these bills with genuine bills also reveals that genuine bills had multi-level verification. (Pg 73)
- Sanjay Kumar in his statement dt.18.10.2020 has stated that all the bills procured from parties whose expenses have been booked under various ledgers viz "Maintenance & Repair, Advertising and publicity expenses, advertising and hoardings" from 01.04.2014 to date of search and which were seen and signed by him are bogus in nature and no actual goods/services were provided. (Pg 73)
- Majority of the 29 vendors whose bills were perused and to whom summons were issued on test check basis were non-existent at the addresses indicated in invoices as per inspector's report (Pg 74) Relevant extract from Inspector's report is reproduced from Pg 85-92.
- Copies of some sample bogus bills during FY 2014-15 is given from Pg 75-78.

8 The rebuttal made by the appellant to such written submissions made by the department filed before us is as follows:

REBUTTAL TO THE WRITTEN SYNOPSIS OF THE RESPONDENT

33. The allegation of diversion of funds is without any basis. In view of the submissions made herein above, the allegations of booking bogus bills/expenses are without any credible evidence and independent enquiry by the Ld PCIT-3 The impugned order has based its finding entirely on the Assessment Orders which are under challenge in statutory appeals
34. In view of the submissions stated at Page No. 14 of the impugned order (@pg no. 18 of Appeal), it is evident that assumption of jurisdiction by Ld. PCIT, Central-3 is bad in law. It is reiterated that CBDT communication dated 19.01.2024 has no force of law as it is an internal communication of the department with no sanctity under Section 119 or Section 120 of the Act. The registration can be withdrawn/cancelled only by the 'Prescribed Authority' who has been empowered to grant the registration as held in several judicial pronouncements including the case title Pacific Academy of Higher Education

and Research Society, Udaipur Vs PCIT (Central), Jaipur (@ para 6.7 @ page 126 of judgment compilation) It is squarely covered in cited judgment that the registration can be cancelled only by the 'prescribed authority' who has granted it.

35. The amended Section 12AB (4) of the Act, does not consider a violation of Section 13(1)(c) of the Act as "specified violations". No allegations of "specified violation" have been averred against the Appellant in the Show Cause Notices. Consequently, the registration cannot be cancelled on the grounds that the Assessee has allegedly violated Section 13(1)(c) or section 11(1)(a) or section 13(1) of the Act. It is held in Islamic Academy of Education (supra) that the amended Section 12AB (4) of the Act does not consider a violation of Section 13(1) of the Act (para 8.1.9 @pg 44-45 of the judgement compilation). Further, reliance placed to Section 12AB (4) of the Act for the alleged violations occurred during AY 2015-16 to AY 2021-22 is without any substance as Section 12AB(4) of the Act is made applicable w.e.f 01.04.2022.
36. As held in Islamic Education (supra), if there is any violation in the previous year 2020-21 relating to AY 2021-22, this cannot be a reason to cancel the registration granted for AY 2022-23 to AY 2026-27 as the assumption of jurisdiction under Section 12AB(4)(ii) of the Act is wrong (relevant para 8.3 @ pg 45 of judgement compilation). The reliance placed by the Ld. DR on certain decisions is misplaced as the same are not applicable in the facts and circumstance of present case.
37. Reliance placed by the Ld. DR on Young Indian Vs CIT(E) case, as in the said case society itself requested for withdrawal of the registration. The Society never carried out any charitable activity and was involved in real estate commercial activity Also, there was concealment and suppression of material fact at the time of registration itself. The said case is not in respect of cancellation under Section 12AB (4) of the Act and the cancellation proceedings were initiated by CIT(E) In the case of the Appellant, undisputably, the Appellant is rendering the educational activities which per se is charitable. Therefore, the case cannot be relied upon in the present case of Appellant as the facts of the case of Appellant are distinguishable.
38. The Ld DR has wrongly justified the reliance on retracted statements, inadmissible electronic data/evidence, excel sheets, denial of cross examination etc in order to justify the illegal cancellation. The Appellant places reliance on the submissions made above. The reliance placed on the statements of the named persons without affording the opportunity to cross examine is denial of principle of natural justice

In view of the above, the Hon'ble Tribunal may be pleased to set aside the impugned order dated 31.03.2024 in full and the Appeal be allowed.”

9. At the time of hearing of the instant appeal the Ld. Senior Counsel appearing for the assessee mainly raised his objections on the maintainability of the order issued by the Ld. PCIT dated 31.03.2024 cancelling the registration of the appellant's society for Assessment Year 2015-16 to 2021-22 as without jurisdiction, bad in law and therefore, liable to be quashed. The order impugned suffers from jurisdictional error as the same has been passed by the non jurisdictional officer. He has further proceeded with the case of revocation/withdrawal of registration under Section 12AB(4) as also being beyond jurisdiction inasmuch as there is no "specified violation" as defined in the said section which is sine qua non for withdrawal of such registration. Moreso, the provision of Section 12AA has been wrongly referred by the Ld. PCIT as the same is not applicable after 01.04.2021. Further that the cancellation of registration of the trust cannot be made with retrospective effect and therefore, revocation of registration in the case in hand, w.e.f Assessment Year 2015-16 is also beyond jurisdiction, bad in law as was the crux of the argument advanced by the Ld. A.R.

10. We have heard the rival submissions made by the respective parties, we have further perused the relevant materials available on record including the orders passed by the authorities below.

11. The case of the assessee is this that the reference dated 04.05.2022 and also dated 31.07.2023 made by the Assessing Officer on the basis of 2nd Proviso to Section 143(3) of the Act is not applicable in the case in hand. The said reference granted under

Section 12AA can only be made during the pendency of the assessment proceedings which admittedly has been concluded on 29.03.2022 for the appellant before us. According to the appellant's counsel such reference could have been made only during the course of assessment proceedings so that the effect of such order passed by the PCIT can be considered while passing final order of assessment by the Assessing Officer. In the case in hand as the assessment proceedings has already been concluded on 29.03.2022 the effect of such alleged violation cannot be made in the assessment order itself as was the main argument advanced by the Ld. Counsel appearing for the assessee before us.

11.1 Moreso, this particular 2nd proviso to Section 143(3) of the Act was substituted and made effective from 01.04.2022 whereby and whereunder the Assessing Officer has been vested with the power to make reference to the PCIT for institutions granted registration under Section 12AA/12AB of the Act. In that view of the matter as there was no provision existing in the statute prior to 01.04.2022 vesting jurisdiction upon the Assessing officer to make reference for alleged violation under Section 12AB(4) of the Act as amendment to Section 12AB(4) and 2nd proviso to Section 143(3) were made w.e.f 01.04.2022. The reference has, thus, no basis and is liable to be quashed.

12. In addition to that, it was submitted by the Ld. A.R. that the reference in terms of 2nd proviso to Section 143(3) of the Act is to be made to the CIT(E) and not to the PCIT or Commissioner to whom

the assessing officer would be subordinate. In the case in hand, it appears from the impugned order dated 31.03.2024 that the PCIT has acted on the reference made by the Assessing Officer. In that view of matter the impugned order issued by the Ld. PCIT cancelling the registration passed on the reference of the Assessing Officer purportedly under 2nd proviso to Section 143(3) is without jurisdiction and therefore liable to be quashed.

13. The further case made out by the appellant is this that the PCIT invokes Section 12AA of the Act, while issuing show cause notices dated 05.07.2023 and 16.08.2023 whereas Section 12AA(5) of the Act provides that the provision of Section 12AA are not to be applied on or after 01.04.2021. In that view of the matter the show cause notices mentioned hereinafter issued by the Ld. PCIT are flawed and not maintainable in view of the provision of Section 12AA (5) of the Act. The power to cancel registration granted under Section 12A r.w.s 12AB of the Act can no longer be exercised under Section 12AA(3) after 01.04.2021.

14. Section 12AB(4) was substituted by the Finance Act 2022 w.e.f 01.04.2022 vesting jurisdiction to the Ld. PCIT to cancel registration granted under Section 12AA(1) of the Act or under Section 12AB(1) of the Act. As Section 12AB(4) was not in existence in the statute prior to 01.04.2022 such specified violation, if any, existed prior to 01.04.2022 cannot be touched by the Ld. PCIT by invoking Section 12AB(4) of the Act.

15. Otherwise also the alleged violation specified in the show cause notices pertained to the period prior to search dated i.e. 14.10.2020 and therefore proceeding emanating under Section 12AB(4) of Act proposing cancellation of Registration for Assessment Year 2015-16 to 2021-22 is totally unlawful and ultravires to the provisions of Section 12AB(4) of the Act.

16. As per the contentions made by the Ld. Counsel appearing for the assessee before us that the jurisdiction to grant and/or withdrawing exemption vest with the Ld. CIT(Exemption). The transfer to case under Section 127 of the Act by and under the order dated 04.01.2021 is only for the purpose of coordinated assessment and not for the purpose of exercising jurisdiction for cancellation of registration. In that view of the matter it cannot be assumed that with the transfer of case of the appellant under Section 127 of the Act for coordinated assessment by the CIT(Exemption) Delhi by and under the order dated 04.01.2021 also transfers the proceedings for cancellation of registration. The order under Section 127 dated 04.01.2021 does not speak that Section 12A registration has also been transferred to the jurisdiction of Ld. PCIT, Central Delhi and thus exercising such powers by the said PCIT-3 for cancellation of registration is not in terms of the statutory provision rather bad in law and therefore, liable to be quashed.

17. The jurisdiction to withdrew exemption vests with the “prescribed authority”. The PCIT has no jurisdiction to withdraw or

cancel the exemption. In this regard the Notification No. 52/2014 and 53/2014 both dated 22.10.2014 vesting powers to the Ld. CIT(Exemption) Delhi in the territorial area specified in Column No. 4 of the said notification who are claiming exemption inter/alia under Section 12A of the Act has been relied upon. It is the case made out by the appellant that by and under the said notification the Ld. CIT(E) has been constituted separately for the purposes mentioned therein. Thus, it is the CIT(E) to exercise the power not the PCIT as has been wrongly done in the case in hand. In this case he has referred the judgment passed in the matter of Aggarwal Vidhya Pracharni Sabha Vs. PCIT in ITA No. 1308/DEL/2023 passed by the Coordinate Bench, relevant portion whereof is as follows:

“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 Id. PCT, Gurgaon the powers to pass the impugned order. The Id. 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 Id. 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 Id 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 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, 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 Of Chief Commissioner 01 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 of 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 of Principal Commissioner or Commissioner,

(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners of Principal Commissioners of 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 of 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 (11) or sub-clause (iii) or sub clause (iv) or sub clause (v) of the said clause,--

(1) 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 (1),

(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 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, 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 (1) 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 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 (11) of clause (b) and clause (c) of sub-section (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.OS 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 DC11, Central Circle 2, 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

Sr. No.	Name and address of the assessee	PAN	From	To
1)	(2)	(3)	(4)	(5)
1.	M/s Aggarwal Vidhya Pracharni Sabha (Aggarwal College, Ballabgarh)	AABTA3490Q	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(F), dated the 14th September, 2001, published in the Gazette of India, Extraordinary, Part 11, 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-

Sr. No.	Designation	Headquarters	Territorial Area	Cases or classes of cases
(1)	(2)	(3)	(4)	(5)
1.	Commissioner of Income-tax (Exemption), Ahmedabad	Ahmedabad	State of Gujarat, Union territory of Daman and Diu, Union Territory of Dadra and Nagar Haveli	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) 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 Number 1 to 20 specified in the notification of Government of India bearing number S.O. 2752 dated the 22 nd October, 2014.

.....

4.	Commissioner of Income-tax (Exemption), Chandigarh	Chandigarh	States of Jammu and Kashmir, Himachal Pradesh, Punjab Haryana and Union Territory of Chandigarh	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) 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 Number 50 to 68 specified in the notification of
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				Government of India bearing number S.O. 2752 dated the 22 nd October, 2014.
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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 MANU/DTCR/0011/2022 dated 3rd June 2022, giving clarification regarding Form No.10 AC till the date of the circular and it will be relevant to reproduce para 1 of this circular herebelow;

“Circular No. 11 of 2022: MANU/DTCR/0011/2022

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 sub-section (1) of section 12AA. Subsequent to examination by the Principal Commissioner or Commissioner of Income-tax, 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 (230) 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 sub rule (5) of rule 20 of the Income-tax Rules, 1962 (the

Rules) to the Principal Commissioner 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 PCIT mentions that consequent to the completion of assessment proceedings, the facts were communicated to his office by the AO pertaining to AY 2014-15 to 2020 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 Id. 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 Id. 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-CC-136-4 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 138 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 138 of the Art 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 Art to transfer powers vested by Board to any other Tax Authority

14.3 Next, as we refer to Section 12AB and Rule 17A which have come into effect from 01.04.2021, and read it with the Circular no. 11 MANU/DTCR/0011/2022 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 Income tax Rules, 1962 to the Principal Commissioner or Commissioner authorised by the Board. The authorization u/s 12AB or Rule 17A if have to be construed, by virtue of Board Notification dated 22.10.2014, then we pointed out during the hearing, to Id. D.R that this Notification dated 22.10.2014 does not mention specifically that the powers which can be exercised by Id. 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, Id. 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 Id. 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 Id. PCIT passing the impugned order liable to be quashed.

16. Furthermore, if examine the legality of the procedure followed by Id. 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 Id.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 AD 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 Id. 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.”

...

“21. In the light of the aforesaid discussion and the law cited before us, we are of the considered view that the impugned order has been passed by Ld. PCIT, Gurgaon, without jurisdiction in context to territorial powers and subject matter as well not in accordance with law and same is liable to be quashed. Accordingly, the additional ground raised by the assessee is allowed. Since the relief is granted to assessee by allowing additional ground itself, the adjudication of other grounds raised by the assessee become academic in

nature and are left open. Resultantly, the appeal of the assessee is allowed and the impugned order is quashed.”

18. Having regard to the judgment as relied upon by the Ld. A.R we are of the considered opinion that the reference made in terms of 2nd proviso of Section 143(3) of the Act to the PCIT to whom the AO was subordinate is not permissible rather it is the CIT(E) Delhi, having territorial jurisdiction specified in Column 4 of the Notification Nos. 52/2014 and 53/2014 both dated 22.10.2014 from whom exemption inter/alia under Section 12A of the Act is being claimed is the appropriate authority. In fact by and under the said notification the CIT(Exemption) has been constituted separately for the purposes mentioned therein. In that view of the matter the order passed by the PCIT cancelling registration of the appellant society on the reference made by the Assessing Officer is found to be flawed and without jurisdiction.

19. Apart from that after considering the 2nd proviso of Section 143(3) of the Act, we find that the reference granted under Section 12AA of the Act is permissible to be made only during the pendency of the assessment proceeding. However, in the case in hand the assessment proceeding has already been concluded on 29.03.2022. In fact, the reference could be made only during the course of assessment proceedings so as to enable the Ld. AO to give effect of the order passed on reference in the Assessment Order itself. Moreso, the said proviso has been inserted w.e.f 01.04.2022 in the statute to make reference to the PCIT by the AO under Section

12AA, 12AB of the Act. In that view of the matter application of a particular provision of law which was not in existence during the material point of time cannot be said to have been rightly invoked.

20. So far as the provision of Section 12AB(4) of the Act as exercised by the PCIT is concerned the Ld. A.R relied upon a judgment passed by the Bangalore Bench in the case of M/s Islamic Academy of Education, Manglore in ITA No. 610/Bang/2023 for Assessment Year 2021-22, a copy whereof has also been annexed to the paper book filed before us by the appellant. While dealing with this particular aspect of the matter the Bench has been pleased to observe as follows:

“8.1.9 registration Before the amendment by the Finance Act, 2022, Section 12AB(4) provided for cancellation of registration in case of any violation under Section 13. The amended Section 12AB(4) does not consider a violation of Section 13(l)(c) and Section 13(l)(d) as specified violations. Consequently, the registration cannot be cancelled on the ground that the assessee has violated Section 13(l)(c) or Section 13(1)(d).

8.1.10 The Finance Act 2023 has inserted clause (g) in Explanation to Section 12AB(4) to provide that giving incomplete, false, or inaccurate information in a registration application under Section 12A(l)(ac) will be deemed as a

"specified violation" that can lead to the cancellation of registration.

8.2 Thus, it means that the following registration could be cancelled:

8.2.1 The PCIT/CIT can cancel the following registrations granted to a trust or institution:

- (a) Final registration or provisional registration granted under section 12AB(1)(a)/(b)/(c);
- (b) Final registration granted under section 12AA(1).
The erstwhile provision did not cover cases of provisional registration granted under section 12AB(1)(c). Now, the provisional registration granted for the first time can also be cancelled by the authorities.

8.3 As seen from the above, since the assessee has secured the registration u/s 12A of the Act dated 4.6.1992, which was effective till the date of 23.9.2021 and this registration granted u/s 12A cannot be cancelled u/s 12AB(4)(ii) of the Act for the previous year 2020-21 covering the assessment year 2021-22. On the other hand, he could cancel the registration from assessment year 2022-23 onwards u/s 12AB(4)(ii) of the Act. In our opinion, if there is any violation in the previous assessment year 2020-21 relating to the assessment year

2021-22, this cannot be reason to cancel the registration granted for the assessment year 2022-23 to 2026-27 as the assumption of jurisdiction u/s 12AB(4)(ii) of the Act is itself wrong on the reasons discussed herein above. The specific violation committed by the assessee in any of these assessment years is to be considered independently and not the violation committed in assessment year 2021-22 for cancelling the registration granted u/s 12AB of the Act for the assessment year 2022-23 to 2026-27. As such, we make it clear that the ld. PCIT at liberty to pass the fresh order of cancellation independently u/s 12AB(4)(ii) of the Act for these assessment years i.e. 2022-23 to 2026-27, if so advised. Accordingly, we allow this ground taken by the assessee. Ordered accordingly.”

21. We find inspiration from the essence of the ratio laid down in the above judgment and observe that in view of the provision of Section 12AA(5) of the Act as the provision of Section 12AA cannot be applied on order after 01.04.2021 the show cause notices issued by the PCIT to the appellant dated 05.07.2023 and 16.08.2023 are, thus, found to be erroneous and therefore liable to be quashed. Once the show cause is found to be non est in the eyes of law, the entire proceeding is naturally found to be on a wrong foundation of law and thus, liable to be set aside. Similarly, invoking the provision of Section 12AB(4) of the Act by the PCIT to cancel registration for specified violation is also not permissible at the

same has not seen the light of day prior to 01.04.2022; the same is therefore, not applicable to Assessment Years 2015-16 to 2021-22 as wrongly has been applied in the case in hand.

22. Thus, having regard to these particular facts and circumstances of the case the issuance of show cause notices proposing cancellation of registration alleging specified violation occurred prior to 01.04.2022 i.e. for Assessment Year 2015-16 to 2021-22 and the final order passed by the Ld. PCIT cancelling registration of the appellant society for Assessment Year 2015-16 to 2021-22 by wrongly invoking the provision of Section 12A r.w.s 12AA and 12AB(4) of the Act is found to be erroneous, bad in law, whimsical, in non application of mind and thus, unsustainable.

23. Before parting we would like to note that the further direction given by the Ld. PCIT to this effect that even if the appellant society is found that specified violation is not in existence then also the consequential cancellation order would continue to operate independently by and under the impugned order dated 31.03.2024 is nothing but colourable exercise of power, not only arbitrary or erroneous but establishes the biasness on the part of the authorities below; by hook or crook the authority was bent upon to cancel the registration of the appellant trust which is evident from such observation and/or decision made by the Ld. PCIT. In fact, on that score alone the order passed by the Ld. PCIT is also found to be bad in law and liable to be quashed. With the aforesaid

observations we thus, quash the impugned order passed by the Ld. PCIT.

24. The assessee's appeal is, therefore, allowed.

Order pronounced in the open court on 22.08.2024

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 22/08/2024

PS: Rohit

Copy forwarded to -

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

ASSISTANT REGISTRAR
ITAT, New Delhi