IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI F BENCH, MUMBAI

[Coram: Justice P P Bhatt (President) and
Pramod Kumar (Vice President)]

ITA No. 7238/Mum/2019

Navajbai Ratan Tata Trust **…….Appellant**
Ground Floor, Bombay House-24,
Homi Mody Street, Fort, Mumbai-400 001 [PAN: AAATN 0202 B]

Vs

Principal Commissioner of Income Tax-17, Mumbai **……Respondent**

Appearances by
P J Pardiwala, Sr Advocate, *along-with* **Madhur Agarwal, Sukh Sagar Syal, T P Ostwal and Indira Anand** *for the appellant*

Anil C Singh, Additional Solicitor General, *along with*
Suresh Kumar, Sr. Standing Counsel, *for the respondent*

Date of concluding the hearing : December 24, 2020
Date of pronouncement of order : March 24, 2021

O R D E R

Per Bench:

The impugned order:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 3rd October 2019, passed by the learned Principal Commissioner of Income Tax-17 Mumbai, in the matter of assessment under section 12A(3)/12A(4) of the Income Tax Act, 1961.

Grounds of appeal:-

2. Grounds of appeal, as set out in the memorandum of appeal filed before us, are as follows:

1 a) The impugned order dated 31.10.2019 passed by the Learned Principal Commissioner of Income-Tax-17 ('PCIT') under section 12AA(3)/(4) of the Income-tax Act, 1961 ('ITA') cancelling the registration of the Appellant is without jurisdiction and, hence, *void ab initio.*

b) The PCIT failed to appreciate that the power of cancellation of registration vests in the authority who has the jurisdiction to grant registration. Admittedly the Commissioner of Income-tax (Exemption) ['CIT(E)'] is the authority who can grant registration, therefore, he is the only authority who can cancel the registration under section 12AA(3)/(4) of the ITA.

c) The PCIT failed to appreciate that when the Trust was registered on 15.03.1976, it was merely communicated that the name of the Trust was entered at TR/10925 in the Register of Trusts. There was no formal order granting registration to start with. Hence there is no requirement in law for passing of an order acknowledging the surrender when the Trust chose to surrender such registration.

2 a) The PCIT erred in holding that the surrender of registration by the Appellant vide its letter dated 11.03.2015 filed on 12.03.2015 is not valid and cannot be given effect to as there is no provision under law for acceptance of such surrender. The PCIT erred in not appreciating that the Appellant is entitled to surrender the registration under section 12A of the ITA as there is no estoppel against such surrender.

b) The PCIT failed to appreciate that there was no subsisting registration under section 12A of the ITA which could be withdrawn by him.

c) The PCIT failed to appreciate that in any event, on the Appellant acquiescing to the Show Cause Notice ('SCN[1]) dated 13.03.2015 issued by the CIT(E) for withdrawal of registration, the registration of the Appellant, even if it survived the surrender, ended (ceased).

d) The PCIT failed to note that in the absence of any laid down procedure requiring the passing of a formal order, no such formal statutory order was required to be passed and the matter reached finality.

e) The PCIT grossly erred in holding that the surrender of registration granted under section 12A of the ITA cannot be accepted as such registration is not only a "benefit" but also carries responsibilities and obligations along with it. The PCIT erred in not appreciating that the registration under section 12A of the IT A is an enabling provision to claim a benefit and the responsibilities and obligations are to be fulfilled only for claiming exemption under section 11 of the ITA.

f) Without prejudice to the Appellant's contention that the Appellant has surrendered its registration, the PCIT grossly erred in holding that Appellants reference to Para 3c of the Income-tax Business Application exemption Instruction No 1 dated 08.07.2016 was misplaced even when the said Instructions of the Director of Income-tax (Systems) on cancellation of registration permitted cancellation at the request of the Appellant which also was undertaken by CIT(E) when he issued SCN dated 13.03.2015.

3. a) The PCIT grossly erred in passing the impugned order cancelling registration with effect from 31.10.2019 with the sole motive of applying the provisions of section 115TD of the ITA introduced from 01.06.2016 and which would not have applied if the surrender of registration was accepted or the impugned order was made effective from the date of the SCN i.e. 13.03.2015.

b) The PCIT grossly erred in observing that the provisions of section 115TD of the ITA would apply even if the registration were to be cancelled w.e.f. 11.03.2015 i.e. date of surrender, as according to the PCIT, specified date in section 115TD of the ITA is on date of conversion which in turn has been defined as the date of the order cancelling the registration.

c) The PCIT failed to appreciate that multiple SCNs were issued to the Appellant on various dates by the CIT(E) (13.03.2015 and 07.06.2017 referring to the Appellants' surrender letter filed, for violation of section 13(l)(d) of the ITA) as well as the PCIT (dated 08.03.2018 stating violation under section 13(l)(d) and 13(2)(h) of the ITA and 16.08.2019 stating that the activities of the Appellant are not carried out in accordance with the objects of the trust deed in addition to violation under section 13(l)(d) and 13(2)(h) of the ITA) each without disposal of the earlier ones (SCNs) and expanding the scope of the earlier ones.

d) The PCIT failed to dispose the SCN dated 13.03.2015 issued by the CIT(E) and failed to appreciate that a change in incumbent who initiated a proceeding cannot abate the proceedings initiated by the erstwhile incumbent.

e) The PCIT ought to have held that the impugned order passed under section 12AA(3)/(4) of the ITA, cancelling the registration of the Appellant is effective from the:

i) date of the surrender application i.e. 11.03.2015 filed on 12.03.2015. Without prejudice, date of the issue of the initial SCN for cancelling registration i.e. 13.03.2015 or from the date the Appellant acquiesced to the Show cause Notice i.e. 20.03.2015.

ii) Without prejudice, when the provisions for cancellation of registration were introduced in the 1TA.

f) The PCIT erred in passing the order with effect from 31.10.2019 even though the PCIT was aware that post May 2016, the Appellant, though surrendered registration, had divested the shares which were the reason for non-compliance of section 11(5) of the ITA. The PCIT, thus, erred in allowing registration under section 12A of the ITA for the period when the Appellant was non-compliant with provisions of section 13(1)(d) of the ITA and has cancelled registration under section 12A of the ITA from a date when there was no such violation.

g) The PCIT erred in passing the order cancelling the registration granted to the Trust w.e.f. the date of the Order as per section 12AA(3) and section 12AA(4). The PCIT ought to have clearly found as for which of the provision should have applied.

4. a) The learned PCIT violated all principles of natural justice in denying an opportunity to the Appellant to make its submissions, in spite of the Appellant specifically submitting so at para X of the submissions dated 18.10.2019.

b) PCIT erred in drawing conclusions which are factually incorrect on records.

c) The learned PCIT exceeded his jurisdiction in observing and giving erroneous findings that the 'Tata Trusts' are controlling 'Tata group of Companies', etc.

5. Without prejudice to the above,

a) the PCIT has erred in law and in fact in holding that the provisions of section 13(2)(h) of the ITA are attracted as the Appellant has invested funds in a concern in which a person as per section 13(3) of the ITA has substantial interest even when none of the Trustees held a substantial interest in Tata Sons Limited. He grossly erred in ignoring the definition of the term "substantial interest" as provided in Explanation 3 to section 13 of the ITA and interpreted the same as an expression of general import.

b) the PCIT has erred in law and in fact by incorrectly placing reliance on an extract of trust deed to hold that the Appellant and Trustees have not carried out activities in strict adherence to the object clause in the trust deed. In doing so, the PCIT erred in not appreciating that –

i) by reinvesting the sale proceeds of shares the trustees did not violate the trust deed and was in accordance with the provisions of The Maharashtra Public Trust Act, 1950

ii) the Appellant had applied its entire income for charitable purposes.

iii) the trust deed does not mandate the registration or surrender of registration under section 12A of the ITA.

iv) the trust deed provides that the Appellant is to expend monies for the various charitable objects as specified in the trust deed so long as those are objects which the ITA permits to enable a trust to qualify for exemption.

v) the Appellant did not hold any equity shares in Tata Sons Limited as per the extracts of audited financial statement of Tata Sons Limited provided by the PCIT and hence the PCIT's conclusion that the Appellant was controlling a large business group through Tata Sons Limited was erroneous.

3. The assessee has also filed an additional ground of appeal, on 26th October 2020, as follows, as also a petition seeking admission of this additional ground of appeal:

That the order under section 12AA(3)/(4) of the Income Tax Act, 1961, of the learned Principal Commissioner of Income Tax -17, dated 31st October 2019, is barred by limitation inasmuch as it passed after an unreasonable time from the date of alleged default as well as surrender application filed by the appellant, and the first show cause notice issued by the *(income tax)* **department in this regard.**

4. We will take a call on the admission of additional ground, and rival contentions on that aspect of the matter, a little later. As for all other grounds of appeal, we will take up these grounds of appeal together. Let us begin by taking a look at the relevant material facts of the case and the developments leading to this litigation before us.

Brief facts of the case:

5. To adjudicate on this appeal, only some of the relevant facts need to be taken note of. The assessee before us is a trust settled by way of the trust deed dated 23rd December 1974, with its main objects including "the advancement of education, learning and industry in all its branches including in economy, sanitary science and arts, or for the relief of human suffering or for any other works of public utility". Shri Ratan Naval Tata and late Shri N A Palkivala were the founder trustees of this trust. A copy of this trust deed is placed before us at pages 1 to 10 of the paper-book. On 23rd July 1975, the assessee trust made an application under section 12A of the Income Tax Act, for its registration as a charitable institution, to the Commissioner of Income Tax concerned. Vide order dated 15th March 1976, the assessee trust was granted

registration under section 12 A. The communication granting the said registration reads as follows:

Office of the Commissioner of Income Tax
Bombay City-IV, Bombay

15th March, 1976

NAVAJIBAI RATA TATA TRUST
(Name of the trust)
Bombay House, Homi Mody Street, Fort, Bombay-23
(Full address)

*as constituted by the trust deed dated **23-12-1974** has filed the registration application under section 12A(a) of the Income Tax Act, 1961, in the prescribed form on **1-8-1975**, i.e. within the stipulated time limit.*

*The application has been eneterd at No. **TR/10925** in the register of applications under section 12-A(a) maintained in this office.*

Seal *for Commissioner of Income Tax*
Bombay City- IV, Bombay

6. On 11th March 2015, the assessee trust wrote a letter to the Commissioner of Income Tax concerned indicating that the assessee does not "desire to continue to avail the benefits of the registration made by the trustees in 1975". This communication reads as follows:

March 11, 2015

Commissioner of Income Tax (Exemptions)
Piramal Chambers, Parel, Mumbai 400 012

Dear Sir,

Navajibai Ratan Tata Trust is a public charitable trust created by the trust deed dated 23rd December 1974. The trust, on 1st August 1975, had filed the prescribed form no. 10A for registering itself as required under section 12A(a) of the Income Tax Act. We were informed by the communication dated 15th March 1976 that the said application has been entered at Serial No. TR/10925 in the Register of applications under section 12A(a) of the Act maintained by the Income Tax Department.

We now refer to Section 12AA(4) of the Act, inserted with effect from 1st October 2014, by the Finance Act (No. 2) Act, 2014, and submit that some of the activities of the Trust are not in compliance with the provisions of Section 13(1) of the Act. We understand that the said non-compliance would be construed as an activity of the trust which is being carried out in a manner that the provisions of Section 11 and 12 of the Act donot apply to exclude either whole or any part of the income of the Trust resulting in withdrawal of registration obtained by us under section 12A(a) of the Act.

Accordingly, the assessee does not desire to continue to avail the benefits of registration made by the Trustees in 1975.

Hence, you are hereby informed that the Trust would not be claiming exemption under section 11 of the Act, since, upon withdrawal of the registration or in any event cancellation of the registration under section 12A of the Act, it would not comply with the requirements of Section 12A(1)(a) read with 12AA(4) of the Act.

We request you to kindly take note of the above an oblige.

Thank you,

Yours sincerely,

On behalf of the Board of Trustees
Trustee

7. Promptly, the Commissioner of Income Tax concerned took note of the above communication, and issued a show cause notice as to why the registration under section 12 A not be cancelled, which is exactly what the assessee trust had prayed for. This communication, dated 13th March 2015, reads as follows:

No CIT(E)/12AA/Withdrawal-16/14-15 *Date: 13.3.2015*

The Trustee
Navajibai Ratan Tata Trust
Bombay House, Homi Mody Street
Mumbai 400 001

Sir,

Sub: Show cause for withdrawal/ cancellation of registration under section 12AA in the case of Navajibai Ratan Tata Trust- reg-

Ref: Your letter dated 11.3.2015 received in this office on 12.3.2015

Please refer to the above.

2. In this connection, vide your letter under reference, you have submitted as under:

> *Navajibai Ratan Tata Trust is a public charitable trust created by the trust deed dated 23rd December 1974. The trust, on 1st August 1975, had filed the prescribed form no. 10A for registering itself as required under section 12A(a) of the Income Tax Act. We were informed by the communication dated 15th March 1976 that the said application has been entered at Serial No. TR/10925 in the Register of applications under section 12A(a) of the Act maintained by the Income Tax Department.*
>
> *We now refer to Section 12AA(4) of the Act, inserted with effect from 1st October 2014, by the Finance Act (No. 2) Act, 2014, and submit that some of the activities of the Trust are not in compliance with the provisions of Section 13(1) of the Act. We understand that the said non-compliance would be construed as an activity of the trust which is being carried out in a manner that the provisions of Section 11 and 12 of the Act donot apply to exclude either whole or any part of the income of the Trust resulting in withdrawal of registration obtained by us under section 12A(a) of the Act.*
>
> *Accordingly, the assessee does not desire to continue to avail the benefits of registration made by the Trustees in 1975.*

Hence, you are hereby informed that the Trust would not be claiming exemption under section 11 of the Act, since, upon withdrawal of the registration or in any event cancellation of the registration under section 12A of the Act, it would not comply with the requirements of Section 12A(1)(a) read with 12AA(4) of the Act.

3. In view of the above, it is proposed to withdraw registration under section 12A of the Income Tax Act, granted in your case vide registration No. TR/10925 of the erstwhile CIT, Bombay City IV, Bombay.

4. You are requested to explain why the registration granted under section 12A should not be cancelled/ withdrawn in your case. In this regard, you are requested to attend in person or through your authorised representative before the undersigned and file the written submission and argue the matter on 20th March 20145 at 3 pm in my office.

Yours faithfully

Commissioner of
Income Tax (Exemptions)
Mumbai

8. As scheduled, the hearing did take place on 20th March 2015. The record of proceedings on that day, as recorded in the office of the Commissioner of Income Tax (Exemptions) is as follows:

Shri Dilip Thakkar, CA, attended, alongwith Ms R Savaksha and Shri B S Taraporewala, and relied on letter dated March 11.

Heard.

Sd/xx	***Sd/xx***	***Sd/xx***	***Sd/xx***
D J T	***B S T***	***R S***	***CIT (E)***

9. There was a long pause thereafter. Even tough the hearing was concluded on 20th March 2015, as evident from the remark "Heard" which is invariably followed by a formal order in respect of the hearing, the assessee did not receive any further communication from any of the income tax authorities in this regard. In the meantime, the assessee had filed its return of income for the assessment year 2015-16 on 27th August 2015 in which the assessee did not claim the exemption under section 11. The assessee claimed exemption of dividend under section 10(34), as is normally admissible, in respect of the dividends from the domestic companies. On 24th May 2016, the assessee, once again sent a communication to the Commissioner of Income Tax concerned placing on record his understanding that with his surrender of registration, he is not required to follow the scheme of Section 11 to 13. This communication reads as follows:

> Commissioner of Income Tax (Exemptions),
> Piramal Chambers, Parel,
> Mumbai - 400 012
>
> Dear Sir,
>
> We had vide our letter dated March 11, 2015, informed you that claiming of exemption u/s 11 of the Income-tax Act, 1961 ('the Act') was disadvantageous to the Trust and, therefore, the Trust did not desire to continue to avail the benefits of registration under section 12A(a) of the Act, viz. exemption from tax u/s 11 of the Act and that consequently the Trust would not be claiming exemption under section 11 of the Act i.e. in effect, surrender the registration obtained by the Trust.
>
> Pursuant to our letter, we received a Notice dated March 13, 2015, wherein you had proposed to withdraw registration under section 12A of the Act, granted to the Trust vide registration no. TR/10925 and asked us to appear before you on March 20, 2015.
>
> Accordingly, on March 20, 2015, the Authorized Representatives of the Trust appeared before you and confirmed their agreement to the action you had proposed to take and stated that the Trust had no objection to your proposal, as the Trust itself had sought the deregistration. As there was no dispute that our request would not be acceded to we proceeded to file our Return of Income for Assessment Year 2015-16, by not availing

the benefits under sections 11 to 13 of the Act. The Return of Income was filed on the basis of the normal provisions of the Act.

As over fourteen months have elapsed after our meeting on 20th March, 2015, we presume our request has been noted and accepted. We have however, not received a formal communication from you. We therefore, request you to confirm that our understanding is right

Thanking you

Yours sincerely,

On behalf of the Board of Trustees

10. There was no response to this letter. Neither the Commissioner of Income Tax concerned responded to the said letter, nor there was any other communication, from any of the income tax authorities, in connection with the above.

11. On 8th March 2018, and without any reference to any earlier proceedings as set out above, the respondent Principal Commissioner issued a notice requiring the assessee to show cause as to why the registration under section 12A granted to the assessee not be cancelled. This show cause notice stated as follows:

No Pr CIT-17/12AA/2017-18/1 *Date: 08/03/2018*

Navajibai Ratan Tata Trust
Bombay House, Homi Mody Street
Mumbai 400 001

Sir,

Sub: Show cause for cancellation u/s 12AA of registration granted under section 12A to Navajibai Ratan Tata Trust- reg-

Kindly refer to the above.

2. Navajibai Ratan Tata Trust was granted registration under section 12 A of the Income Tax Act, by the Commissioner of Income Tax, Bombay City-IV, Bombay vide registration no. TR/10925 dated 15.03.1976

3. However, it is seen from the records that you have violated statutory obligations as regards the mode of investment of your fund as per section 11(5) of the Income Tax Act, 1961 and further consistently been hit by the Section 13(1)(d) and 13(2)(h) of the Income Tax Act,

4. In view of the above, you are requested to show cause as to why the registration granted under section 12A of the Income Tax Act to you, as mentioned above, should not be cancelled. You may appear before the Pr CIT-17 Mumbai on 14.03.2018 at 11.30 AM either in person or through the Authorized Representative.

Yours truly,

Pr CIT-17, Mumbai

12. The assessee, alongwith five other similarly placed assessee trusts- namely R D Tata Trust, Tata Social Welfare Trust, Sarvjanik Seva Trust, Jameshdji Tata Trust and Tata Education Trust, challenged this show cause notice before the Hon'ble Bombay High Court but subsequently withdrew the writ petition with the liberty to raise all the contentions in appropriate proceedings. Hon'ble Bombay High Court, accordingly, disposed off these petitions vide judgment dated 29th October 2018 observing, inter alia, "**we dispose of each of these writ petitions with the liberty to raise all the contentions at an appropriate stage before the appellate forum/authority**" and that "**the petitions are disposed of with the liberty, as prayed**".

13. Once again, proceedings resumed before the respondent Principal Commissioner of Income Tax. It was, inter alia, explained by the assessee that this exercise is an exercise in

futility inasmuch as the registration under section 12A has already been surrendered by the assessee and it stood cancelled/ withdrawn with effect from March 2015, for the reasons as follows:

(i) The Trust was constituted by trust deed dated 23.12.1974 and obtained registration as public charitable trust in August 1975 under section 12A(a) of the ITA. In August 1975 it had filed prescribed Form 10A as required under section 12A(a) of the ITA. Vide communication dated 15.03.1976 the Trust was informed that the said application had been entered at Sr No TR/10925 in the Register of Applications under section 12A(a) of the ITA.

(ii) In March 2015, referring to section 12AA(4) of the ITA inserted with effect from 1 October 2014 by Finance Act, 2014 the Trust submitted to the CIT(E) that some of its activities are not in conformity with the provisions of section 13(1) of the ITA which would be construed as an activity of the Trust which is being carried out in a manner that provisions of section 11 and 12 of the ITA do not apply to exclude either whole or any part of the income of the Trust, resulting in withdrawal of the registration under section 12A of the ITA. By the said letter the Trust had surrendered its registration.

(iii) Acknowledging Trusts letter dated 11.03.2015, a show cause notice dated 13.03.2015 was issued by the CIT(E) proposing to cancel/withdraw the Trusts registration under section 12A of the ITA. The Trust was called for a hearing on 20.03.2015 on which date the Trust confirmed its agreement to the cancellation/withdrawal of the registration. Copy of the said letter dated 11.03.2015 is enclosed at page 42 to 43 of the PB, the show cause notice dated 13.03.2015 is enclosed at page 44 to 45 of the PB and a copy of the order Sheet of hearing on 20.03.2015 before CIT(E) is enclosed at page 46. Thus, the Trust submits that it has already surrendered the registration in 2015.

iv) Pursuant to the surrender in 2015, the Trust filed its income tax return without claiming exemption under section 11 and 12 of the ITA.

v) The surrender of registration was accepted by the CIT(E) which is evident from the fact that the Trusts file was transferred by CIT(E) to the PCIT-17 vide letter dated 28.11.2017.

vi) It is pertinent to note that subsequently the case records of the Trust with respect to the assessment were transferred to the Assessing Officer under your

Honor's jurisdiction vide letter dated 07.12.2017 and Trust has been assessed by the non-exemption ward thereafter.

vii) The above shows that surrender/ cancellation has been accepted and the same has been consistently reflected in the department's own actions.

14. None of these submissions, however, impressed the respondent Principal Commissioner of Income Tax. He proceeded with cancelling the registration of the assessee trust, as granted under section 12A, and he cancelled the registration with effect from the date of his order, i.e., 31st October 2019. The assessee has no grievance whatsoever with the cancellation of the Trust because that is exactly what he had prayed for many years before the date of this order, and the dispute of the assessee is confined to the date from which such cancellation has to be effective.

Rival submissions:

15. Shri P J Pardiwalla, learned Senior Advocate, painstakingly took us through the facts of the case in detail and submitted that this entire exercise of cancellation of registration is a nullity in law inasmuch as by virtue of letter dated 11th March 2015, the registration under section 12 A is no longer in existence. He submits that what is provided by Section 12 A is a registration which is the nature of benefit as it is a foundational requirement for the exemption under section 11. It is thus meant to be a beneficial scheme for the taxation of trusts. A benefit cannot be thrust upon an unwilling person, particularly when what is perceived and claimed to be a benefit turns out to be a liability. Learned counsel submits that a benefit, right or privilege cannot be thrust upon anyone, and it can only be retained by a beneficiary on his own choosing. Our attention is then invited to John W Salmond's very respected and authoritative commentary "The Theory Of Law", which at page 642, states as follows:

"Vestitative facts- whether they create, transfer, or extinguish rights-are divisible into two fundamentally distinct classes, according as they operate in pursuance of the will of the persons concerned, or independently of it. That is to say, the

creation, transfer, and extinction of rights are either voluntary or involuntary. In innumerable cases, the law allows a man to acquire or lose his rights by manifestation or declaration of his will and intent directed to that end." (page 371)

"The importance of agreement as a vestative fact lies in the universality of its operation. There are few rights which cannot be acquired through the assent of the persons upon whom the correlative duties are to be imposed. There are few rights which cannot be transferred to another by the will of him in whom they are presently vested. There are few which are not extinguished when their owner no longer desires to retain them. Of that great multitude of rights and duties of which the adult member of a civilised community stands possessed, the great majority have their origin in agreements made by him with other men. By agreements of contrary intent he may strip himself almost as destitute of rights and duties, as when in the scantiest of juridical vesture he made his first appearance before the law. *Invito beneficium non datur,* said the Romans; and the maxim is fundamental." (page 375)

"*Invito beneficium non datur*- The law confers upon a man no rights or benefits which he does not desire. Whoever, waives, abandons or disclaims a right will lose it." (page 642)

16. Our attention is then invited to certain extracts from the well-known book 'Interpretation of Statutes' authored by Maxwell, which are reproduced below for ready reference:

"Another maxim which sanctions the non-observance of a statutory provision, is that *cuilibet licet renuntiare juri pro se introducto*. Every one has a right to waive, and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual, in his private capacity (b), and which may be dispensed with without infringing on any public right or public policy. Thus, a person may agree to waive the benefit of the Statute of Limitations (c). The trustees of a turnpike road may, in demising the tolls, waive the provision of the Act which requires that the demise shall be signed by the sureties of the lessee (d). A passenger may waive the benefit of an enactment which entitles him to carry so many pounds of luggage with him; and he does so, it may be added, by taking a ticket with the express condition that he shall carry no luggage (a). The only person intended to be benefitted by such an enactment is obviously, the passenger himself; and no consideration of public policy is involed in it (b). A company authorised by

the statute to levy tolls within a specified maximum is not bound to exact uniform tolls from all persons alike; but is entitled, in the absence of an express provision requiring equality, to remit any part of the tolls to particular persons, at its discretion (c)." (page 474)

17. Learned senior counsel submits that these principles have been reiterated time and again by the Hon'ble Courts above. Our attention is then invited to Hon'ble Supreme Court's judgment in the case of **CIT Vs Mahendra Mills [(2000) 243 ITR 56 (SC)]** wherein Their Lordships have, inter alia, observed as follows:

……The Officer is required to do no more than to advise the assessee. It does not place any mandatory duty on the officer to allow depreciation if the assessee does not want to claim that. Provision for claim of depreciation is certainly for the benefit of the assessee. If it does not wish to avail that benefit for some reason, benefit cannot be forced upon him. It is for the assessee to see if the claim of depreciation is to his advantage. Rather, the ITO should advise him not to claim depreciation if that course is beneficial to the assessee……..

……..It is rightly said that privilege cannot be to a disadvantage and an option cannot become an obligation……

18. It is then submitted that, as held by Hon'ble Supreme Court, in the case of **Shri Lachoo Mal Vs Shri Radhey Shyam [(1971) AIR SC 2213]**, if there is nothing in the provision which prohibits a person from waiving a privilege, the doctrine of waiver can be applied and privilege can be given up. Learned counsel, in particular, relies upon the following observations made by Hon'ble Supreme Court:

"The general principle is that every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus the maxim which sanction the non-observance of the statutory provision is *cuilibet licat renuntiare juri pro se introducto*. (See Maxwell on Interpretation of Statutes, Eleventh Edition, pages

375 & 376). If there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a more extensive operation 'as a matter of public policy. In Halsbury's Laws of England, Volume 8, Third Edition, it is stated in paragraph, 248 at page 143.

"As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said, can contract himself out of the Act, unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public policy. Statutory conditions may, however, be imposed in such terms that they cannot be waived by agreement, and, in certain circumstances, the legislature has expressly provided that any such agreement shall be void."

19. Learned counsel further relies, in support of the same proposition, upon the judicial precedents in the cases of **Shri Poosaji Magnilal Vs The South Indian Humanitarian League [(2009) 2 CTC 25 (Mad)], Commissioner of Customs Vs Virgo Steels [(2002) 4 SCC 316)], Vellayan Chettiar Vs Province of Madras [(1947) 49 BOMLR 794], Jain Ram Vs Union of India [(1954) AIR SC 584 (SC)]** as also several precedents on the same lines. For the sake of brevity, however, we may not deal with these precedents.

20. It is then contended that unlike Section 18 of the Bombay Public Trust Act, 1950, which mandates every public trust to make an application for registration under the Income Tax Act, there is no such requirement under the Income Tax Act. Registration is mandatory only when exemption under section 11 is claimed. Thus, when the assessee files the registration application on his own will, it is a natural corollary thereto that the assessee may, in his own right, surrender the registration as well. Learned counsel then invites contrast of this situation with the situation under section 115BAA wherein the assessee, once applying for the lower rate of taxation subject to certain conditions, cannot subsequently withdraw from the said scheme. It is contended that when no such fetters are placed under section 12A, the same cannot be inferred.

21. Learned counsel then submits that under section 12AA(4), an assessee can surrender a registration under section 12A and there will be no necessity to pass a formal order to that effect. Our attention is then invited to the wordings of Section 12AA(3) and 12AA(4), which are reproduced below for ready reference:

Section 12AA:

(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 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 and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of 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, 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.

[Emphasis, by underlining, supplied to highlight the plea of the assessee]

22. Learned counsel submits that while section 12AA(3) requires the Commissioner to be satisfied of a 'violation', under sub section 12AA(4) a violation has to be only 'noticed'. Once the assessee has informed the Commissioner of the violation, that satisfies the requirement of Section 12AA(4) inasmuch as the Commissioner cannot say that he has not noticed the violation, and no further satisfaction by the Commissioner is necessary. It is thus contended that the requirements of Section 12AA(4) were clearly satisfied in the present case. It is then pointed out that while under section passing of an order is mandatory under section 12AA(3) inasmuch as it provides that the Commissioner "shall" pass the order, the word used in section 12AA(4) is "may", and, by implication therefore, passing of the order is not mandatory at all. It is further pointed out that while section 12AA(3) provides for an opportunity of hearing to the assessee, no such provision exists in section 12AA(4). This too, according to the learned counsel, indicate that it is not necessary that a formal order be passed under section 12AA(4).

23. It is then contended that, as held by Hon'ble Supreme Court in the case of **Moti Ram Vs Param Dev [(1993) 2 SCC 725 (SC)]**, doctrine of unilateral relinquishment permits a person to give up its rights and privileges, and having done so, it is not necessary for anyone to recognize or give effect to such relinquishment. In such cases, relinquishment becomes complete and operative when relinquisher, by a concomitant act makes good his intention of relinquishment. In this case, according to the learned counsel, Hon'ble Supreme Court has held that when there is no provision in the statute requiring another person to accept the relinquishment, a party will have the unilateral right of relinquishment.

24. It is further contended that even if a ministerial order cancelling the registration is a statutory requirement, the order sheet endorsement will suffice for the purpose, and that in any event the fact of the learned Commissioner cannot prejudice the assessee. It is further contended that not passing the formal cancellation order has seriously prejudiced the interests of the assessee inasmuch the assessee has been declined benefit of exemption under section 10(34) and there can be a potential tax implication under section 115 TD as well. It is then

submitted that failure of a statutory authority to discharge its statutory duty cannot prejudice the assessee. Reliance is placed on the judicial precedents in the cases **of Kusheshwar Prasad Singh Vs State of Bihar [(2007) 11 SCC 447 (SC)], CIT Vs TVS Electronics Ltd** (TCA No 1457 of 2008; serial 38 of the legal paper book) and **Strides Acrolab Ltd Vs ACIT** [(2015) ITA No. 1727/Mum/2006; serial 39 of the legal paper book].

25. Learned counsel's next contention is that one is to proceed on the basis that until the registration under section 12 A is cancelled by the Commissioner, it will continue to bind the assessee, it will result in an absurdity inasmuch as an assessee will have to deliberately commit a breach, as contemplated in section 12AA(3) or (4) so as to give the Commissioner an occasion to cancel the registration. That is clearly incongruous and could never have been intended by the legislature.

26. Learned counsel further submits that under the scheme of Section 12A, as it then existed and quite in contrast with the scheme of Section 12AA introduced by the Finance Act 1996, there was no requirement for the Commissioner being satisfied about genuineness of the activities of the trust and the requirement of registration was satisfied as soon as the assessee filed the application for registration in the prescribed manner. Our attention was invited to Hon'ble Madras high Court's judgment in the case of **New Life in Christ Evangelistic Association Vs CIT [(2001) 246 ITR 532 (Mad)]** wherein it is said to have been held that the only purpose of registration under section 12 A was to establish identity of the Trust. Our attention was then invited to the CBDT circular 762 of 1998 which, inter alia, has, referring to the scheme of section 12 A as it then stood, observed that "**One of the conditions is that the person in receipt of income shall make an application for registration of trust or institution in the prescribed form and in the prescribed manner to the Chief Commissioner or the Commissioner in the specified time. However, there was no provision in the income tax law for processing of such an application and granting or refusal of registration to the concerned trust or institution**". It is then contended that so far as registrations under section 12 A are concerned, these were no granted by the Commissioner as there was admittedly no legal process for grant of or refusal of such registrations in the first

place. It was obtained by a unilateral act, though confirmed by a communication by the Commissioner, and, therefore, its cancellation cannot entail a different process.

27. Learned senior counsel then submits that in any event, learned Commissioner could not have delayed disposal of the assessee's request for cancellation for an indefinite period. It was his duty to pass the order within a reasonable time frame. Once he does not do so, he is denuded of the powers to pass the order, and the impugned order must, therefore, be held to be time barred. In this background, he pleads for admission of the additional ground of appeal which is a pure question of law and must be adjudicated as such.

28 Shri Anil C Singh, learned Additional Solicitor General, vehemently opposes the submissions so made by the learned counsel for the assessee. He submits that the purported unilateral surrender of registration by the appellant is not valid nor effective for several reasons which are in the alternative and without prejudice to one another. He submits that there is no provision to surrender a registration envisaged or provided under the Income tax Act, 1961. Registration is not merely a benefit which can be waived but a benefit coupled with obligations, and, is elementary, obligations cannot be unilaterally waived or surrendered. It is then contended that assuming whilst denying that a unilateral surrender is permitted under the statute, even then the letter dated 11th March, 2015 is not and does not amount to a surrender of registration and that there is no power of surrender provided for in the Trust Deed. It is then further contended that assuming whilst denying that a unilateral surrender is permitted under the statute and that the letter dated 11th March, 2015 amounts to a purported surrender which the Trust Deed permitted, even then the purported letter is not *bona fide* but written for collateral/oblique purposes and hence, invalid. It was therefore, according to the learned Additional Solicitor General, necessary, to issue a show cause notice and after giving due opportunity to the Assessee to respond to the same, pass a reasoned Order as has been done in the instant case.

29. Learned ASG contends that the registration under section 12A does not amount to a benefit *simplicitor* to the assessee. His line of reasoning is as follows. It is submitted that as would be evident on a bare perusal of the relevant provisions of the Income Tax Act, 1961

registration of a Trust as a charitable or religious entity permits it, *inter alia*, to claim exemptions on its total income. These exemptions are permitted and provided for, as a *quid pro quo* for the fact that these bodies are involved in carrying out philanthropic activities. The legislature in its wisdom has deemed it fit to permit entities which seek to help society by performing charitable acts to be entitled to certain benefits from the taxation schemes of the Government. It is further submitted that these benefits however, are not standalone benefits available to any and all trusts but only to trusts that perform charitable activities and meet the criterions mentioned in the statute for this purpose. He submits that the registration is granted only when the activities and objects of the Trust are in conformity with the Act. The Act lays down a welfare scheme whereby it seeks to permit certain exemptions to Trusts but only such Trusts or entities as are involved in charitable activities. Thus, to assert that registration is merely a benefit with no obligation is clearly contrary to the express language, intent and purport of the Act. It is contended that the concept of "benefit" *per se* is not exactly applicable to registration of Trusts. Learned ASG submits that registration is not granted for the asking but is dependent upon the applicant being otherwise in conformity of the provisions of the statute and in a sense, undertaking to comply with the statute and the purpose of rendering charitable services. To put it differently, registration is not a benefit available to all but a benefit which can be claimed by the Trusts which meet the criterions specified by the Act and which are willing to comply with it. To illustrate this point, learned ASG suggests, one may consider an example of a company. A company is entitled carry on a legal business. However, not all companies can carry out banking business. It is only those companies which undertake to comply with the requirements of grant of registration as a NBFC which would be entitled to carry on banking business. Similarly, Trusts can carry out charitable activities if they so desire but if they desire exemption from income tax for such acts, then registration under the Act is compulsory. Registration is dependent upon compliance of the obligations of rendering such charitable services. Therefore, according to the learned ASG, it is evident that the registration of a Trust under the provisions of the Act also carries with it responsibilities and obligations. It is, for example, an obligation on the part of a registered charitable Trust to utilize the exempt income for specified purposes, and even if Trust funds are accumulated for future, the accumulated money is required to be used for charitable purposes and be invested as per the Act- as is the scheme of Section 11 to 13. Therefore, unlike in the case of CIT vs. Mahendra Mills *(supra)* relied on by the appellant, grant of registration cannot be regarded as mere grant of a right comparable to grant of depreciation allowance which is a benefit available to all

assessee. The concept of depreciation is clearly distinct and different from that of registration as a charitable trust, and, for this reason, what is held in the case of Mahendra Mills *(supra)* would not be applicable in the present context.

30. It is then contended that while the assessee has an option to claim or not to claim the benefit of Section 11, as it is optional, but then, once a registration is granted, it is not at the option of the assessee to have or not to have the registration. Once the registration is granted, and unless it is lawfully cancelled, the assessee is bound by the same. Learned ASG then takes pain to clarify that claiming of benefit under Section 11 may be option of the trust, however, not claiming benefits under section 11 and surrendering the registration granted under section 12A are, two entirely different concepts. It is legally tenable for a Trust to be registered under section 12A of the Act and still opt for not claiming benefits of section 11 of the Act. Reliance is also placed on the registration certificate of one of the group Trusts wherein it is specifically mentioned that registration in itself does not entitle the Trust for claiming exemption under section 11 of the Act. It is submitted that this would even stand to reason since, otherwise every Trust once registered would need to do nothing further to claim exemption but would be deemed automatically to be entitled to an exemption. This is, according to the learned ASG, clearly not the prevailing law. The distinction between claiming an exemption and the registration as a trust has even been admitted by the Trust also- as is evident from the wordings of ground 2 (e) raised by the assessee. It is thus reiterated and respectfully submitted that registration is not a *simplicitor* benefit. To illustrate that the registration of a Trust is not merely a benefit but an obligation in terms of continuing to meet the requirements of registration by performing the requisite charitable acts, learned ASG once again goes back to the example of a company, and submits that an analogy could be drawn to the incorporation of a company. The incorporation of a company allows a company to have a separate juristic existence and is a benefit to the persons who have setup the company in terms of limited liability etc. However, the promoters cannot unilaterally strike out a company. Section 248 of the Companies Act, 2013 expressly recognises that the ROC would check that the company has no liabilities before it is struck off. The purpose and intent being that one cannot use/misuse the benefit and ignore the obligation and then seek to avoid the obligation on a plea of unilateral surrender. Similarly, even when a Company is registered as a charitable entity under Section 8 of the Companies Act, 2013 (Section 25 of the Companies Act, 1956), such company cannot unilaterally convert itself to a private company. Section 8(4)(i) expressly provides for permission of the Central

Government before such conversion and detailed Rules have been prescribed for such conversion which include several disclosures to show due compliance of the law whilst having been registered as a Section 8 Company and obtaining NOC's from other authorities as well. Our attention is drawn to Rule 21 and 22 of the Companies Incorporation Rules, 2014. Hence, it is not as if a company having taken the benefits of being a charitable institution can unilaterally surrender or convert the same. Such conversion is subject to the express provisions of the Companies Act, 2013. Failure to perform or deliberate violations cannot be brushed aside by surrendering the registration unilaterally as is attempted to be done. If this is allowed, it would result in Trusts registering themselves on the pretext of charitable purposes, then carrying out commercial activities and upon being told to explain the wrongful use of the registration to claim exemptions (if exemptions were otherwise available), surrendering the registration and walking away scot free having abused and violated the law. It is submitted that this could never be the intent or purpose of the law. Even the plain language of the provisions suggests contrary to the assertions of the Trust on this aspect.

31. Learned ASG thus submits that the question of a unilateral surrender cannot and would not arise. In fact, there is no power or provision under the Act whereby a party can unilaterally effect a surrender of the registration. Section 12AA(3) and (4) expressly provide for an Order in Writing for cancelling the registration. Necessity of passing an order is a statutory requirement without which the registration of a Trust cannot be cancelled, meaning thereby that the registration under section 12A of the Act continues till the Commissioner of Income tax/Principal Commissioner of Income Tax cancels the registration by an order in writing.

32. Learned ASG then submits that the appellant has sought to urge that the power to unilaterally surrender must be read into Section 12AA(4). This submission is made on the basis of distinguishing the language between Section 12AA(3) and Section 12AA(4) more particular the distinction between the use of the words 'shall' and 'satisfaction in the former as against 'may' and notice in the latter. It is submitted that such an interpretation is clearly misconceived for the following reasons:-

1. plain and clear language of the provisions does not provide a power to surrender;

2. clear purpose and intent of the provisions relating to registration of Trust and cancellation thereof as explained above, do not envisage registration as a simplicitor benefit which can be unilaterally surrendered. Hence, such an interpretation is not only not borne out by the plain language of the statute but would be contrary to the meaning, purpose and intent of the Act.

3. The use of the word 'notice' in Section 12AA(4) relates to the aspect of the events coming to his/her knowledge. Mere notice of breach, it is respectfully, submitted would never suffice for the purposes of ordering a cancellation. If it is held so, it would mean that the Commissioner upon noticing a breach, without arriving at any satisfaction could cancel the registration of the Trust. It is submitted that such an interpretation must only be stated to be rejected.

4. Even the use of the word 'may in Section 12AA(4), it is respectfully submitted does not buttress the Appellant's submission any further. Firstly, it is submitted that the provision would have to be read in its entirety and bearing in mind the above scheme of the statute of conferring not only a benefit but a benefit coupled with an obligation. Secondly, the proviso to Section 12AA(4) expressly uses the word 'shall' and not 'may'. Thus, it would be evident that the necessity of passing an "order in writing" is maintained and is not diluted as urged by the Appellant.

5. It is therefore respectfully, submitted that there is no power for unilateral surrender provided for in the Act.

33. It is contended that the above submission is even buttressed by the clear legislative mandate of an Order in Writing being passed to cancel the registration. Hence, the legislature has consciously provided for an order of cancellation to be passed and not permitted a unilateral act of surrender.

34. It is contended that the appellant on its own considered it necessary to have the formal cancellation order as necessary as would be evident on a bare perusal of the letter dated 11th March, 2015. The letter dated 11/03/2015 sent by the Trust to Commissioner of Income-tax

(Exemptions), Mumbai also bears out that even the Trust contrary to its present assertion, understood the statute in the same sense. The letter admits that there has been a violation and hence, states that they would no longer seek exemption. The letter expressly records that, *"Accordingly, the Trustees do not desire to continue to avail the benefits of the registration made by the Trustees in 1975. Hence, you are hereby informed that the Trust would not be claiming exemption under Section 11 of the Act, since upon withdrawal of the registration or in any event cancellation of the registration under Section 12A of the Act, it would not comply with the requirements of Section 12A(1)(a) read with 12AA(4) of the Act".* The clear language of the letter suggests that the Trust understood it was only "upon" withdrawal of registration or cancellation that it would not comply. Hence, the own understanding of the Trust was that such effect takes place only "upon" withdrawal and/or cancellation and not by the mere submission of the letter as is being urged. It is further submitted that it is trite law that an Order of cancellation is a quasi-judicial act *(See Industrial Infrastructure Development Corporation vs CIT -Order dated 16th February, 2018 passed in Civil Appeal No. 6262 of 2010 -Para 29 and 30).* Hence, the question of circumventing such a quasi-judicial act cannot and does not arise. It is reiterated that the statutory scheme which mandates a written order for cancellation places an obligation on the competent authority to carefully consider all relevant parameters in any given case before taking any final view. In the instant case, for example, various details would be required to be considered, which could include the following:-

(a) Having regard to the clauses in the Trust Deed, whether the trustees had the power to apply for cancellation of registration?

(b) Whether the Trust had complied with the provisions of the Act and had not abused its registration to seek undue benefit or unfair advantage?

(c) Whether the Trust has complied with its obligations of using its income for charitable purposes?

(d) Verification of the Tax liabilities and other proceedings like reassessments (147), review (263) pending against the Trust which are premised on the registration?

35. Learned ASG submits that an enquiry into these issues would be not only relevant but it is respectfully, submitted mandatory to ensure that no Assessee uses the provisions permitting for registration as an unlawful device to make gains in the name of charitable purpose and then surrenders the same to avoid being penalised for the violations, if any.

36. On the strength of these submissions, learned ASG reiterates that a unilateral surrender is neither envisaged under the Act nor can it be permitted since registration is not a *simplicitor* benefit but a benefit coupled with obligations.

37. It is then pointed out that the letter dated 11/03/2015 sent by the Trust to Commissioner of Income tax (Exemptions), Mumbai admits that there has been a violation and hence, states that they would no longer seek exemption. The letter expressly records that, *"Accordingly, the Trustees do not desire to continue to avail the benefits of the registration made by the Trustees in 1975. Hence, you are hereby informed that the Trust would not be claiming exemption under Section 11 of the Act, since upon withdrawal of the registration or in any event cancellation of the registration under Section 12A of the Act, it would not comply with the requirements of Section 12A(1)(a) read with 12AA(4) of the Act".* The clear language of the letter suggests that the Trust was not seeking to surrender the registration. In fact, no words to the effect “surrender" or "relinquish" even found in the said letter. A bare perusal of the portion quoted above, would evince that what was urged by the Trust is that they would not claim the benefits of registration i.e. the exemption and not that they were surrendering the same. As explained above, there is a difference and distinction between registration and claiming the exemption. It is contended that the letter only suggested that no exemption would be claimed and nothing beyond that.

38. Learned ASG submits that the reliance on the noting dated 20th March, 2015 is misconceived, as it is an admitted position that no formal order thereon was ever passed and hence, the requirement of an order in writing was never completed. Hence, it is incorrect to urge that the cancellation of registration took place by way of surrender or acquiescence to the show cause notice in March, 2015. Such an interpretation would render otiose the requirement of an order in writing as mandated under Section 12AA(3) and (4). It is then submitted that there is no power of surrender vested in the Trustees under the Trust Deed dated 23rd

December, 1974, and therefore the question of trustees acting in purported violation of their constitutional document cannot and does not arise. As per the proviso, if at any time after the creation of the Trust, it is held that any of the objects or purposes as delineated in the Trust Deed, for which the corpus and/or income of the Trust Fund or any part thereof, as directed to be applied or expended, is/are not strictly charitable according to the law relating to Income tax in force at the relevant time so as to exempt the trustees from payment of income tax on the income of the Trust Fund, then in that eventuality the trustees shall apply and expend the corpus and/or income towards carrying out such objects and purposes as may be held to be strictly charitable so as to enable the trustees or the Trust to qualify for such exemption. As against such mandate being in the preamble of the Trust Deed, the trustees of the assessee Trust have blatantly and consistently violated the provisions of section 13(1)(d) and has made investments which are not in accordance with the objects of the Trust Deed. The trustees have no authority whatsoever to withdraw or surrender the registration granted under section 12A of the Act, since no such power is vested with them in the Trust Deed. On the contrary, they have to ensure that all the conditions required for the exemption of the income as per the provisions of Income Tax Act currently in force, is always ensured by the trustees. The conscious decision of the trustees not to claim exemption under sections 11 and 12 of the Act w.e.f. A.Y. 2015-16 (as per their ITRs filed) rather than to correct their default of holding the impermissible investments or prohibited modes of investment, shows their disregard to the objects of the Trust Deed as well as to the provisions of Income Tax Act. The aforesaid wilful / conscious activities carried out by the trustees are against the basic objects of the trust within the meaning of the provision of section 12AA(3) of the Act. It is also contended that in the present case, the purported surrender on 11th March, 2020 was not genuine but merely an attempt to escape liability for past wrongdoings and as such a letter addressed for collateral and/or oblique purposes. It is claimed that the trustees knew that they had violated the provisions of section 13(1)(d) of the Act, and they would not be able to avail of the benefits of exemption under sections 11 and 12 of the Act. This fact had been affirmed by the Hon'ble ITAT, Mumbai in 2014 in the case of Jamshetji Tata Trust. Therefore, once the final fact-finding authority, had confirmed the Trust's violation of the aforesaid provisions, this Trust (being a group concern of Jamsetji Tata Trust) was left with no other alternative but to give up the benefits of registration. Therefore, it is submitted that this act on the part of the Trust was not a voluntary act but was a *fait accompli*. There is nothing on record to show that, but for this, the Trust would have *suo moto* surrendered the benefits of exemption under sections 11 and 12 of the

Act. The entire argument on the basis of an option being available to the Trust in light of Section 10(34) of the Act, is not to be found on the record anywhere nor does the letter dated 11th March, 2015 refer to Section 10(34) of the Act. It may be noted that as early as in 2013, the Comptroller and Auditor General of India ("C&AG") in its Report No.20 of 2013 had pointed out that the Trust was violating the provisions of section 13(1)(d) of the Act. The Trust, had sold the shares of TCS (which formed part of the Trust's corpus) and the proceeds thereof were utilized for investing in preference shares of Tata Sons Ltd. Following this, the exemption claimed by the Trust for AY 2010-11 was denied in assessment by Assistant Commissioner of Income Tax(Exemption), Mumbai vide order dated 10/02/2015 under section143(3) r.w.s. 147 of the Act. Meanwhile, in the case of Jamsetji Tata Trust, the Hon'ble ITAT, Mumbai, vide order dated 26/03/2014, wherein the facts are similar, confirmed the stand of the Assessing Officer that the Trust was violating the provisions of section 13(1)(d) which, inter alia, lays down that Trusts cannot hold any shares in a company (other than a public sector company).In the light of the above submissions, learned ASG submits that the purported surrender on 11th March, 2020 was not genuine but merely an attempt to escape liability for past wrongdoings and as such a letter addressed for collateral and/or oblique purposes. It is pointed out that the Comptroller and Auditor General Report had, much before the said surrender letter, categorically observed that investments of the trusts are in violation of Section 13, and, therefore, it was not the generousity of the assessee to have triggered this surrender of registration. It was then contended that the cancellation cannot be retrospective in effect and must take effect from the date of the order. It was also pointed out that fresh show cause notice was issued as the assessee had objected to the earlier show cause notice. Learned ASG thus submits that the respondent Principal Commissioner was justified in cancelling the trust registration, by way of the impugned order, and in disregarding the so called unilateral surrender of registration granted to the assessee under section 12A. We are thus urged to uphold the impugned order and decline to interfere in the matter. Learned ASG vehemently opposes admission of the additional ground of appeal as it would require reference to many facts of the case which are not already on record. He submits that what is an inordinate delay, and what is not an inordinate delay, is essentially a factual question which cannot be agitated at this stage. In any case, such an investigation would require a reference to a large number of factual aspects which is not possible at this stage. He finally submits that if this aspect is to be adjudicated, the matter is required to be adjourned as hearing on that aspect, given the present limited facts, is not possible.

39. Learned counsel for the assessee, in his rejoinder, points out that the short question before us is the date from which the cancellation has to be effective- the date on which the assessee wrote to the Commissioner that the assessee is no longer eligible for the benefit of exemption under section 11 and, therefore, there is no point in his continuing with the registration, the date on which the first show cause notice in this regard, the date on which the hearing for cancellation was concluded, a date within reasonable time frame of concluding the hearing on cancellation, or a date on the whims and fancies of the tax administration. Our attention is once again invited to the significance of the date of cancellation and tax implications flowing from the same. There is no dispute that the assessee is not eligible for the benefit of Section 11, and that is the reason that the assessee has surrendered the registration. As for the audit observations made by the CAG, learned counsel submits that audit observations are not the gospel truth but simply perceptions of the auditor which may or may not be correct, and just because CAG takes a particular stand, it does not become an accepted fact. There are numerous occasions when these observations are found to be incorrect, and Hon'ble High Court has not approved such observations either. There is no question of lack of bonadfides on the part of the assessee in surrendering the registration, because the assessee is giving up a precondition of benefit rather than claiming it. It is then pointed out that in any case the whole debate on satisfaction about bonafides is misplaced inasmuch as the scheme of law does not provide for the same, as it does, for example, under section 273A where Commissioner's satisfaction about a declaration being in "good faith" is essential. He then refers to judicial precedents, such as in the case of **ACIT Vs Agra Development Authority [(2018) 407 ITR 562 (All)]**, wherein it is held that the cancellation of trust can be with effect from the date of the show cause notice, and the first show cause notice was admittedly issued in March 2015. Learned counsel once again submits that when benefit can be given, without any pre-conditions, as was given to the assessee under section 12A, there cannot be any question of attaching any preconditions thereto while assessee surrendering the said benefit. He once again invites our attention to Section 115 BAB and the scheme of the said provision which specifically puts a bar on giving up the said benefit once availed. In the absence of such a scheme of law, the same cannot be inferred in Section 12 A. Learned counsel once again reiterates his submissions, points out that his contentions remain unaddressed and submit that we must hold the cancellation to be effective from 11th March 2015.

40. We have given our careful consideration to submissions made by Shri P J Pardiwala, learned senior counsel for the assessee, as also by Shri Anil C Singh, learned Additional Solicitor General of India. We have also carefully perused the material on record and duly considered facts of the case in the light of the applicable legal position.

Our analysis:

41. It is only elementary that the registration under section 12A of the Income Tax Act, 1961 is a foundational requirement for tax-exemption of charitable institutions under section 11, and the usual litigation before us, therefore, is the litigation wherein a trust seeks the aforesaid registration, when it is not granted, or seeks it with effect from a date prior to the date on which it is granted, when it is granted, so that a trust can avail more of the tax-exemption, if admissible, under section 11. In this case, however, while the assessee claims that the registration was surrendered on 10th February 2015, and, therefore, the trust should not be treated as registered charitable trust, for the application of Section 11 tax exemption, with effect from the assessment year 2015-16, the case of the revenue authorities is that since registration is cancelled vide respondent Principal Commissioner's formal order dated 31st October 2019, such cancellation will only have a prospective effect, and, accordingly, the trust is required to be treated as a registered trust, for the application of section 11 tax exemption, for the assessment years 2015-16, 2016-17, 2018-19, 2019-20, as also assessment year 2020-21.

42. The question then arises as to why would an assessee trust decline such a generousity of the income tax department, or, to put it conversely, why is the income tax department is so keen to extend registration under section 12A, for this extended period from March 2015 to October 2019, when the assessee does not want it. On the face of it, nothing really turns on this registration, in favour of the assessee or even against the assessee, so far exemption under section 11 is concerned, since after all, as learned ASG has strenuously argued, the assessee anyway has the option of claiming, or not claiming, the exemption under section 11, and merely

because an assessee is registered under section 12A, the exemption under section 11 is not thrust upon the assessee.

43. To understand the possible reasons, one has to factor in certain rather recent legislative amendments.

44. The first such amendment is in section 11. By virtue of the insertion of sub section (7) to Section 11 with effect from 1st April 2015, tax exemption for 'dividends from Indian companies', on which dividend distribution tax is already paid by the company distributing dividends anyway, under section 10(34)- as is available to every other taxpayer, is no longer admissible to charitable trusts registered under section 12A. This sub section provides as follows:

> **(7) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) of section 12AA 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 the said registration is in force for any previous year, then, nothing contained in section 10, other than clause (1) and clause (23C) thereof, shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year.**
>
> *[Emphasis, by underlining, supplied by us]*

45. The manner in which the above provision has been construed is this. As long as the assessee trust is registered as a charitable institution, by obtaining registration under section 12A or by being granted registration under section 12AA(1)(b), the assessee will not be entitled to any of the exemptions, barring under section 10(23C)(1), under section 10 of the Act. That is how this provision has been construed by the income tax authorities. Without going into the validity of that approach, which is not the subject matter of adjudication by us anyway, let us see the corollaries of this approach. Going by this logic, so far as dividend from Indian companies is concerned, the assessee, for the reason of registration as a charitable institution under section 12A, is deprived of exemption under section 10(34). To this extent, the registration under section 12A acts as a disability for the assessee, and, by thus ensuring that the registration under section 12A continues to remain in existence, the assessee is denied

exemption under section 10(34). Effectively thus, the continuance of registration under section 12A, even when the assessee does not want exemption under section 11, may result in higher tax liability for a trust which has earned, as this Trust has earned, income by way of dividends from domestic companies eligible for exemption under section 10(34).

46. While on this subject, it is perhaps appropriate to look at the way the income tax department itself has understood the related legal provisions. While explaining the purpose of this amendment, CBDT circular no. 1/ 2015 (F No 142/13/2014 (TPL) dated 21st January 2015) has, *inter alia,* observed as follows:

> 4. The first issue was regarding the **interplay of the general provision of exemptions which are contained in section 10 of the Income-tax Act vis-a-vis the specific and special exemption regime provided in sections 11 to 13 of the said Act**. As indicated above, the primary objective of providing exemption in case of charitable institution is that income derived from the property held under trust should be applied and utilised for the object or purpose for which the institution or trust has been established. In many cases it had been noted that trusts or institutions which are registered and have been availing benefits of the exemption regime do not apply their income, which is derived from property held under trust, for charitable purposes. In such circumstances, when the income becomes taxable, a claim of exemption under general provisions of section 10 in respect of such income is preferred and tax on such income is avoided. This defeats the very objective and purpose of placing the conditions of application of income etc. in respect of income derived from property held under trust in the first place.
>
> 7.4.1 **Sections 11, 12 and 13 of the Income-tax Act are special provisions governing institutions which are being given benefit of tax exemption**. **It is therefore imperative that once a person voluntarily opts for the special dispensation it should be governed by these specific provisions and should not be allowed flexibility of being governed by other general provisions or specific provisions at will**. Allowing such flexibility has undesirable effects on the objects of the regulations and leads to litigation.

47. Clearly, therefore, the amendment was brought in to ensure that the assessee does not have the benefit of choice between special provisions and general provisions. Once an assessee, to borrow the words used in the circular, "**voluntarily opts for the special dispensation, it**

should be governed by these specific provisions and should not be allowed the flexibility of being governed by other general provisions or specific provisions at will". The intention of the legislature was thus unambiguous; all that the legislature intended was to eliminate the unfettered choice between the general exemption and the specific exemption. However, the way this provision is being interpreted by the income tax authorities is that once an assessee is a registered charitable institution, irrespective of admissibility or even claim for exemption under section 11, the exemption under section 10(34) is inadmissible. That is how admittedly this provision has been construed by the revenue authorities, and that approach, coupled with the facts set out earlier, puts the assessee to a clear tax disadvantage. Effectively thus, as a result of the trust being held to be a charitable trust registered under section 12A, the trust is declined the exemption of dividends received by the trust from the domestic companies- an exemption which is available to every taxpayer. To this extent, the scheme of "**Sections 11, 12 and 13 of the Income-tax Act are special provisions governing institutions which are being given benefit of tax exemption"**, which was intended to be an optional benefit to the charitable institutions, inasmuch as the assessee could **voluntarily opt for the special dispensation**, has become source of an additional tax burden for the trusts in question.

48. The other aspect of the matter is that this circular specifically recognizes that "**Sections 11, 12 and 13 of the Income-tax Act are special provisions governing institutions which are being given benefit of tax exemption**" and that it is for the assessee to "**voluntarily opt for the special dispensation".** We will, however, come to this dimension a little later.

49. The next important legislative development is the introduction of Section 115 TD. By virtue of Section 115 TD, which is brought by the Finance Act 2016 with effect from 1st April 2016, an additional tax burden is put on the deregistration of a charitable institution in respect of its accreted income. This provision is as follows:

> **Tax on accreted income.**
>
> **115TD. (1) Notwithstanding anything contained in this Act, where in any previous year, a trust or institution registered under section 12AA has—**

(a) converted into any form which is not eligible for grant of registration under section 12AA;

(b) merged with any entity other than an entity which is a trust or institution having objects similar to it and registered under section 12AA; or

(c) failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AA or to 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, within a period of twelve months from the end of the month in which the dissolution takes place,

then, in addition to the income-tax chargeable in respect of the total income of such trust or institution, the accreted income of the trust or the institution as on the specified date shall be charged to tax and such trust or institution, as the case may be, shall be liable to pay additional income-tax (herein referred to as tax on accreted income) at the maximum marginal rate on the accreted income.

(2) …….

50. This additional tax burden would not come into play in case the deregistration is with effect from the date on which the registration is claimed to have been surrendered i.e. 19th February 2015, the date on which the hearing in this respect is concluded by the Principal Commissioner of Income Tax, i.e. 20th March 2015, or even when it is taken as within a reasonable period from the date of conclusion of this hearing, say within 365 days from the date of closing the hearing i.e. 20th March 2016. Therefore, the date of cancellation of registration has an important bearing on this tax liability as well.

51. It would thus indeed seem that the actual trigger, and proximate reason for this unwelcome generosity of extending the benefit of registration under section 12 A, is the possible denial of exemption of dividends from domestic companies, under section 10(34) as also the fact that there may be certain adverse tax implications under section 115 TD on account of the effect of cancellation being after 1st April 2016, which result in more tax revenues to the exchequer. That is, in our humble understanding, the reason for canvassing the path followed by the revenue authorities to the correct by them, and the revenue authorities are thus seeking to benefit from their own *inertia*. Of course, revenue authorities have made out a case that the cancellation can have only prospective effect and it is purely the compulsion of law, rather than

any temptation for revenue, that the benefit of registration under section 12A must be extended to the assessee till 31st October 2019- whether the assessee wants it or not. That claim, for the detailed reasons we will set out now, does nor seem to be correct.

52. One of the fundamental issues which have come up before us, in this case, is whether the registration under section 12 A constitutes a benefit or not, and whether an assessee, not inclined to continue with registration under section 12A, can be virtually compelled to continue with the said registration.

53. It is only elementary that, as is the mandate of section 119(1), the Central Board of Direct Taxes "may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and **such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board**". The CBDT circulars thus bind all the field authorities. In **Navnitlal Jhaveri Vs Sen [(1965) 56 ITR 198 (SC)], Ellerman Lines Ltd Vs CIT [(1971) 82 ITR 913 (SC)]** and **K P Verghese Vs ITO [(1981) 131 ITR 597 (SC)]**, Hon'ble Supreme Court has accepted the validity and binding nature of the beneficent or benevolent circulars, and recognized the taxpayer's right to enforce these circulars, in favour of the assessee, even in courts. In the case of **Sedco Forex International Drill Inc Vs CIT [(2005) 279 ITR 310 (SC)],** following **CIT Vs Patel Brothers & Co Ltd [(1995) 215 ITR 165 (SC)]**, Hon'ble Supreme Court has observed that The CBDT circular conveying "**departmental understanding of the effect of the 1999 amendment even if it were assumed not to bind the respondents under section 119 of the Act, nevertheless affords a reasonable construction of it, and there is no reason why we should not adopt it**". In the case of K P Verghese *(supra)*, Hon'ble Supreme Court has observed that the *"***circulars of the CBDT are, as we shall presently point out, binding on the tax department in administering or executing the provisions enacted in subsection (2), but quite apart from their binding character, they are clearly in the nature of *contemporanea expositio* furnishing legitimate aid in the construction of sub-section (2). The rule of construction by reference to *contemporanea expositio* is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous".** Quite clearly, therefore, the CBDT circulars, as an aid for interpretation of the law as also as a

binding authority on the field authorities employed in the execution of the Income Tax Act, provide a legitimate basis for understanding the provisions of the Income Tax Act.

54. In this light, let us once again take a look at the CBDT circular no 1/ 2015 (supra). This circular, relevant extracts from which we have reproduced earlier as well, specifically notes that "**Sections 11, 12 and 13 of the Income-tax Act are special provisions governing institutions which are being given the benefit of tax exemption**" and that it is for the assessee to "**voluntarily opt for the special dispensation".** In our considered view, therefore, for this short reason alone, it cannot be open to the income tax authorities to suggest that the provisions of Section 12A are not in the nature of a benefit or to suggest that it is not voluntary for the assessees to opt for such special dispensation. One it is held, as is our view, that the benefit of this special dispensation of scheme of Section 11, 12 and 13, is voluntary and at the option of the assessee, it is clear that continuance of a registration under section 12A, as a foundational requirement for exemption under section 11, cannot be thrust upon an unwilling assessee. Viewed thus, an assessee has an inherent right to withdraw from this special dispensation of scheme of Section 11, 12 and 13, unless such an withdrawal is found to be *malafide*. For this short reason alone, once an assessee specifically requests for cancellation of registration, that request cannot be declined. That, however, is not the only reason for our coming to the said conclusion.

55. The present registration is under section 12A. As introduced by the Finance Act 1972, the relevant statutory provision is as follows:

> **Conditions as to registration of trusts, etc**
>
> **12A. The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely: —**
>
> **(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later:**

Provided that the Commissioner may, in his discretion, admit an application for the registration of any trust or institution after the expiry of the period aforesaid;

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds twenty-five thousand rupees in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return Of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.".

56. Clearly, therefore, registration under section 12A was a condition precedent for availing section 11 exemption. An exemption is clearly in the nature of a benefit, and, therefore, meeting a precondition for exemption is also a benefit. The registration under section 12A did not put the assessee under any obligation to do, or refrain from doing, anything. It was so for the reason that even if someone has registration under section 12A, and yet it does not perform any charitable activities or meet the requirements under the scheme of, as CBDT terms it, "**special dispensation" of "Sections 11, 12 and 13 of the Income-tax Act…… special provisions governing institutions which are being given the benefit of tax exemption**", all that happens to the assessee is that the assessee does not get the said exemption**.** It was exemption under section 11, which was given as *quid pro quo* for the assessee doing the charitable activities. There was no *quid pro quo* for the registration inasmuch as a registration under section 12A did not, at that point of time, result in any obligations on the assessee or disadvantage to the assessee- in tax or otherwise. The disadvantageous tax implications on the assessee are only as a result of a much later legislative amendment which were not in effect even when the assessee informed the Commissioner of Income Tax of his disinclination to continue with the registration. The registration under section 12A was thus only an advantage to the assessee, and was a benefit as such. The question then is whether a benefit can be conferred upon an unwilling person. We do not think such a course is permissible in law unless this benefit is coupled with obligation or unless there is specific provision, such as in Section 115BAA, to the effect that once an assessee avails a specific beneficial provision, he cannot opt out of the same on his own in an unfettered discretion. When the law does not provide for such a restriction, even if it is considered desirable for any reasons whatsoever, it cannot be inferred- as is the mandate of the rule of '***casus omissus'*** in the principle of interpretation of laws. In any case, as is stated in Salmond, in his legendary treatise "The Theory of Law", "**the law**

confers upon a man no rights or benefits which he does not desire". We are in most respectful agreement with these observations and that is the principle we must bear in mind while interpretating a statutory provision. The same is the principle conveyed through the Latin maxim "***Invito beneficium non datur***". In our considered view, therefore, an assessee unwilling to avail the "benefit" of registration "obtained" under section 12A cannot be compelled to, by action of or by inaction of the revenue authorities, continue with the said registration.

57. As regards learned ASG's suggestion that the registration under section 12A is not a benefit *simplictor* but is coupled with an obligation to perform, and regulate, its philanthropic activities in a particular way. In his written note, learned ASG gives an example and states that "**It is, for example, an obligation on the part of a registered charitable Trust to utilize the exempt income for specified purposes, and even Trust funds are accumulated for future, the accumulated monies are required to be used for charitable purposes and be invested as per the provisions of the Act** *(See Section 11 to 13)*". These obligations, however, are vis-à-vis the exemption under section 11 and not vis-à-vis registration under section 12A. An assessee may be registered under section 12A and yet it may not claim an exemption under section 11, and, in such a situation, all these provisions relied upon by the learned ASG do not come into play. The registration under section 12A does not, therefore, put any such obligations on the assessee. It is an exemption under section 11, which puts these obligations on the assessee, but that is not the issue before us. Right now, we are only concerned about the implications of Section 12A.

58. Learned ASG has repeatedly stated that "**registration is not granted for the asking but is dependent upon the applicant being otherwise in conformity of the provisions of the statute and in a sense, undertaking to comply with the statute and the purpose of rendering charitable services**" and that "**registration is not a benefit available to all but a benefit which can be claimed by the Trusts which meet the criterions specified by the Act and which are willing to comply with it**". Undoubtedly, that position could be correct for the period after insertion of Section 12AA with effect from 1st April 1997, but, so far as the relevant point of time is concerned, the registration was not "granted" but was simply "obtained" by the mere filing of an application in the office of the prescribed authority. There was nothing more

than mere filing of the form which would entitle the applicant for registration under section. The use, in Section 12AA(3), of expression "grant" for registrations after 1st April 1997, and use of the expression "obtain" for registrations under section 12A prior to 1st April 1997, takes that aspect of the matter beyond any doubt or controversy. In the present case, the registration was obtained on 15th March 1976, and, therefore, there was no question of registration being "granted" upon the satisfaction of the Commissioner "about the objects of the trust or institution and the genuineness of its activities", as is the situation post 1st April 1997. It was obtained by the assessee upon the filing of an application within the prescribed time limit, and the letter intimating the assessee of this registration as such, as reproduced earlier in this order, clearly evidences that position.

59. In our considered view, therefore, registration under section 12A on the facts of this case and particularly as it has been "obtained" prior to Section 12AA coming into force with effect from 1st April 1997, simply being a foundational requirement for exemption under section 11 and not putting assessee under any obligations, is in the nature of a benefit to the assessee. Much as we researched, we could not find any "obligations" imposed on the assessee on account of registration under section 12A, at least in terms of the registration obtained in the pre-section 12AA era. Once we hold so, and in view of the observations of Hon'ble Supreme Court in the case of Mahendra Mills *(supra)* to the effect that "**If it does not wish to avail that benefit for some reason, benefit cannot be forced upon him**" and that "**It is rightly said that privilege cannot be a disadvantage and an option cannot become an obligation**" which will apply, with equal vigour, in the present context, we are also of the considered view that the registration under section 12A cannot be thrust upon an unwilling assessee.

60. We have also noted that, on 11th March 2015, the assessee on his own had informed the assessee that on account of its investment pattern becoming incompatible with the amended provisions Section 13(1) and in view of the provisions of Section 12AA(4), the assessee is no longer eligible for the continuance of registration under Section 12A. Once the learned Commissioner "noticed" this position admitted by the assessee, it was his duty to pass an order

in writing withdrawing the registration. For ready reference, the relevant legal provision, i.e. section 12AA(4), is being reproduced once again as below:

> (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**
>
> *[Emphasis, by underlining, supplied by us]*

61. It is quite clear that once the admitted violation of law by the assessee came to the notice of the Commissioner, as not only he received the communication of the assessee but also issued a show-cause notice to the assessee requiring the assessee to show cause why the registration not be cancelled and concluded hearing thereon, the Commissioner had the powers, under section 12AA(4), to cancel the registration obtained by the assessee under section 12A. It is well settled legal position that whenever law confers any powers in any public authority, such a public authority has the corresponding duty to exercise these powers when circumstances so justify or warrant. As observed by a coordinate bench of this Tribunal, in the case of **Ashok Anant Sabnis Vs ACIT [(2009) 29 SOT 29 (Pune)]**, "**All the powers of someone holding a public office are powers held in trust for the good of the public at large. There is, therefore, no question of discretion to use or not to use these powers. It is so for the reason that when a public authority has the powers to do something, he has a corresponding duty**

to exercise these powers when circumstances so warrant or justify—a legal position which has the approval of Hon'ble Supreme Court". In the case of **Lala Hirdaya Narayan Vs ITO [(1978) 78 ITR 26 (SC)]**, Hon'ble Supreme Court has observed that "**If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for the exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen**". While it was well within the notice of the Commissioner that it was a fit case for cancellation of registration obtained under section 12A and the assessee had informed, as also accepted, that position, learned Commissioner did not exercise his powers of cancellation. The Commissioner does not have a choice about taking or not taking a call in these proceedings. He had to take a call one way or the other in this matter. Such inaction on the part of the Commissioner simply cannot meet any judicial approval. What is done next is to ignore these proceedings without bringing them to a logical conclusion and start fresh proceedings, after a long gap, on a standalone basis, *dehors* the pending proceedings. That is equally impermissible. When the proceedings for cancellation of registration are pending for disposal, there cannot be another initiation of proceedings for the same purpose. What makes these proceedings even more unsustainable in law is the fact the delay in cancellation of registration has tax implications to the disadvantage of the assessee, and, to that extent, one will have to be really naïve, or at least pretend to be so naïve, to miss the obvious, or, to put it mildly, apparent motives. In any case, it is incorrect to say that the cancellation of registration cannot take effect from a date prior to the date of the order of cancellation. In the case of **Agra Development Authority** *(supra),* Hon'ble High Court has observed that it can relate back to the date of show cause notice, and the first show-cause notice in the present case is dated 13th March 2015. In the case of **Young Indian Vs CIT [(2019) 11 taxmann.com 235 (Del)]**, a coordinate bench of this Tribunal has observed, and very appropriately so, that "**The cancellation of registration, whether with retrospective effect or prospective, depends upon the facts and circumstances of the case and the Commissioner has power to cancel the registration from the time when such breach has occurred."** It cannot be, and is not, the law that formal order cancelling registration of a trust, on account of disability attracted by the trust or for any other legitimate reason, can only be with a date with effect from the date of the order so cancelling the registration. General

implications of this proposition apart, on the peculiar facts of this case, such an approach will incentivise the wilful delay and inertia on the part of the income tax authorities. As we have seen earlier in our legal analysis, wherever a public authority has a power, that public authority also has the corresponding duty to exercise that power when circumstance so warrant or justify. Viewed thus, the Commissioner had not only the power, but also the corresponding duty, to hold that the cancellation of registration is to take effect from the date on which the violation with the statutory requirements for grant of exemption occurred, the date on which such a violation or breach was noticed or at least the date on which hearing in this regard was concluded. Whichever way one looks at it, the registration can only be can only with effect from 20th March 2015 or a date prior thereto, and that's what the assessee has canvassed before us. In the present case, the assessee's acquiescing to the show cause notice dated 13th March 2015, which was formalized in hearing on 20th March 2015, itself should have brought an end to the matter. In this view of the matter, in our considered view, the cancellation of registration was thus required to be effective, at the most, from 20th March 2015.

62. We have also held that registration under section 12A, on the facts of this case and having been granted prior to 1st April 1997, was in the nature of a benefit to the assessee, and, therefore, it could not have been thrust upon an unwilling assessee. Be that as it may, this aspect of the matter is not really decisive, even if quite relevant, because as we have in the preceding discussion, once the Commissioner notices the admitted violation of Section 13(1), it was his duty, not only power, to cancel the registration granted under section 12A, and this has to relate back, at the minimum, to the date on which hearing in this matter was concluded. The inordinate delay in cancellation of registration, which is wholly attributed to the revenue authorities, cannot be placed to the disadvantage of the assessee.

63. As learned ASG rightly puts it, an order in writing for cancellation is a statutory requirement to bring an end to the registration. There can be no dispute with this proposition. The question, however, is the date from which such an order has to be effective, and on that aspect, we have already given our findings against the stand of the revenue authorities. In our considered view, the inordinate delay in passing the order in writing, cancelling registration granted under section 12A, must not put assessee to a disadvantage- particularly when the effect

of the cancellation has to essentially relate back to the point of time when the first show-cause notice was issued, or, at the minimum, when hearing on the first show-cause notice were validly concluded and the first show cause notice, requiring the assessee to show cause as to why the registration obtained by the assessee under section 12A, was formally acquiesced by the assessee.

64. Learned ASG has also provided several examples from the corporate law, particularly with respect to removal of a company's name from the records of the Registrar of Companies, which cannot be done unilaterally by the company. In our humble understanding, that example will not hold good in the present context inasmuch as the incorporation of a company brings a new legal entity into existence, and its extinction cannot indeed be a unilateral process, but then registration under section 12AA does not bring into existence any legal entity or even a legal entitlement; all it does is to provide for a minimum qualification for entitlement to exemption under section 11 which must depend on a large number of other qualifying conditions. In our considered view, therefore, the legal position vis-à-vis an incorporated entity being brought to an end and cancellation of a registration obtained under section 12A have different implications in character, and there is no parity between these situations.

65. There is no dispute that certain investments made by this Trust donot qualify the benefit of exemption under section 11, and that precisely was the reason that the assessee had requested the Commissioner for cancellation of registration under section 12A. Nothing really turns on those things so far as the present controversy is concerned. When the assessee does not comply with the scheme of sections 11, 12 and 13, all that happens to the assessee is that the assessee does not get exemption under section 11, and the assessee has no issues with that position. The discussions about these aspects in the impugned order are not really relevant inasmuch as it is not at all in dispute that the assessee is not eligible for exemption under section 11, and the assessee is content with that position. Any academic discussions about the nuances of this position at this stage is unwarranted. Of course, at the time of the related assessments or related proceedings, the Assessing Officer can deal with that those aspects of the matter. The trouble, however, is that given the complex web of legal developments, the cancellation is made effective from a later date the assessee is being put to a disadvantageous legal position and tax implications. If the assessee does not comply with the permissible mode of investment, for

trusts what follows is the denial of exemption under section 11, but such a non-compliance cannot justify or legitimize the cancellation of registration being effected from a later date, than the date on which cancellation ought to have been effected, so as to put the assessee in a disadvantageous legal position with tax implications other than the legal, including penal, consequences for the non-compliance in question by the assessee. We cannot approve the approach adopted by the revenue authorities.

66. The question of whether the assessee had the powers, under the trust deed, to seek cancellation or withdrawal of registration under section 12A or not is wholly irrelevant because once the assessee informs the Commissioner of the assessee becoming ineligible for exemption under section 11, it is power, as indeed duty, of the Commissioner to cancel the said registration and that power of the Commissioner is not dependent on the assessee having powers, under the trust deed, to seek cancellation of registration. On this aspect of the matter also, we are unable to find ourselves in agreement with the learned ASG.

67. It is difficult to understand on the first principles, much less approve, any legitimate justification for the income tax authorities to insist that the assessee must have continue with the registration under section 12A when the assessee does not want it. It is nobody's case that there were certain specific obligations on the part of the assessee which the assessee must perform as a *quid pro quo* for the registration *per se*. Whatever obligations a charitable institution has towards the income tax authorities, these obligations are a *quid pro quo* for exemption and not a foundational requirement for the exemption. All these things are, however, academic in the light of our findings that the Commissioner had the duty, much more than the power, to cancel the registration under section 12A upon the fact of admitted violation of section 13(1) coming to his notice, and that such cancellation had to effective from the date on which the disability for exemption under section 11 is attracted (which is not ascertained on the facts of this case), the date of this fact coming to the notice of the Commissioner (i.e.11th March 2015), from the date on which the first show-cause notice was issued (i.e. 13th March 2015), or,at the minimum, from the date on which hearing in this regard was concluded and the order thereon was reserved (i.e. 20th March 2015).

Our conclusions:

68. In view of the above discussions, as also bearing in mind the entirety of the case, we are of the considered view that the impugned order of cancellation of registration granted to the assessee under section 12A must be held to be effective from the date on which the hearing on first show-cause notice was concluded and the show cause notice issued by the Commissioner was formally acquiesced by the assessee in the said hearing, i.e., 20th March 2015, since, without disposing of the said matter, the Commissioner, or his successors, could not have started other parallel proceedings for cancellation of registration obtained under section 12A. The registration having been "obtained" under section 12A was in the nature of a benefit to the assessee, and it was, therefore, entirely at the option of the assessee. In our considered view, an assessee unwilling to avail the "benefit" of registration "obtained" under section 12A cannot be, directly or indirectly and by actions or by inactions, compelled by the revenue authorities, to continue with the said registration "obtained' by the assessee, particularly when it pertained to the registration obtained in a period prior to the insertion of section 12AA. The present cancellation of registration under section 12A must, therefore, be held to be effective from 20th March 2015. To this limited extent, we uphold the plea of the assessee.

69. We have noted that many other peripheral issues, with regard to the conduct of the assessee trust and compliance with the statutory provisions under section 11 to 13, are raised in the course of the impugned proceedings. In our humble understanding, there is no need to deal with these aspects so far as our adjudication, on the core issue requiring our adjudication in this appeal, is concerned. All these issues so raised by the revenue authorities are left open for adjudication at the appropriate stage such as in the assessment, or any other related, proceedings, if and so necessary. Our observations hereinabove have no bearing, or should be construed as having any bearing, on these issues.

70. The admission of additional ground of appeal is also an academic issue in the light of the above conclusions arrived by us, and there is no need to deal with that aspect of the matter either. As we have decided this appeal on the short issue about the date from which the

impugned order must be held to be effective, we refrain from dealing with all other issues, including the additional ground of appeal, at this stage. There are many other facets of arguments advanced before us and the grievances raised before us. However, we see no need to deal with all these aspects of the matter at this stage.

71. In the result, the appeal is allowed in the limited terms as indicated above. Pronounced in the open court today on the 24th day of March, 2021

Sd/xx ***Sd/xx***
Justice P P Bhatt **Pramod Kumar**
(President) (Vice President)

Mumbai, dated the 24th day of March, 2021

Copies to: *(1)* *The appellant* *(2)* *The respondent*
(3) *CIT* *(4)* *CIT(A)*
(5) *DR* *(6)* *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai