आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 290/JP/2020
निर्धारण वर्ष/Assessment Year :2011-12

Bharatpur Royal Family Religious & Ceremonial Trust Moti Mahal, Bharatpur	बनाम Vs.	CIT (E) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABTB6641B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. P. C. Parwal (CA)
राजस्व की ओर से/ Revenue by : Sh. Rajendra Singh (CIT)

सुनवाई की तारीख/ Date of Hearing : 08/07/2021
उदघोषणा की तारीख/Date of Pronouncement: 13/07/2021

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order passed by the ld. CIT(Exemption), Jaipur u/s 263 dated 06.03.2020 pertaining to A.Y 2011-12 wherein the grounds of appeal taken by the assessee read as under:-

"1. Under the facts and circumstances of the case, order passed by the Ld. CIT(E) u/s 263 is illegal & bad in law and the same be quashed.

2. The Ld. CIT(E) has erred on facts and in law in holding that the order passed by AO is erroneous and prejudicial to the interest of Revenue by incorrectly holding that verification of the fact of registration of the trust under I.T. Act, 1922 was the very basic direction given by the Hon'ble ITAT vide order dt. 23.06.2017 which the AO has evidently failed to examine whereas no such direction was given by the Hon'ble ITAT which has set aside the case to AO to examine whether exemption granted under the

Repeal Act was saved by section 297 of the Act and whether it was consistent with the corresponding provisions of law under the new Act.

3. The Ld. CIT(E) has erred on facts and in law in making various incorrect observations including the nature and activities of trust in setting aside the order to AO with a direction to specifically examine as to whether the trust was registered under IT Act, 1922 and if not, no benefit of exemption is to be granted since prior to the amendment dt. 03.08.2016 the nature of trust, its objects & activities were not the same making the first proviso to section 12A inapplicable."

2. During the course of hearing, the ld. AR submitted that assessee trust was constituted vide trust deed dated 29.06.1957 by Shri Sawai Brijendra Singh Ji, Maharaja of Bharatpur. The Ministry of Home Affairs, Government of India vide letter dated 12.11.1958 has communicated that the trust and its properties would be exempt from Income Tax, Wealth Tax and Expenditure Tax. The trust is also registered with the Devsthan Vibhag under Rajasthan Public Trust Act, 1959 vide registration certificate dated 03.02.1979 and u/s 12AA(1)(b) of the Income Tax Act w.e.f. 03.08.2016.

3. It was submitted that the assessee trust filed its return of income for the first time for AY 2011-12 on 30.09.2011 declaring Nil income after claiming refund of Rs.26,42,430/- being tax deducted at source on the arrears of rent of Rs.2,64,24,302/- received during the year. It is claimed that its income is exempt u/s 10 of the Act. However, while processing the return, the income was taken at Rs.1,84,97,570/- (being 70% of Rs.2,64,24,302/- after considering statutory deduction u/s 24(a) of the Act) and a demand of Rs.54,03,271/- was created. Against this intimation, assessee filed an application u/s 154 and in this proceedings, assessee filed a detailed reply dated 28.08.2013 explaining how its income is exempt from tax under the Act.

4. It was submitted that the AO, however, rejected the claim of assessee that its income is exempt from tax by holding that the trust failed to file any documentary evidence of having being registered u/s 12A/12AA of the Act. On reference, being made to the higher authorities, it was directed that the issue be decided in light of the provisions of Income Tax Act, 1961. The Ld. CIT(A) upheld the order of AO by holding that no mistake apparent on record in the tax computation or in charging of interest could be brought to his notice. Further, the other issues raised by the appellant were held as irrelevant and outside the scope of provisions of section 154 of the Act.

5. It was submitted that against the order of Ld. CIT(A), the assessee filed an appeal before the ITAT, Jaipur Benches which vide its order dt. 23.06.2017 after considering the above facts partly allowed the appeal for statistical purpose as per the observation made in para 6.3 to 6.8 of its order. It was submitted that in view of the direction of the ITAT, the AO in the set aside proceedings vide letter dt. 20.09.2017 required the assessee to furnish following explanation/ clarification/ documents:-

(i) Please explain as to how exemption granted under the Repeal Act was saved by section 297 of the IT Act, 1961. Please also furnish documentary evidences in support of your explanation.

(ii) In case the exemption granted under the Repeal Act was saved by section 297 of the IT Act, 1961, please explain as to how the same was consistent with the corresponding provisions of the law under IT Act, 1961. Please also furnish documentary evidences in support of your explanation.

6. It was submitted that against the queries raised by AO, the assessee filed a detailed reply dt. 16.10.2017 before the AO wherein it has explained as to how the exemption granted under the Income Tax Act, 1922 is saved by clause (k) of subsection (2) of section 297 of the Act. It further brought to the

notice of AO that subsequently, the Ld. CIT(E) vide order dt. 05.09.2016 has also registered the assessee trust under section 12AA of the IT Act, 1961 and such registration in view of proviso to section 12A would apply to all pending assessment proceedings. Thereafter, the AO vide letter dt. 22.12.2017 required the assessee to explain as to when the assessee has amended the objects and also to furnish copy of the amended objects. The same was replied vide letter dt. 26.12.2017 reproduced at Pg 9 & 10 of the order wherein it is clarified that there is no change in the object and status of the trust since its registration and inception as public trust. The amendment was only with reference to the nature of trust in as much as in Rule 3 of the trust deed, it is mentioned that the trust would be a private trust whereas as per the order of District & Session Judge, Bharatpur dt. 05.05.1977, trust was held to be a public trust and Devasthan Vibhag vide registration dt. 03.02.1979 has also registered it at public trust and therefore, this amendment was made and intimated to Devasthan Vibhag on 26.08.2016. However, the fact remains that assessee is a public trust and not only it was allowed exemption u/s 4(3)(i) of the IT Act, 1922 by the Central Board of Revenue on 05.11.1958 but also exemption registration u/s 12AA of the IT Act, 1961 vide order dt. 05.09.2016. The AO after considering all the above facts held that the explanation of assessee in in order and accordingly income declared in the return was accepted.

7. It was submitted by the ld AR that thereafter, the Ld. CIT(E) issued a show cause notice dt. 05.11.2019 u/s 263 of IT Act stating that the order passed by AO is erroneous and prejudicial to the interest of Revenue as he has allowed substantial relief to assessee without enquiring into the veracity of claim of assessee regarding its registration under IT Act, 1922 despite specific directions given in this regard by ITAT, Jaipur Benches vide its order dt. 23.06.2017. The assessee filed its reply dt. 27.11.2019 in response to the show cause notice. The Ld. CIT(E), however, did not accept the explanation of assessee and held that the order passed by AO is erroneous and prejudicial to the interest of Revenue by giving the following findings:-

(a) The Hon'ble ITAT at para 6.2, 6.7 & 6.8 of the order dt. 23.06.2017 has directed the AO to examine whether assessee was registered under IT Act, 1922 and whether such registration, if obtained, was saved by section 297 of IT Act. In set aside proceedings, the AO has asked the assessee to explain as to how exemption granted under repealed Act was saved by section 297 of IT Act, 1961. Thus, the AO has proceeded on the assumption that registration was granted to assessee under repealed Act of 1922 and hence he has not bothered to examine the very core issue of whether the assessee was indeed registered under IT Act, 1922.

(b) The Law Commission in its report has repeatedly used the words 'appears' which make it abundantly clear that there was no specific registration granted to the assessee under old Act by the Competent Authority under IT Act. Further, Member was also not the Competent Authority under IT Act to grant registration/ exemption. Similarly, reference of a letter of Ministry of Home Affairs by the assessee has no relevance as the said Ministry also has no locus-standi in the matter of grant of registration under IT Act.

(c) Had the assessee been granted registration under IT Act, 1922, the assessee would have produced such order of registration in the earlier proceedings which it has failed to do. Since there was no specific order of registration by the competent authority under IT Act, 1922, the question of whether such recognition/ approval was saved by section 297(2)(k) of IT Act, 1961 does not arise. In fact the assessee applied for the first time for registration under IT Act, 1961 vide application dt. 30.03.2016 and was granted registration u/s 12AA w.e.f. 03.08.2016. The reason for granting registration was that the assessee has amended its trust deed wherein the nature of trust was changed from private to public trust.

(d) The Income & Expenditure A/c shows that prior to registration, trust was not receiving any public donations whereas after registration, it is receiving donations which is another indicator that the trust was indeed a private

religious trust before the said amendment was carried out in the trust deed. It is surprising as to how Devsathan Vibhag has registered the said trust before 03.08.2016 as a public trust when the original deed clearly mentions the trust to be a private trust. Be that as it may, registration by Devsathan Vibhag is immaterial to the proceedings under IT Act.

(e) The Hon'ble ITAT vide para 6.2 of the order dt. 23.06.2017 has held that there is no infirmity in the order of AO in declining claim of exemption on the ground that the trust was not registered u/s 12A of the Act. Thus, verification of the fact of registration of the trust under IT Act, 1922 was the very basic direction given by the Hon'ble ITAT which the AO has evidently failed to examine.

8. The ld. AR submitted that from the facts stated above, it can be noted that the ITAT has set aside the issue to AO examine whether the exemption granted under the Repeal Act was saved by section 297 of the IT Act and whether it was consistent with the corresponding provisions of the law under the new Act. The AO in the set aside proceedings has examined this issue with reference to section 4(3)(i) of IT Act, 1922 vis-à-vis section 11 of the Act and thereafter has held that the submission of A/R is found to be in order. Therefore, it is incorrect on part of the PCIT to allege that AO has failed to examine the same so as to hold the order passed by him as erroneous and prejudicial to the interest of Revenue.

9. It was submitted by the ld AR that the issue as to whether the assessee is a private trust or public trust was examined in detail by the Ministry of Law where the Ministry of Finance has raised the issue whether the trust is private trust, who are the beneficiaries of trust and whether the temples whose maintenance is to be managed by the trust is open to public or not. Thereafter the Ministry of Home clarified on 17.01.1958 that beneficiaries of the trust are the members of Bharatpur Royal Family and the public and that the temples

are open to the public. Thereafter, the Ministry of Finance on 03.11.1958 held that the trust is partly religious and partly charitable and its income would be exempt u/s 4(3)(i) of the IT Act, 1922 and accordingly informed the Ministry of Home Affairs on 05.11.1958. Considering the same, Ministry of Home Affairs vide letter dt. 12.11.1958 informed the trustees that the income of trust would be exempt from income tax. It may be noted that section 4(3)(i) of 1922 Act was replaced by section 11 of the IT Act, 1961 and therefore, in view of section 297(k), any approval given/ recognition granted under the 1922 Act so far it is not inconsistent with the corresponding provision of this Act, be deemed to have been granted/ given under the corresponding provision of 1961 Act and shall continue in force accordingly. Therefore, it is evident that the approval given/ recognition granted to the assessee trust under 1922 Act shall continue to remain in force under the 1961 Act. Therefore, various observations made by PCIT in Para 8 & 9 of the order are incorrect in as much as (i) Member, Income Tax, Central Board of Revenue vide order sheet dt. 05.11.1958 has categorically stated that assessee is partly religious and partly charitable trust and its income is exempt u/s 4(3)(i); (ii) once an approval has been given/ recognition granted by Department of Revenue, only because the Home Ministry has informed the assessee trust about such exemption would not mean that Home Ministry has granted the exemption which has no locus-standi in the matter and (iii) only because there was no provision for issuing a separate order of registration in 1922 Act, it would not mean that such recognition/ approval is not saved by section 297(2)(k) of the IT Act, 1961.

10. It was submitted by the ld AR that the Devasthan Vibhag has also registered the trust as public trust. The Ld. CIT(E) has observed that it is surprising as to how Devasthan Vibhag has registered the trust as public trust when the original deed clearly mention the trust to be a private trust. These observations are factually incorrect in as much as even the Ministry of Finance while vetting the nature of trust has in its letter dt. 03.05.1958 has given a finding that though the trust has been declared to be a private trust, it enures

for the benefit of public and therefore, it can be said that it is a public trust. Therefore, only because clause (iii) of the trust deed states that trust will be a private trust would not make any difference when it is for the benefit of public at large. Further to put a quietus to this controversy, the assessee has amended this clause but the object remains the same. Hence, the adverse inference drawn by CIT(E) on this issue is incorrect.

11. It was submitted by the ld AR that in order to have a formal order of registration u/s 12AA, the assessee trust has applied for the same on 30.03.2016 and considering the said application, the CIT(E) passed an order of registration u/s 12AA on 05.09.2016. Thus, a formal registration is also granted to the assessee under the 1961 Act. Once such registration is granted, in view of first proviso to section 12A(2), the provision of section 11 and 12 shall apply to the pending assessment proceedings provided the objects and activities remains the same. There is no dispute that the objects and activities of assessee for AY 2011-12 and the date on which registration is granted remains the same. The AO considering this legal provision has also held that the assessee is entitled to exemption u/s 11. Even the Hon'ble Rajasthan High Court in case of CIT Vs. Sh. Shyam Mandir Committee in DBIT Appeal No. 234/2016 order dt. 23.10.2017 has held that the appellant proceedings before the appellate authorities are deemed to be assessment proceedings before the AO in terms of first proviso to section 12A(2). Therefore, there is no error in the order passed by AO in granting exemption u/s 11 to the assessee. In view of above, order passed by CIT(E) u/s 263 be directed to be quashed and set-aside.

12. Per contra, the ld. CIT/DR submitted that the assessee trust initially filed an appeal before the CIT(A), Alwar against the order passed by the ITO. However, the CIT(A), Alwar dismissed this appeal vide order dated 11.01.2016 after detailed discussion. The assessee trust being aggrieved with this order of CIT(A) filed second appeal before the ITAT Jaipur Bench. The ITAT vide order dated 26/06/2017 set aside the matter to the AO with

the directions to decide the issue of availability of exemption to the assessee afresh. The relevant portion of the order of ITAT read as below:-

"Para 6.2 In view of the judgment of Hon'ble Supreme Court in the case of UP Forest Corp. & Anr vs. DCIT (supra), there is no infirmity into the order of the AO in declining the claim of exemption of the ground that the trust was not registered u/s 12A of the Act.

Para 6.7 The AO was required to examine whether firstly exemption granted under the repealed Act was saved by Section 297 of the Act and secondly, whether it was consistent with the corresponding provisions of Law under the new Act.

Para 6.8 Under these facts, we are of the considered view that by not adverting these issues, the AO has committed mistake apparent from the record and needs fresh consideration. Accordingly, the AO is directed to decide the issue of availability of exemption afresh."

13. It was submitted by the ld CIT/DR that the ITO on 29-12-2017 passed an order in consequence to the directions and order of ITAT in which he allowed the claim of the assessee regarding exemption u/s 4(3)(i) of the IT Act, 1922. However, in this order, the ITO summarily accepted the claim of assessee regarding such exemption. From the order of the Hon'ble ITAT, Jaipur dated 23.06.17, there were two very specific directions given at paras 6.2, 6.7 and 6.8 as stated above, which the AO was supposed to verify during the set aside proceedings. These two core issues were firstly whether the assessee was registered under the Income Tax Act, 1922 and secondly, whether such registration, if obtained under the old Income Tax Act, was saved by Section 297 of the I.T. Act. In the set aside proceedings, the AO has issued a query letter dated 20.09.17 asking the assessee to explain as to how exemption granted under the Repealed Act was saved by Section 297 of the I.T. Act, 1961. It is evident that the AO has proceeded on the assumption that registration was granted to the

assessee under the Repealed Act of 1922 and hence he has not bothered to examine the very core issue of whether the assessee was indeed registered under the I.T. Act, 1922.

14. It was submitted by the ld CIT/DR that it is interesting to note that in its response during the set aside proceedings, the assessee has repeated the same facts as were there before all the relevant authorities in the earlier proceedings. In such earlier proceedings as well as the set aside proceedings, the assessee has referred to certain observations of the Law Commission, whereby the Law Commission observed that it appears that part of the income of the trust is applied to religious purpose and another part is applied for charitable purposes which will be exempted from income tax u/s 4(3)(i) in the hands of the trust. The Law Commission goes on to refer to a note dated 05.11.1958 by the Member, Income Tax, Central Board of Revenue wherein the Law Commission has stated that it appears from the said note that the Member has agreed to the entire trust being exempted from wealth, expenditure and income taxes. It is evident from the references of Law Commission that the word "appears" used by Law Commission repeatedly makes it abundantly clear that there was no specific registration granted to the assessee under the old Act by the competent authority under the I.T Act. Further, the Member was also not the Competent Authority under I.T. Act to grant registration / exemption. Similarly, the reference of a letter of Ministry of Home Affairs by the assessee has no relevance as the said Ministry also has no locus-standi in the matter of grant of registration under the I.T. Act.

15. It was submitted by the ld CIT/DR that had the assessee been granted registration under the I.T. Act, 1922, the assessee would have produced such order of registration in the earlier proceedings, which it has failed to do. Since there was no specific order of registration by the competent authority under the I.T. Act, 1922, the question of whether such recognition/ approval was consistent with and saved by Section

297(2)(k) of the I.T. Act, 1961 does not arise. It was also submitted that the consistency has to be seen from the perspective of I.T Act, 1961 which requires registration u/s 12AA for seeking exemption u/s 11 of the Act and if the contention of the ld AR is accepted that there was no provision for issuing separate order of registration in 1922 Act, in such scenario, it is evident that the provisions of 1922 Act and 1961 Act are not consistent and thus, so called exemption granted under the 1922 Act is clearly not saved by section 297(2)(k) of the Act.

16. Regarding applicability of first proviso to section 12A(2), it was submitted that the assessee applied for the first time for registration under the I.T. Act, 1961 vide application dated 30.03.16 and was granted registration u/s 12AA w.e.f. 03.08.16, vide order dated 05.09.16. The reason for granting registration w.e.f. 03.08.16 was that the assessee has amended its trust deed vide resolution passed on 03.08.16, wherein the following two amendments have been carried out:-

"1. The nature of the trust was changed from private to a public trust. In this regard, the following paras of the original trust deed dated 29.06.1957 are relevant:-

"(2) *The name of trust will be Bharatpur Royal Family Religious and Ceremonial Trust.*

(3) This trust will be a private trust."

Thus, the amendment carried out on 03.08.16 changed the very nature of the trust from a private trust to a public trust. As per Section 13(1)(a) of I.T. Act, 1961, private religious trusts are not eligible for exemption / registration. Therefore, the above said amendment to the very nature of the trust was done in order to obtain registration under the I.T. Act.

"2. The second amendment which was carried out on 03.08.16 was that in the event of dissolution of the trust, provision was made to transfer the assets to a trust of similar objects. Such dissolution clause was also absent from the original trust deed. In fact, the private religious nature of the trust before the said amendments were carried out, is also obvious from the Income and Expenditure accounts of the trust as on 31.03.11 viz., prior to registration and 31.03.19 (after the registration).

17. It was submitted by the ld CIT/DR that it is obvious from the above accounts that the trust, prior to registration was not receiving any public donations, whereas after registration it is receiving donations, which is another indicator that the trust was indeed a private religious trust before the said amendments were carried out in the trust deed. It is, therefore, surprising as to how the Devsthan Vibhaag has registered the said trust before 03.08.2016 as a public trust when the original deed clearly mentions the trust to be a private trust. Be that as it may, the registration by Devsthan Vibhaag is immaterial to the proceedings under the I.T. Act. It was accordingly submitted that the very nature of the trust and consequently its objects and activities were not the same as those post amendment, making the 1st proviso to Section 12A inapplicable.

18. It was submitted that as has been held by the Hon'ble Supreme Court in the case of U.P Forest Corporation (supra), that for claiming benefit u/s 11(1)(a), registration u/s 12A is a condition precedent. The Hon'ble Tribunal vide para 6.2 of order dated 23.06.17 has reiterated the said judgment of the Supreme Court and has held that in view of the judgment of Hon'ble Supreme Court in the case of U.P Forest Corporation (supra), there is no infirmity in the order of the AO in declining of claim of exemption on the ground that the trust was not registered u/s 12A of the Act. Thus, verification of the fact of registration of the trust under the I.T

Act, 1922 was the very basic direction given by Hon'ble ITAT vide order dated 23.06.17, which the AO has evidently failed to examine.

19. In view of the above, it was submitted by the ld CIT/DR that the order passed by the AO on 29.12.17 is erroneous insofar as it is prejudicial to the interest of Revenue and was rightly set-aside. He accordingly supported the order of the ld CIT(E) and submitted that there is no merit in the present appeal filed by the assessee and the same be dismissed.

20. We have heard the rival contentions and perused the material available on record. The first contention which has been raised by the ld AR is that the Tribunal has set aside the issue to the file of the AO to examine whether the exemption granted under the Repeal Act was saved by section 297 of the Act and whether it was consistent with the corresponding provisions of the law under the new Act, and in the set aside proceedings, the AO has duly examined this issue with reference to section 4(3)(i) of IT Act, 1922 vis-à-vis section 11 of the Act and found to be in order and therefore, it is incorrect on part of the ld PCIT to allege that AO has failed to examine the same so as to hold the order passed by him as erroneous and prejudicial to the interest of Revenue. Further, referring to various observations made by PCIT in Para 8 & 9 of the impugned order, it has been contended by the ld AR that merely because there was no provision for issuing a separate order of registration in 1922 Act, it would not mean that such recognition/ approval is not saved by section 297(2)(k) of the IT Act, 1961.

21. We will deal with both of these contentions together. In this regard, we firstly refer to the findings and directions of the Coordinate Bench (in ITA No. 254/JP/2016 dated 23.06.2017) for the impugned assessment year, i.e, A.Y 2011-12 wherein the matter was set-aside to the file of the AO with certain specific directions and the said findings and directions read as under:

"6. We have heard the rival contentions, perused the material available on record and gone through the order of the authorities below. The Ld. CIT(A) has decided this issue in his order as under:-

> *"4.3 I have perused the rectification order and submissions made by the appellant and find that issue raised is against the denial of exemption of income u/s 10 & 11 of the IT Act by the AO. The appellant has also stated that AO has wrongly charged interest u/s 234A, 234B, and 234C of the IT Act.*
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> *4.4 The appellant has filed detailed submissions. It is stated that vide a certificate no. 4/26/56-Po11.III of Ministry of Home Affairs, Po11 III Section intimated vide letter dated 12th November, 1958, exemption from income tax was given to the trust. The appellant has stated that AO has failed to appreciate that Section 4(3)(i) of the Indian Income-tax Act, 1922 (Corresponding to section 11(1) of the Act) is available to the assessee, as the following incomes are exempted from the application of income tax and no tax is payable on them u/s 11(1)(a) of the IT Act.*
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> *4.5 Having considered carefully the submissions made by the appellant including the judicial citations given therein, I find that no prima facie mistake has been brought to the notice of the AO in the application for rectification filed by the appellant. Similar facts have been raised in the course of present proceedings and no mistake apparent from record in the tax computation or in the charging of interest could be brought to the notice of the undersigned.*
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> *4.6 The other issues raised by the appellant are irrelevant and outside the ambit of the scope of the provisions of section 154 of the IT Act. Thus, I find no infirmity in the order passed by the AO. Therefore, I do not find any merit in the appeal filed by the appellant and hence, the same is dismissed. "*

6.1 From the above it can be inferred that Ld. CIT(A) was of the view that the issues raised were beyond the scope of the rectification u/s 154 of the Act. As per the assessee when the assessee was entitled for

exemption and such exemption is not allowed in computation of total income, such Act is a mistake apparent from the record and can be rectified u/s 154 of the Act. The Hon'ble Supreme Court in the case of MEPCO Industries Ltd. Vs. CIT 319 ITR 208 (SC) had occasion to examine. The scope of the section 154 of the Act and following the earlier judgments of Hon'ble Supreme court in the case of Dena Metal Powder (P) Ltd. Vs. Commissioner, Trade Tax [2008] 2 sec 439 and Commissioner of Central Excise, Calcutta [2003] 151 ECTM 81 held that under the facts of that case it was not open to AO rectifying his own order. In the case of Dena Metal Powder(P) Ltd. Vs. Commissioner of Trade Tax, it was a "rectifiable mistake" is a mistake which is obvious and the same must be apparent from record. It is must be a patent mistake, which is obvious and whose discovery is not dependent on elaborate arguments. In the case of Commissioner of Central Excise, Calcutta Vs. A.S.C.U. Ltd. (supra) held that a "rectifiable mistake" is mistake which is obvious and not something which has to be established by a long drawn process of reasoning or where two opinions are possible. The Decision on debatable point of law cannot be treated as "mistake apparent from the record"

6.2 In the present case, the AO declined the claim of the exemption on the basis that the Trust was no registered u/s 12AA of the Act. Undisputedly, when the assessment order was passed, the trust was not registered u/s 12AA, therefore, it cannot be construed that there was any mistake apparent from record in recording finding on fact in this regard. The Hon'ble Apex Court in the case of U.P. Forest Corporation & Anr Vs. DCIT (2008) 297 ITR 001 (SC) held that a conjoint reading of section 11, 12 and 12A makes it clear that registration under section 12A is a condition precedent for availing benefit under section 11 and 12 unless and until an institution is registered u/s 12A it cannot claim the benefit of section 11(1)(a).

In view of the judgment of Hon'ble Supreme Court in the case of U.P. Forest Corp. & Anr Vs. DCIT (supra), there is no infirmity into the order of the AO in declining the claim of exemption on the ground that the Trust was not registered u/s 12A of the Act.

6.3 Another argument of the assessee is that since the Trust was granted exemption by the Government of India way back in the year 1958, it was not open to Revenue to tax the receipts of the assessee Trust now under the excuse of not having registered u/s 12A of the Act. We find that the AO has dealt this issue as under:-

> *"Vide letter dated 11.09.2013 the assessee has filed petition u/s 154 that the exemption was given u/s 4(3)(i) of the Income Tax Act 1922 by the then CBR (Central Board of Revenue) on 05.11.1958 by accepting the status of the trust as Charitable Institution. The asseessee has further contended that the provisions of earlier Indian Income Tax Act 1922 u/s 4(3)(i) are corresponding to the provisions of section 11(1) of the Income Tax Act 1961. The assessee has also re-produced language of section 4(3)(i) of Income Tax Act 1922.*
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> *I have gone through the petition of assessee and I have also perused the letter dated 12.11.1958 by the Ministry of Home Affairs. It is found that the said letter neither contains any mention of the Income Tax Act 1922 or its provisions relevant to section 4(3)(i). Therefore, it cannot be assumed that the exemption has been granted under the provisions of section 4(3)(i) o f Income Tax Act 1922. "*

6.4 Further, the Ld. Counsel has placed on record, the report of the Law Commission under the Income Tax Act, 1922 the relevant contents are reproduced herein below.

> *"From the facts stated above, it will appear that the trust is partly religious and partly charitable. As such, it appears to me that that part of the income of the trust as is applied to religious purpose and also that part which is*

applied for charitable purposes will be exempts from income-tax u/s 4(3)(i) in the hands of the trust. "

6.5 From the facts stated above, will be exempt from income u/s 4(3)(i) in the hands of the assessee. Further the Ld. Law Commission has observed as under:-

"Reference Finance Ministry's note above. In this connection notes from page 9/ante may please be seen. It appears from the note dated 5.11.1958 by the Member, Income-tax, CBR that he has agreed to the entire Trust being exempted from wealth, expenditure and income taxes without the restriction mentioned at 'B' on 14 ante. We may send a reply to HH of Bharatpur as in the draft submitted for approval."

6.6 From the above observation of Ld. Law Commission, it is evident that the Assessing Officer committed mistake by observing that there is no mention of Section 4(3)(i) of the Income Tax Act, 1922. The Assessing Officer has also not given a finding as to what was the status of trust who was granted the exemption under the old Act i.e. Income Tax Act, 1922, after repeal of that Act. Whether such Acts fall under the saving clause or not if falls under the saving clause then it would be deemed that the exemption was available to the assessee trust. It would be proper at this stage to refer to Section 297 of the Act. Section 297 is reproduced herein below:-

***"297. Repeals and Savings**.*

(1) the Indian Income-tax Act, 1922 (11 of 1922), is hereby repealed.

(2) Notwithstanding the repeal of the Indian Income-tax Act, 1922 (11 of 1922) (hereinafter referred to as the repealed Act),-

(a) Where a return of income has been filed before the commencement of this At by any person for any assessment year, proceedings for the assessment of that person for that year may be taken and continued as if this Act had not been passed;

(b) Where a return of income is filed after the commencement of this Act otherwise than in pursuance of a notice u/s 34 of the repealed Act by any person for the assessment year ending on the 31st day of March, 1962, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Act;

(c) any proceeding pending on the commencement of this Act before any income-tax authority, the Appellate Tribunal or any court, by way of appeal, reference, or revision, shall be continued and disposed of as if this Act had not been passed;

(d) where in respect of any assessment year after the year ending on the 31st day of March, 1940,-
(i) a notice under section 34 of the repealed Act had been issued before the commencement of this Acct, the proceedings in pursuance of such notice may be continued and disposed of as if this Acct had not been passed;
(ii) any income chargeable to tax had escaped assessment within the meaning of that expressions section 147 and no proceedings under section 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice under section 148 may, subject to the provisions contained in section 149 or section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly;

(e) [Subject to the provisions of clause (g) and clause (i) of this sub-section,] section 23A of the repealed Act shall continue to have effect in relation to the assessment of any company or its shareholders for the assessment year ending on the 31st day o f March, 1962 or any earlier year, and the provisions of the repealed Act shall apply to all matters arising out of such assessment as fully and effectually as if this Act had not been passed;

(f) any proceeding for the imposition of a penalty in respect o f any assessment complete before the first day of April, 1962, may be initiated and any such penalty may be imposed as if this Act had not been passed;

(g) any proceeding for the imposition of a penalty in respect o f any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act;

(h) any election or declaration made or option exercised by an assessee under any provision of the repealed Act and in force immediately before the commencement of this Act shall be deemed to have been an election or declaration made or option exercised under the corresponding provision of this Act;

(i) where, in respect of any assessment completed before the commencement of this Act, a refund falls due after such commencement or default is made after such commencement in the payment of any sum due under such completed assessment, the provisions of this Act relating to interest payable by the Central Government on refunds and interest payable by the assessee for default shall apply;

(j) any sum payable by way of income-tax, super-tax, interest, penalty or otherwise under the repealed Act may be recovered under this Act, but without prejudice to any action already taken for the recovery of such sum under the repealed Act;

(k) any agreement entered into, appointment made, approva l given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Acct, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly;

(l) any notification issued under-sub (1) of section 60 [or section 60A] of the repealed Act and in force immediately before the commencement of this Act, to the extent to which provision has not been made under this Act, continue in force

[Provided that the Central Government may rescind any such notification or amend it so as to rescind any exemption, reduction in rate or other modification made thereunder;]

(m) where the period prescribed for any application, appeal, reference or revision under the repealed Act had expired on or before the commencement of this Act, nothing in this Acct shal l be constructed as enabling any such application, appeal, reference or revision to be made under this Act by reason only of the fact that a longer period therefore is prescribed or provision is made for extension of time in suitable cases by the appropriate authority."

From a bare reading of Section 297(2)(k) of the Act is evident that any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act, shall, so far it is not inconsistent with the corresponding provisions of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly.

6.7 In view of the above, the AO was required to examine whether firstly exemption granted under the repealed Act was saved by Section 297 of the Act and secondly, whether it was consistent with the corresponding provisions of Law under the new Act.

6.8 Under these facts, we are of the considered view that by not adverting these issues. The AO has committed mistake apparent from the record and needs fresh consideration. According the AO is directed to decide the issue of availability of exemption afresh. The Assessee also argued that the rent was accrued when this was ordered by the Hon'ble Supreme Court in the year 2002, we find no such issue was raised before the Assessing Officer hence could not be rectified. We find even no such ground was raised before the Ld. CIT(A). Therefore, this issue is not arising out of the order under Section 154 of the Act. Under these facts, this plea of the assessee that the receipts cannot be taxed under the year under appeal is devoid of any merit hence rejected."

22. In the aforesaid decision, the Coordinate Bench, at para 6.2 of its order, has held that there is no dispute that when the assessment order was passed, the trust was not registered u/s 12AA and where the AO declined the claim of the exemption on the basis that the Trust was not registered u/s 12AA of the Act, it cannot be construed that there was any mistake apparent from record in recording a finding of fact in this regard and accordingly, it was held that there was no infirmity in the order of the AO in declining the claim of exemption on the ground that the Trust was not registered u/s 12AA of the Act.

23. Addressing another argument canvassed on behalf of the assessee wherein it was contended that since the Trust was granted exemption by the Government of India way back in the year 1958, it was not open to Revenue to tax the receipts of the assessee Trust under the excuse of not been registered u/s 12A of the Act, the Coordinate Bench, held in para 6.6 of its

order that the Assessing Officer, however committed a mistake by observing that there is no mention of Section 4(3)(i) of the Income Tax Act, 1922 by referring to the report of the Law Commission. In this regard, the Coordinate Bench held that the Assessing Officer has not given a finding as to what was the status of trust which was granted the exemption under the old Act i.e. Income Tax Act, 1922, after repeal of that Act. Whether such Acts (exemption) fall under the saving clause (section 297) or not and if falls under the saving clause, then would it be deemed that the exemption is available to the assessee trust under the Act of 1961 and thereafter, in para 6.7 of its order, the Coordinate Bench has held that the AO was required to examine whether firstly exemption granted under the repealed Act of 1922 was saved by Section 297 of the Act of 1961 and secondly, whether it was consistent with the corresponding provisions of law under the Act of 1961 and accordingly held that under these facts, it is of the considered view that by not adverting to these issues, the AO has committed a mistake apparent from the record which needs fresh consideration. According, the Coordinate Bench directed the AO to decide the issue of availability of exemption afresh for the impugned assessment year.

24. We therefore find that the matter was set-aside by the Coordinate Bench to the file of the AO to decide the issue of availability of exemption afresh with a specific direction to examine whether exemption granted under section 4(3)(i) of the repealed Act of 1922 was saved by section 297 of the Act of 1961 which in turn would depend upon whether the exemption so granted under the repealed Act of 1922 is consistent with corresponding provisions under the Act of 1961.

25. In this regard, we refer to the provisions of Section 4(3)(i) of the Act of 1922 which read as under:

> *"(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them:*

(i) Subject to the provisions of clause (c) of sub-section (1) of section 16, any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto:"

26. Under the Act of 1961, the provisions relating to exemption are contained in section 11, 12, 12A, 12AA and 13 of the Act. What is therefore required to be examined is whether the exemption granted under section 4(3)(i) of the Act of 1922 is consistent with combined reading of section 11, 12, 12A, 12AA and 13 of the Act of 1961 and thus saved by section 297(2)(k) of the Act of 1961.

27. Section 11 of the Act of 1961 has been amended from time to time. As per section 11(1) of the Act, subject to provisions of sections 60 to 63, where the trust having been created before the commencement of this Act, the income derived from property held under trust in part for charitable or religious purposes to the extent to which such income is applied to such purposes in India and to the extent to which income is accumulated or set apart not in excess of 15 percent of income from such property, and the income in form of voluntary contribution with the specific directions that they shall form part of the corpus of the trust or institution in the manner and to the extent specified shall not be included in the total income of the previous year. Sub-section (2) of section 11 deals with the situation where income referred to in clause (a) and (b) of sub-section (1) read with Explanation to the sub-section is not applied or is not deemed to have been applied to the charitable purpose or religious purposes in India during the previous year but is accumulated or set apart either in whole or in part for application to such purposes in India and mandates that such income shall not be included in the total income of the previous year of the person in the receipt of the income on the compliance of the conditions specified in sub-clauses (*a*) and (*b*). Sub-section (3) of section 11, provides that any income referred to in sub-section

(2) which is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or ceases to remain invested for deposited in any of forms or modes specified in sub-section (5) or is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof or is credited or paid to any trust or institution registered under section 12A or 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, shall be deemed to be the income of such person of the previous year in which it is so applied for ceases to be accumulated or set apart or ceases to remain so invested or deposited or credited or paid or as the case may be, of the previous year immediately following the expiry of the aforesaid period. We therefore find that unlike provisions of section 4(3)(i), provisions of section 11 are elaborately worded and contains detailed conditions in terms of extent of accumulation of income, manner and mode of investment and related consequences of non-compliance of such conditions.

28. Section 12 of the Act talks about the voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.

29. Section 12A was introduced for the first time in the statute books by the Finance Act, 1972 and it provides that exemption from income-tax in respect of income derived from property held under trust u/s 11 or by way of voluntary contributions by charitable or religious trusts or institutions u/s 12

will be available only if the person in receipt of the income makes an application for registration of the trust or the institution to the Commissioner of Income-tax before 1-7-1973 or before the expiry of a period of one year from the date of creation of the trust or establishment of the institution, whichever is later. The Commissioner of Income-tax was empowered to admit, in his discretion, belated applications for registration where he was satisfied that person in receipt of income was prevented from making application before the expiry of period aforesaid for sufficient reasons. However, such discretionary powers of the CIT were later on taken away by the Finance Act, 2007 and sub-section (2) has been inserted to provide for applicability of exemption for income for the financial year in which application is made and subsequent years. It further provides for the consequential effect of such registration for the past financial years for which the assessment proceedings were pending before the Assessing officer as on the date of such registration provided the objects and activities of such trust or institution remain the same for such preceding year(s).

30. Another condition which has to be satisfied for claiming exemption under section 11 and 12 is that where the total income of the trust or institution (without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount not chargeable to tax in any previous year, the accounts of the trust or institution for that year have to be audited by an accountant as defined in section 288 and the report of audit is required to be furnished along with the return of income for relevant assessment year and such return of income has to be furnished in accordance with the provisions of section 139(4A) within time allowed under that section.

31. We find that aforesaid conditions for seeking exemption as so provided in the Act of 1961 are conspicuously absent in the erstwhile provisions of claiming exemption under the Act of 1922.

32. Further, section 12AA talks about the powers of the Commissioner on receipt of application seeking registration under section 12A and calling for information/documents and making further enquiries in order to satisfy himself about objects of the trust and genuineness of the activities of the trust and passing an order in writing either registering the trust or refusing to register the trust for reasons to be recorded in writing after providing a reasonable opportunity to the trust and prescribes the time limit within which such order is to be passed. Further, powers have been granted to the Commissioner to cancel the registration of the trust where he is satisfied that the activities of such trust are not genuine or are not being carried out in accordance with the objects of the trust or the activities of the trust are being carried out in a manner that the provisions of section 11 and 12 donot apply to exclude either whole or any part of the income of such trust due to operation of section 13(1) of the Act.

33. We find that provisions seeking registration under section 12A and the consequent powers of the Commissioner to grant such registration and subsequently cancel the registration are conspicuously absent in the erstwhile provisions for claiming exemption under the Act of 1922 and it is one of the critical and distinguishing requirements under the Act of 1961 vis-à-vis the Act of 1922 besides others elaborate conditions, as we noted above, for seeking exemption u/s 11 under the Act of 1961. Under the Act of 1961, the Trust whether constituted and/or formed prior to the said Act coming into force or afterwards, is required to move an application for seeking registration before the Commissioner and such trust must be granted registration and duly registered under section 12AA of the Act. It is a settled position that unless and until the trust is registered under section 12A, it cannot claim the benefit of section 11 of the Act and thus, registration under section 12A is a condition precedent as also upheld by the Hon'ble Supreme Court in case of U.P Forest Corporation vs DCIT reported in 297 ITR 1 wherein it was held as under:

"11. We are of the considered view that for claiming benefit under s. 11(1)(a), registration under s. 12A is a condition precedent. Sec. 11 provides for exemption of income which is applied for charitable purposes. Sec. 12 is in the nature of an Explanation of s. 11. Sec. 12A provides that provisions of ss. 11 and 12 shall not apply in relation to income of any trust or institution unless certain conditions are satisfied, one of which is cl. (a), the same is reproduced as under:

"12A. The provisions of s. 11 and s. 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 Chief CIT or CIT before 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 Chief CIT or CIT may, in his discretion, admit an application for the registration of any trust or institution after the expiry of the period aforesaid;

(b)....."

12. Application for registration under s. 12A has to be made in Form No. 10A prescribed by r. 17A of the IT Rules, 1962 before the expiry of one year from the date of the creation of the trust or the establishment of the institution, whichever is later. The same has to be made by the person in receipt of the income of the trust. Chief CIT or CIT under proviso to cl. (a) of s. 12A has been vested with the discretion to admit an application for registration after the expiry of the prescribed period. A conjoint reading of ss. 11, 12 and 12A makes it clear that registration under s. 12A is a condition precedent for availing benefit under ss. 11 and 12 of the Act. Unless and until an institution is registered under s. 12A of the Act, it cannot claim the benefit of s. 11(1)(a) of the Act. Keeping in view the fact that the appellant-Corporation has not been granted registration under s. 12A of the Act, we hold that the appellant is not entitled to claim exemption from payment of tax under ss. 11(1)(a) and 12 of the Act."

34. Under the Act of 1922, we find that there were no provisions and condition precedent in terms of seeking registration from the Commissioner at first place and all that was required to seek exemption was that the income

should be derived from property held under trust wholly for religious or charitable purposes and such income is applied or accumulated for application to such religious or charitable purposes as so contained in section 4(3)(i) of Act of 1922. Unlike provisions contained in section 4(3)(i) of the Act of 1922, the provisions of section 11(1)(a)/(b) of the Act of 1961 are subject to satisfaction of various conditions relating to application, accumulation, manner of investment, etc, and more importantly, registration with the Commissioner under section 12AA. Unless and until the trust is registered under section 12AA, it cannot claim the benefit of section 11 of the Act and thus, the provisions of section 11 have to be read along with section 12A and 12AA of the Act and then, compared with the provisions of section 4(3)(i) of Act of 1922. The principle of consistency has to be seen from the perspective of conditions as so prescribed under the Act of 1961 and the same need to be compared with the conditions prescribed under the Act of 1922 to determine whether the erstwhile provisions are consistent with the current provisions and where the answer to the same is in the affirmative, the assessee having satisfied the conditions as per erstwhile provisions, the same would be considered in due compliance with the current provisions and its claim of exemption is sheltered from any interference by the Revenue. Given the distinguishing features and conditions precedent of registration u/s 12AA under the Act of 1961, it cannot be held that the section 4(3)(i) of the Act of 1922 is consistent with section 11 r/w section 12, 12A, 12AA and 13 of the Act of 1961 and thus saved by section 297(2)(K) of the Act.

35. In the instant case, we are therefore unable to accede to the contention advanced by the ld AR that where there was no provision for issuing a separate order of registration by the Commissioner in 1922 Act, it would not mean that exemption granted u/s 4(3)(i) of 1922 Act is not saved by section 297(2)(k) of the IT Act, 1961. Under the Act of 1961, the Trust whether constituted and/or formed prior to the said Act coming into force or afterwards, is required to move an application for seeking registration before

the Commissioner and such trust must be granted registration and duly registered under section 12AA of the Act. There is thus no mandate under the current statue to treat these two set of assessees differently and thus creating separate class of assessees, one which have been formed earlier and got exemption under the Act of 1922 and those formed subsequently and seeking exemption under the Act of 1961. Both the set of assessees are on equal footing without claiming any differential treatment and have to comply with the conditions as prescribed under the Act of 1961 to continue to claim exemption or to claim exemption, as the case may be, under the Act of 1961. At the same time, from the stand point of continuity, the principle of consistency has been enshrined under section 297(2)(K) of the Act of 1961 which provides that where the provisions so provided under the Act of 1961 are consistent with the provisions of Act of 1922, the existing assessee claiming exemption under the Act of 1922 can continue to claim such exemption under the Act of 1961. However, where there are changes and/or newer provisions have been introduced under the Act of 1961 which were absent or not provided for in the Act of 1922, the assessee cannot claim immunity but to comply with such fresh provisions to continue to claim exemption and cannot seek the shelter of old regime invoking the saving clause as provided under section 297(2)(k) which in any case doesn't apply being inconsistent with the current regime. The assessee has to keep pace with the evolving law and regulations and cannot be claim immunity and seek shelter under the erstwhile law. In view of the aforesaid discussion, we are of the considered view that the exemption so granted to the assessee trust u/s 4(3)(i) of the Act of 1922 cannot be saved under section 297(2)(k) of the Act. being inconsistent with corresponding provisions under the Act of 1961.

36. Now, let us examine as to how the AO has dealt with the same in the set-aside proceedings. During the set-aside proceedings, the AO vide letter dated 20.09.2017 has asked the assessee to explain as to how the exemption granted under the Act of 1922 was saved by section 297 of the Act of 1961

and secondly, how the provisions are consistent with the corresponding provisions under the Act of 1961. In response, the assessee furnished its submission dated 16.10.2017 and submitted that it has been granted exemption from Income tax, wealth tax, and expenditure tax vide letter dated 12.11.1958 issued by Ministry of Home Affairs. Further, referring to the provisions of section 11(1)(a) of Act of 1961 and provisions of section 4(3)(i) of the Act of 1922, it was submitted that section 4(3)(i) of the Indian Income Tax Act, 1922 is corresponding to section 11(1) of the Act and thus, the exemption is available to it and it doesn't require registration u/s 12AA in light of section 297(2)(k) of the Act. Though the explanation has been sought and reply received, there is no finding recorded by the AO inspite of specific direction given to this effect by the Coordinate Bench to examine whether exemption granted under section 4(3)(i) of the repealed Act of 1922 was saved by section 297(2)(K) of the Act of 1961 and secondly, the provisions of the repealed Act are consistent with corresponding provisions under the Act of 1961.

37. Even where it is held that the Assessing officer having satisfied himself with the explanation of the assessee is not required to record a specific finding unless there is any contrary finding to be recorded, we find that in the instant case, the Assessing officer has failed to consider various distinguishing features/conditions of section 4(3)(i) of the Act of 1922 and that of section 11(1)(a)/(b) of the Act of 1961 relating to application, accumulation, manner of investment, etc, and more importantly, registration with the Commissioner under section 12AA which need to be read together with the provisions of section 11 and which clearly require that the Trust should move an application for seeking registration to the Principal Commissioner or the Commissioner and such trust be granted registration and duly registered under section 12AA of the Act. We therefore find that the Assessing officer has gone merely by the submissions of the assessee and has completely failed to consider the settled position in law that the provisions of section 11 are to be read along with

section 12A of the Act and only where the trust has been registered under section 12AA, the exemption can be availed by the assessee and has thus failed to consider the distinguishing features of the erstwhile provisions section 4(3)(i) of Act of 1922 which are not consistent with the current provisions. Thus, the acceptance of the submissions of the assessee that the provisions of section 4(3)(i) of the Act of 1922 are consistent with section 11 of the Act of 1961 and saved by the provisions of section 297 of the Act and is not required to register u/s 12AA is clearly erroneous in view of non-consideration of the provisions of section 12A of the Act which provides that the provisions of section 11 and 12 shall not apply to the income of the trust unless the trust has applied and duly registered u/s 12AA of the Act.

38. It has also been contended that since the assessee has subsequently applied for registration u/s 12AA and the same has been granted by the ld CIT(E) vide letter dated 31.03.2016, the said fact of subsequent registration has been duly considered by the AO and held applicable for the impugned assessment year for granting exemption u/s 11 and the order so passed by the AO cannot be held as erroneous in view of the proviso to section 12A(2) which provides that the assessee is eligible for exemption u/s 11 in respect of relevant assessment year, the proceedings in respect of which are pending before the Assessing officer. We find that matter relating to applicability of registration for prior assessment years and grant of exemption has already been examined by the Coordinate Bench in assessee's own case for A.Y 2013-14. In this regard, we refer to the decision of the Co-ordinate Bench in case of ITO (Exemption), Alwar vs. M/s Bharatpur Royal Family Religious & Ceremonial Trust, Bharatpur *(in ITA No. 831/JP/2019 dated 13/03/2020)* wherein it was held as under:-

> *"4. We have considered the rival submissions as well as the relevant material on record. As per the original Trust deed/Memorandum of Association whereby the assessee trust was created in the year 1957, there is no dispute that the By-laws of the Trust itself says that assessee*

trust is a private trust. However, when the assessee trust applied for exemption under section 4(3)(i) of the IT Act, 1922, the Government accepted the status of the assessee trust as Charitable Institution and there is a communication in this regard dated 05.11.1958 as well as 12.11.1958 by the Ministry of Home Affairs. The said communication was based upon the report of the Law Commission which says that the Trust is partly religious and party charitable and as such part of the income of the Trust as applied to religious purposes and also that part which is applied for charitable purposes will be exempt from income tax under section 4(3)(i) of the IT Act 1922. The Law Commission also observed that on the reference of the Ministry of Finance as well as the Notification dated 05.11.1958 by the Member of the Central Board of Revenue, it was accepted that the assessee Trust is entitled for exemption. Without going into the issue of Public or Private Trust, once this issue was decided by this Tribunal for the assessment year 2011-12 vide order dated 23rd June, 2017, we accept that the assessee is a Public Trust.

5. Now the question arises whether provisions of section 50C are applicable in respect of the capital gain assessable in the hands of a trust. So far as the exemption available to the Trust in respect of the Capital gain arising from sale of capital asset being property held under Trust, section 11(1A) of the IT Act contemplates the treatment of such income is applicable which reads as under :-

> *"[(1A) For the purposes of sub-section (1),—*
>
> *(a) where a capital asset, being property held under trust wholly for charitable or religious purposes[50], is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—*
>
> *(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;*

(ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

(b) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;

(ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

Explanation.—In this sub-section,—

(i) "appropriate fraction" means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

*(ii) "cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in *sub-clause (b) of †clause (1) of section 55;*

(iii) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.]"

It is pertinent to note that so far as the income of the trust from sale of any asset other than the asset being property held under trust, the treatment of the said income has to be in terms of section 11 of the IT Act subject to the other conditions including section 13 of the IT Act. However, if there is a sale or transfer of the capital asset being property held under Trust then the exemption is allowed only when the net consideration is utilized for acquiring another capital asset to be so held as property under trust. Therefore, a property which is held under Trust

and a part of the corpus fund of the Trust is generally not allowed to be transferred except when the said property is to be replaced by a new capital asset and kept as held under Trust. Even otherwise, in case of Public Trust, the immovable property of the Trust cannot be transferred by way of sale, exchange, gift or lease out for a period exceeding 5 years or 3 years in case of agricultural or non-agricultural land or building as the case may be except the previous sanction of the Assistant Commissioner Devasthan, State Government Board created for regulating the Public Trust in the State under Rajasthan Public Trust Act 1959. For ready reference we reproduce section 31 of Rajasthan Public Trust Act as under :-

" ***Sec. 31 – Previous sanction to be obtained for certain transfers :***

1. *Subject to the directions in the instrument of trust or any directions given under this Act or any other law by any court :*

(a) *No sale, exchange or gift or any immovable property or of movable property exceeding five thousand rupees in value, and*

(b) *No lease, for a period exceeding five years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building.*

belonging to a public trust shall be valid without the previous sanction of the Assistant Commissioner.

2. *An application for the sanction of the Assistant Commissioner, under sub-section (1) shall be made in the prescribed manner and form.*

3. *Where, on the application duly made for sanction in respect ofany transaction specified in sub-section (1), the Assistant Commissioner does not, within two months of the receipt thereof, pass final orders, it shall be presumed that he has accorded sanction in respect of that transaction, provided that the application described the transaction, with sufficient accuracy.*

4. *The Assistant Commissioner shall not refuse to accord sanction in respect of any transaction specified in sub-section*

(1) unless such transaction is, in this opinion, likely to be prejudicial to the interests of the public trust, and no order refusing to accord sanction shall be passed unless the working trustee of such public trust has had a reasonable opportunity of being heard."

In the case in hand, the trust in question was created by the Settler on 09.06.1959 and entrusted the property in question apart from other properties under the Trust. Therefore, the property in question was a property held under Trust and, therefore, the provisions of section 11(1A) are strictly applicable in this case. It is pertinent to note that even as per section 11(1A), the provisions of section 48 & 49 are applicable so far as the computation of capital gain is concerned. Even the provisions of section 55 are also applicable for assigning the meaning of cost of any improvement. This land in question was a contribution by the Settler for creating the Trust in question and thus it is part of the corpus of the Trust and a property held under Trust. Therefore, being a Public trust, the transfer/sale of the property held under trust is a matter of serious concern and it is otherwise not permissible except to the satisfaction of the authorities that the transfer is the only option left with the Trust and it was inevitable for the Trust to transfer the property under Trust and particularly the immovable property. Hence, the sale consideration of such asset/property held in Trust cannot be allowed to be suppressed in a manner which is prejudicial to the interest of the Trust itself. The sale consideration in the case of the assessee trust claimed as Rs. 60,00,000/- as against the stamp duty valuation of Rs. 11,33,72,000/-. Though there is a decision of the Lucknow Bench of the Tribunal in case of ACIT vs. Upper India Chamber of Commerce (supra) regarding non applicability of provisions of section 50C, however, sections 11 & 12 of the IT Act provides exemption from Income Tax of the income derived from the property held in Trust to the extent of the same is applied for charitable purposes. Therefore, provisions of sections 11 & 12 do not disturb the head of the income which are otherwise

applicable in respect of a particular income based on its source. The capital gain which is arising from the investment of the Trust which is otherwise permissible as per the provisions of section 11 of the Act would be strictly computed as per the provisions of sections 45 to 55 of the IT Act. Similarly, section 11(1A) of the IT Act provides the exemption and this exemption is only for the purpose of application of the net consideration for acquiring the new capital asset being the property held under Trust. Thus the provisions of section 50C become irrelevant or inapplicable once the actual consideration/net consideration received by the Trust is utilized for acquiring another capital asset being property held under Trust. Once the entire actual consideration is applied in terms of section 11(1A), then the question of computing capital gain does not arise and consequently the provisions of section 50C also becomes irrelevant. Once the capital gain arising from transfer of a capital asset being property held in Trust is not utilized or partly utilized then the capital gain arising from such transfer would be assessed as per the provisions of Chapter IV of the IT Act. Therefore, the applicability of the provisions of section 50C depends whether the real consideration on transfer of the property held in Trust is utilized for acquiring the new capital asset to be held as property held under Trust or not. In the case in hand, the assessee has claimed that the entire consideration has been utilized for acquiring new capital asset. However, this issue of utilization of the sale consideration for acquiring the new asset being the property held under Trust has not been examined by the AO as the dispute before the AO was only regarding the applicability of provisions of sections 11 & 12 as well as section 50C of the IT Act. In any case, in case of Trust, the sale consideration of the property held under Trust has to be verified to avoid any misuse and in the case in hand it is apparent that a huge difference between the sale consideration declared by the assessee at Rs. 60,00,000/- and the valuation determined by the Stamp Duty Authority at Rs. 11,33,72,000/-. There

may be a reason for fair market value of a property would be less than the DLC value but the difference must be reasonable having regard to the factors adversely affecting the value of the property. In the case in hand, the assessee declared the sale consideration at Rs. 60,00,000/ in comparison to the Stamp Duty Authority has valued the property at Rs. 11,33,72,000/- on which a stamp duty of Rs. 79,36,040/- was paid. Even the assessee has determined the indexed fair market value as on 01.04.1981 at Rs. 1,33,10,000/-. All these facts show that the sale consideration declared by the assessee is even less than the indexed cost of acquisition computed from 01.04.1981 as well as less than the stamp duty paid on the transaction of transfer of property in question. Therefore, these are not the ordinary circumstances but points to an extra ordinary circumstance which needs to be verified by conducting proper investigation. Accordingly, this issue of determination of real and actual consideration in terms of the fair market value of the property as on the date of sale requires reconsideration at the level of the AO. Thus, the same is set aside to the record of the AO for conducting a proper enquiry on the issue and then determine the fair market price of the property in question as on the date of sale. Needless to say, the assessee be given an appropriate opportunity of hearing before deciding this issue.

6. As regards the applicability of provisions of section 12AA and particularly proviso to the said section and consequential benefit of sections 11 & 12 of the Act, we find that the registration was granted by the Commissioner (Exemptions) vide order dated 5th September, 2016 with effect from 03.08.2016 after the assessee has amended its By-laws and Memorandum of Association whereby certain terms and conditions have been completely changed. Therefore, the constitution of the Trust does not remain the same as it was prior to the amendment and hence when the constitution itself is changed and the registration is granted on

the new and amended constitution of the Trust, then the benefit of proviso to section 12A would not be available to the assessee for the assessment year preceding to the year in which such registration is granted. Further, the said proviso to section 12A(2) specifically mentions the proceedings of the assessment are pending before the AO. Though it may be inferred that the proceedings before the Appellate Authority are also considered to be the assessment proceedings pending but the same are not regarded as pending before the AO. Even otherwise, when the registration is granted on the amended constitution of the Trust, then the benefit of this proviso to section 12A(2) is not available.

6.1. Accordingly, in view of the above facts and circumstances of the case, we set aside the impugned order of the ld. CIT (A) and remand the matter to the record of the AO to the extent of computation of the fair market price of the property in question as on the date of sale and the utilization of sale consideration for purchase of new capital asset being property held under Trust, then decide this issue after allowing the benefit of sections 11 & 12 as it was already allowed by this Tribunal for the assessment year 2011-12 in terms of the Ministry of Home Affairs D.O. No. 4/26/56 dated 12th November, 1958 as well as the Ministry of Finance Department communication dated 12.12.1958."

39. We therefore find that the Coordinate Bench has recorded a clear finding that the registration was granted by the Commissioner (Exemptions) vide order dated 5th September, 2016 with effect from 03.08.2016 after the assessee has amended its By-laws and Memorandum of Association whereby certain terms and conditions have been completely changed. Therefore, the constitution of the Trust does not remain the same as it was prior to the amendment and hence when the constitution itself is changed and the registration is granted on the new and amended constitution of the Trust, then the benefit of proviso to section 12A would not be available to the assessee for the assessment year preceding to the year in which such registration is granted. Further, the said

proviso to section 12A(2) specifically mentions the proceedings of the assessment are pending before the AO. Though it may be inferred that the proceedings before the Appellate Authority are also considered to be the assessment proceedings pending but the same are not regarded as pending before the AO. Even otherwise, when the registration is granted on the amended constitution of the Trust, then the benefit of this proviso to section 12A(2) is not available. The said finding applies equally to the impugned assessment year 2011-12 and we donot find any justifiable reason to deviate from the said finding rendered after detail examination of facts and circumstances of the case which permeates equally through the impugned assessment year. Therefore, even where it is held that the AO has taken a view that the assessee is entitled to exemption u/s 11 in view of the subsequent registration for the impugned assessment year, the said view is clearly erroneous in light of the clear findings of the Tribunal in the assessee's own case that benefit of proviso to section 12A(2) is not available to the assessee and thus, prejudicial to the interest of the Revenue.

40. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, we are unable to accede to the various contentions advanced by the ld AR that the AO has complied with the directions of the Tribunal and duly examined this issue with reference to section 4(3)(i) of Act of 1922 vis-à-vis section 11 of the Act of 1961 as so directed by the Tribunal and given the fact that the AO having failed to comply and examine the matter, find that the ld. PCIT was justified in exercising his jurisdiction u/s 263 to enforce the directions of the Tribunal and thus to hold the order so passed by AO as erroneous and prejudicial to the interest of Revenue. In the result, we upheld the order of the ld PCIT in exercise of his powers u/s 263 in setting aside the order so passed by the AO and the grounds of appeal taken by the assessee are hereby dismissed.

In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 13/07/2021.

Sd/-	Sd/-
(संदीप गोसाई)	(विक्रम सिंह यादव)
(Sandeep Gosain)	(Vikram Singh Yadav)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 13/07/2021
*Ganesh Kr.
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant - Bharatpur Royal Family Religious & Ceremonial Trust, Bharatpur
2. प्रत्यर्थी / The Respondent- The CIT (E), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 290/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar