

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 96/Chd/2021

निर्धारण वर्ष / Assessment Year :

Chandigarh Educational Trust 2368, Phase-10, Mohali Punjab-160060	बनाम	The PCIT(Central)- Gurgaon at Chandigarh C.R. Building, Himalaya Marg, Sector-17-E, Chandigarh- 160017
स्थायी लेखा सं./PAN NO: PTLM12857F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 97/Chd/2021

निर्धारण वर्ष / Assessment Year :

Chandigarh Educational Society Chandigarh Group of Colleges, VPO Jhanjeri, State Highway-12A, Sirhind Road, SAS Nagar, Mohlai Punjab-140307	बनाम	The PCIT(Centra)- Gurgaon At Chandigarh C R Building, Himalaya Marg, Sector-17E, Chandigarh-160017
स्थायी लेखा सं./PAN NO: AAAAC8124A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं. / ITA NO. 98/Chd/2021

निर्धारण वर्ष / Assessment Year :

Shri Guru Ram Dass Educational Society Chandigarh Engineering College VPO Landran, Tehsil and District: Mohali, Punjab-140307	बनाम	The PCIT (Central)- Gurgaon At Chandigarh C.R. Building, Himalaya Marg, Sector-17E, Chandigarh-160017
स्थायी लेखा सं./PAN NO: AACTS6157Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri M.S. Syali, Sr. Advocate
Shri Sudhir Sehgal, Advocate
Shri Tarandeep Singh, Advocate

राजस्व की ओर से/ Revenue by : Smt. Chandrakanta, CIT

सुनवाई की तारीख/Date of Hearing : 19/07/2021

उद्घोषणा की तारीख/Date of Pronouncement : 31/08/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

These appeals by the Assesseees are directed against the separate orders each dt. 22/03/2021 of the Pr. CIT(C)-Gurgaon.

2. Since the issues involved are common in all these appeals which were heard together, so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance we will deal with the appeal in ITA No. 96/Chd/2021 wherein the assessee has raised the following grounds:

1. *That on facts and in law the order passed by Principal Commissioner of Income Tax (Central)-Gurgaon {"PCIT-Gurgaon"} u/s 12AA(3)/(4) of the Act is bad in Law and void abinitio.*

1.1.1 *That the order passed is void and unsustainable inter alia for the following reasons:*

(a) *That it grossly violates principles of natural justice, fair play and Equity mandated by law.*

(b) *That it lacks Jurisdiction/competence to deal with and adjudicate on the subject matter.*

(c) *That it lacks jurisdiction in the absence of statutory conditions precedent to valid assumption and exercise thereof.*

2. *That on facts and in law the PCIT-Gurgaon erred in cancelling the registration granted to the appellant u/s 12AA of the Act vide order F. No. CIT-II/CHD/Tech/12A/324/2010-11/4776 dated 22nd February 2011.*

2.1 *That on facts and in law the PCIT-Gurgaon has erred in not appreciating that charitable activities carried on by the appellant were genuine and that the same were being carried out in accordance with its object and bye laws.*

3. *That on facts and in law the PCIT-Gurgaon has erred in invoking and exercising jurisdiction u/s 12AA(3) and 12AA(4) of the Act and that too on basis of untested and unconsidered alleged search material, merely on the allegations, suspicions and surmises in the Report of the Investigation Wing without awaiting its appraisal and appraisal by a Quasi Judicial Assessing officer.*

3.1 *(That on facts and in Law, the PCIT neither gave any opportunity himself nor awaited examination by a competent Authority, vitiating the order passed.*

4. That on facts and in law the PCIT-Gurgaon has erred in issuing show cause u/s 12AA(3)/(4) of the Act by blindly following report of the Investigation Wing i.e without conducting any independent inquiry and without application of mind.

5. That on facts and in law the PCIT-Gurgaon has erred in holding / observing as under:

(i) That the Appellant has not made any submissions on the merits of the case.

(ii) Appellant had siphoned off the funds of the trust to the trustees by booking bogus expenses.

(iii) Assets of the trust have been utilized directly or indirectly for benefit of the trustees.

(iv) Appellant had introduced unexplained funds as bogus corpus donation.

(v) That once expenses are not recorded properly or are unverifiable or utilized for personal benefit of the trustees then the trust cannot be said to be carrying out its activities genuinely and solely for the purpose of its object.

6. That without prejudice, on facts and in law the PCIT-Gurgaon has erred in cancelling the registration granted u/s 12AA of the Act retrospectively w.e.f 01.04.2012.

7. That Without prejudice to the above, even if it is assumed that the provision of section 13(1)(c) or 13(d) are applicable in the case in hand, cancellation of registration in unwarranted both on facts and in law and at best, the relevant income qua which the exemption under section 11 and 12 shall not operate, by virtue of section 13(1)(c) r.w.s 13(1)(d) r.w.s 164(2), may be charged to tax at maximum marginal rate of tax.

8. That the appellant prays for leave to add, alter, amend and/or vary the ground(s) of appeal at or before the time of hearing.

4. The main grievance of the assessee relates to the cancellation of the Registration granted under section 12AA of the Income Tax Act, 1961 (for short the 'Act'). Vide Ground No. 3 and 3.1 which was argued at the first instance, the assessee contended that the Ld. PCIT(C) without waiting the appraisal report of the A.O. and without giving opportunity of being heard, invoked and exercised the Jurisdiction under section 12AA(3) & 12AA(4) of the Act.

5. The facts of the case in brief are that the assessee is a society / Trust which was created for charitable purpose and registered under the Society Registration Act (XXI of 1860) vide Registration No. 2650 of 2009-10 on 28.10.2009.

The assessee society / Trust is Registered under section 12AA of the Act vide order dt. 22/02/2011 of Ld. CIT-II, Chandigarh w.e.f A.Y. 2011-12 and also registered under section 80G(5)(vi) of the Act vide order dt. 21/02/2011 of Ld. CIT-II, Chandigarh. The objects of the assessee Trust are mentioned in its Memorandum of Association (MOA) and Rules & Regulations. The Trust is engaged in providing education and running various educational institutions including Chandigarh University at VPO. Gharuan, Kharar-Ludhiana Road, SAS Nagar, Mohali. The assessee Trust belongs to Chandigarh Group of colleges, a leading private group of colleges in Northern India and runs several colleges from three campuses situated in Landran, Gharuan and Jhanjeri. All the colleges are run in the name of the following three educational Trusts / societies.

S.No.	Name of Society/Trust	PAN	Address of the trust	Campus address
1	Shri Guru Ram Dass Educational Society	AACTS6157Q	Landran, Mohali	VPO. Landran, SAS Nagar, Mohali
2	Chandigarh Educational Trust	AABTC2038D	#2368, Phase-10, Mohali	VPO. Gharuan, Kharar-Ludhiana Road, SAS Nagar, Mohali.
3	Chandigarh Educational Society	AAAAC8124A	#1941, Phase-10, Mohali	VPO. Jhanjeri, State Highway 12A, SAS Nagar, Mohali

In these cases a search and seizure action under section 132(1) of the Act was carried out on 03/10/2019, besides the assessee Trust, its key Trustees / members and other related persons were also covered. During the course of search and post search proceedings various alleged incriminating documents / evidences regarding siphoning off the funds of the Trust to its Trustees by booking bogus expenses were found and seized. Assessment proceedings under section 153A of the Act have been initiated in this case for the A.Y. 2014-15 to 2019-20. During the pendency of the assessment proceedings the Ld. Pr CIT(C) observed that the ITR's of the assessee Trust filed under section 139 of the Act revealed that the Trust is showing huge surplus year after year and was claiming exemption under section 11 and 12 of the Act on account of Registration of Trust under section 12AA of the Act. The year wise details of Income & Expenditure account shown

by the assessee Trust in its ITR's from A.Y. 2013-14 to 2019-20 are mentioned at page no. 3 and 4 of the impugned order by Pr. CIT(C) for the cost of repetition the same is not reproduced herein. The Ld. Pr. CIT(C) observed that the assessee is a closely held society solely controlled and managed by Shri Satnam Singh Sandhu and his family members since beginning and that Shri Satnam Singh Sandhu is Chairman of the assessee society whereas his wife Smt. Damandeep Kaur is the General Secretary and his mother-in-law Smt. Jasmail Kaur is the Finance Secretary. In other words, all the three posts of Governing body were held by Sandhu family. Ld. Pr. CIT(C) further observed that as per Clause-5 of the Rules and Regulation of the society framed in accordance with the object of the society, these three persons are empowered to accept or reject any application for the membership of the society and as per Clause 15(b) of the Rules and Regulations, "all assets and funds of the society belong to the society and not to any individual member / Officer bearer".

5.1 Ld. Pr CIT(C) mentioned the details of the members / trustees shown by the assessee in its ITR at page nos. 4 and 5, for the cost of repetition the same are not reproduced herein. According to the Ld. Pr. CIT(C), the various incriminating documents / evidences regarding siphoning off funds of the trust to its trustees / members by booking bogus expenses were found during the course of search and post search proceedings which shows that the activity of the assessee were not genuine and not being carried out in accordance with object of the society. He therefore issued a detailed show cause notice dt. 24/11/2020 asking the assessee to explain as to why the Registration already granted under section 12AA of the Act vide order dt. 22/02/2011 may not be cancelled by invoking the provisions of Section 12AA(3) and 12AA(4) of the Act.

5.2 In response the assessee furnished the written submissions before the Ld. Pr. CIT(C) who mentioned the gist of the submissions as under:

i) *The cancellation of registration cannot be made on the basis of the findings of search and seizure operation and cancellation of registration should not be done till the final assessment is completed.*

ii) *The activities of the assessee trust are genuine and are being carried out in accordance with the objects of the trust. Hence, the registration granted to the trust cannot be cancelled under the provisions of section 12AA(3) of the Act.*

iii) *As regards the trustees misappropriating the funds it was submitted that this matter is sub judice before the DCIT, Central Circle-2, Chandigarh and the case is still at prima-facie stage and no adverse conclusion can be drawn in hurry for cancellation of registration.*

iv) *As per the proviso to section 164(2) of the Act, where the whole or any part of the relevant income is not exempt under section 11 or section 12 of the Act by virtue of the provisions of section 13(1)(c) or section 13(1)(d) of the Act, tax shall be charged on the relevant income or part of relevant income, at the maximum marginal rate. The AR has relied upon a number of judgements which are mentioned in the submission.*

v. *In view of the CBDT Notification dated 22.10.2014 the issue of cancellation of registration u/s 12AA shall be dealt upon by the Commissioner of Income Tax (Exemptions) only and not by Pr. Commissioner of Income Tax (Central).*

5.3 The Ld. Pr. CIT after considering the submissions of the assessee observed that the proceedings under section 12AA of the Act are entirely different from the assessment proceedings under section 153A or 143(3) or 147 of the Act and that what was to be tested under section 12AA(3) was whether the activities of the Trust were as per its object or not and whether activities of the Trust are being genuinely carried out or not. He further observed that whether the income of the assessee Trust enures for the benefit of public and any income or property of the trust was not used or applied directly or indirectly for the benefit of specified persons like author of the trust, trustees etc. and that the said conclusion would be based on the seized material, findings of the search and post search proceedings. According to the Pr. CIT there was no requirement that the Commissioner should wait till conclusion of assessment / appellate proceedings for cancellation of registration, the reference was made to following case laws:

- *U.P. Forest Corporation Vs. Deputy Commissioner of Income-tax, Lucknow [2008] 297 ITR 1 (SC)*

- *U.P. Distillers Association Vs. Commissioner of Income-tax [2017] 399 ITR 143 (Delhi)*

5.4 The Ld. PCIT observed that in the Income Tax Act, all the authority such as Principal Commissioner / Commissioner, Additional Commissioner / Joint Commissioner, Deputy Commissioner / Assistant Commissioner etc. have been given different powers which are exercised by them in accordance with the provisions of the Act and satisfaction arrived by them independently. He was of the view that there was no requirement that Principal Commissioner / Commissioner should rely on the findings of the assessment proceedings and wait for its conclusion for granting or cancelling the registration under section 12AA of the Act. The reliance was placed on the following case laws :

- *Hind Charitable Trust Vs. Principal Commissioner of Income Tax, (Central), Lucknow [2018] 93 Taxmann.com 483(All.)*
- *CIT Vs. SPL'S Siddhartha Ltd. [2012] 17 Taxmann.com 138 (Delhi)*
- *Kalinga Institute of Industrial Technology Vs. CIT [2011] 336 ITR 389 (Orissa)*

5.5 The Ld. Pr. CIT observed that a detailed show cause notice had been issued to the assessee which was based on the statement, documents and evidence etc. collected during the search and post search proceedings and also on perusal of the return and details examined by the A.O. during the assessment proceedings and that the show cause notices issued, properly record the basis for initiation of proceedings under section 12AA(3) / 12AA(4) of the Act and the satisfaction of the circumstances which warranted exercise of such powers.

5.6 Ld. Pr. CIT rejected this contention of the assessee that the cancellation of registration should not be done till the final assessment was completed and should be based on the satisfaction of the A.O.

5.7 As regards to the other submissions of the assessee that the activities of the assessee trust were genuine and were being carried out in accordance with

the object of the Trust, hence the registration granted to the Trust could not be cancelled under the provisions of Section 12AA(3) of the Act, the Ld. Pr. CIT observed that the assessee had not offered any comment in respect of the powers of the Pr. CIT / Commissioner to cancel the registration. He was of the view that as per the provisions of section 12AA(4) of the Act the Commissioner may cancel the registration of the Trust or Institution if it is noticed by him that the activities of the Trust or Institution were being carried out in a manner that the provisions of Section 11 & 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 of the Act which provide that where a Trust or an Institution has been granted registration and subsequently it is noticed that its activities are being carried out in such a manner that

- (i) its income does not enure for the benefit of the public;
- (ii) it is for benefit of any particular religious community or caste (in case it is established after commencement of the Income-tax Act, 1961);
- (iii) any income or property of the trust is used or applied directly or indirectly for the benefit of specified persons like author of trust, trustees etc.; or
- (iv) its funds are not invested in specified modes,

then the Pr. CIT may cancel the registration, if such Trust or Institution does not prove that there was a reasonable cause for the activities to be carried out in the aforesaid manner.

5.8 The Ld. Pr. CIT further observed that the grant of registration under section 12AA is only a procedural provisions and a condition precedent for availing the benefit under section 11 and 12 by specified category of entities and that the Section 11, 12 & 13 of the Act further lay down additional conditions in order to exclude the income from total income, hence to decide the eligibility of Section 12AA of the Act subsequently after having been granted earlier, the test to be applied are twin; (1) whether the activities of the trust are being carried out as per the stated objects and genuine and income is derived only from the

property held under the trust ("Source test") (2) whether the trust is applying entire receipt/income solely for the charitable purposes of trust as required u/s 11,12 & 13 ('Application Test'). The Ld. Pr. CIT further observed as under:

9.4 Further, in order to avail the exemption u/s 11 & 12, not only all the activities of the trust should be genuine but at the same time the income should be applied solely towards the objects of the trust ('Application test). Application of income towards charitable purposes only is one of the critical tests for being eligible u/s 11 & 12 and consequential continuation of registration u/s 12AA. The application of income towards the objects of the trust impliedly also pre- envisages that all the receipts/expenses of the trust are duly & completely recorded in the books of account properly on regular basis. The expression appearing in section 11 (1)(a) "to the extent to which such income is applied to such purposes in India" and also the expression "to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property", would imply the requirement of maintenance of the account completely and correctly comprising of all receipts and expenses incurred in pursuing the activities as per the objects of the trust in order to enable the verification/satisfaction of the conditions of 11(1)(a). Therefore, when any part of the receipts or expenses is not found duly recorded or accounted for in the books maintained by the trust, then the test of application solely for the purposes or objects of trust and computation of the limit of 15% of income for accumulation, would fail. Recording the receipts and expenses improperly would by itself make redundant the mandatory condition of recording all receipts and expenses to fulfil the application test. Even otherwise, the trust with an obligation to carry out its activities genuinely is bound to follow the law of land regarding correct and complete maintenance of books of account required for furnishing audit report in Form 10B under section 12A(b) of the Act and if it is violated, the trust could not be said to be genuinely carrying out its activities. Thus, the requirement of recording of all receipts/expenses in the books is of paramount importance to meet the condition of application of income u/s 11 (1)(a) and in absence of all receipts/expenses being recorded properly in the books, the condition mandated u/s 11(1)(a) would fail, which would in turn make activities of the trust as not being carried genuinely as per its charitable objects.

9.5 Thus, even if a trust registered u/s 12AA claims to be carrying out and deriving income from its activities of providing education etc. but the genuineness of its activities or its existence solely for charitable purposes can still be challenged if it; (i) derives its income not from a source/property held under the trust (ii) derives its income in the manner which is prohibited by law (iii) The trust does not record entire receipts or expenses in the books of account which prevents verification of application of income solely for charitable purposes as per the provisions of section 11(1)(a) of the Act or (vi) allows application or use of income or property of the trust for direct or indirect benefit to the persons mentioned u/s 13(3) of the Act.

5.9 Ld. Pr. CIT was of the view that conspectus of decisions on the subject provides that at the time of granting registration under section 12AA(1) of the

Act, only the objects and purposes are required to be seen and if any violation is noted subsequently the registration shall be liable to be cancelled under section 12AA(3)/12AA(4) of the Act, which by implication follows that once the assessee is not required to prove the genuineness of its activities at the time of initial registration and subsequently if any violation is found then the onus of proving that the activities were carried out genuinely as per the objects of the trust only and otherwise, shall lay heavily on the assessee and not on the Revenue. The reliance was placed on the judgment of the Hon'ble Apex Court in the case of :

- Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company & Others

which overruled the 3 Judges Bench decision in the case of

- Sun Export Corporation Mumba Vs. Collector of Customs, Mumbai (1997) 6 SCC 564

5.10 The Ld. Pr. CIT was also of the view that violation of the conditions of Sections 11,12 & 13 can also trigger cancellation of registration as per the provisions of Section 12AA(4) of the Act which have been introduced with effect from 01/10/2014 and that the denial of exemption under section 11 & 12 can be triggered for two reasons; (i) due to non fulfillment of conditions of any of the sections 11,12 & 13 of the Act or (ii) due to cancellation of registration u/s 12AA of the Act for any other reason.

5.11 He also observed that the test of application / utilization of income towards charitable purposes is prescribed under section 11 which miserably fails in case of the assessee which requires proper and regular maintenance of books of account comprising of all receipts and expenses incurred for the object / purpose of the trust and that the recording of all the receipts / expenses in the books is of paramount importance for satisfying the condition of application of income under section 11(1)(a) of the Act and in the absence, the test mandated under section 11(1)(a) of the Act would fail. Therefore the condition to satisfy application of income for charitable purpose and also to

meet the ceiling of accumulation of not more than 15% of such income as provided under section 11(1)(a) of the Act were absent in the case of the assessee, hence the argument of the assessee that the same were utilized for the objects of the trust has no legs to stand.

5.12 Ld. Pr. CIT observed that applying the test for continuance of registration under section 12AA of the Act, it was apparent that if the expenses were not recorded properly or were unverifiable or were utilized for personal benefit of the trustees in violation of the provisions of section 13(1) of the Act then the trust could not be said to be carrying out its activities genuinely and solely for the purposes of its objects, even if the part of its receipt / expenses were unaccounted. According to the Ld. Pr CIT the assessee was indulged in siphoning off its funds by booking bogus expenses and diversion of its funds to its trustees which had been summarized as under:

- a) *Diversion of funds amounting to Rs. 14,21,17,932/- during FY 2019-20 under the head 'Fee'.*
- b) *Diversion of funds amounting to Rs.63,93,98,466/- from FYs 2012-13 to 2018-19 booking bogus expenses under the heads 'Capital Work in Progress'/'Building under Construction'.*
- c) *Diversion of funds amounting to Rs. 6 crore during FY 2017-18 for purchase of Plot No.147, Sector 9, Chandigarh in the names of Sh. Satnam Singh Sandhu and Smt. Damandeep Kaur.*
- d) *Diversion of funds of Rs. 56,00,000/- (received as gift of CAD 1,00,000) through money laundering for purchase of a house at Canada in the name of Smt. Damandeep Kaur during FY 2019-20.*
- e) *Diversion of funds amounting to Rs.30,00,000/- during FY 2015-16 to Smt. Jasmail Kaur.*
- f) *Diversion of funds through accommodation entries of unsecured loan by Sh. Satnam Singh Sandhu and his partnership firms - Amount of Rs.4,90,00,000 received by Golden Infotech from the shell company Alps Management Solutions Pvt. Ltd. (FY 2018-19), amount of Rs. 4,79,50,000 received by Chandigarh Multiplex Projects from the shell company LTE Info Technologies Pvt. Ltd. (FY 2018-19), amount of Rs.5,00,00,000 (FY 2017-18) & Rs.4,85,00,000 (FY 2019-20) received by Sh. Satnam Singh Sandhu from the shell companies LTE Info Technologies Pvt. Ltd. and Syamali Security and Consultant Pvt. Ltd. respectively.*
- g) *Diversion of funds amounting to Rs.4,69,41,200 and Rs.2,80,75,400 paid to Sh. Rashpal Singh Dhaliwal and his wife Smt. Karamjit Kaur (Trustees of*

Chandigarh Educational Society) in form of salary and equivalent amount of salary received (Rs.5,29,44,200/- + Rs.2,07,50,000/-) by Sh. Satnam Singh Sandhu and his wife, Smt.Damandeep Kaur from Chandigarh Educational Society.

h) Introduction of unexplained fund as bogus corpus donation amounting to Rs.4,00,000/- alleged to be received from Sh. Spand Sharma, Sh. Sohan Lal and Sh. Itty Benjamin during FYs 2012-13, 2013-14 and 2014-15 respectively.

5.13 According to the Ld. Pr. CIT the assets and funds of the assessee society had been utilized directly or indirectly for the benefit of trustees / specified persons which were not in accordance with the object of the society, therefore, there was not even iota of doubt that the activities of the society were not being carried out in accordance with its objects which was a clear violation of the provisions of section 12AA(3) of the Act and that the assessee was indulged in siphoning off its funds by booking bogus expenses and diversion of its funds to its trustees in clear violation of the provisions of section 12AA(4) r.w.s 13(1) of the Act. The reliance was placed on the following case laws:

- *Commissioner of Income-tax (Exemptions) Vs. Jagannath Gupta Family Trust [2019] 102 taxmann.com 34 (SC)*
- *Ram Bhawan Dharamshala Vs. State of Rajasthan [2002] 124 Taxman 149 (Raj.)*
- *Agappa Child Centre [1997] 226 ITR 211 (Ker)*
- *DIT (Exem). Vs. Charanjiv Charitable Trust [2014] 43 taxmann.com 300 (Delhi)*
- *CIT-II, Lucknow Vs. Audh Educational Society [2011] 15 taxmann.com 235(All)*
- *Kanahya Lal Punj Charitable Trust Vs. DIT (Exem.) [2008] 171 Taxman 134 (Delhi)*
- *Commissioner of Income-tax Vs. V.G.P. Foundation (Madras High Court) Tax Case No. 31 of 1998 Oct. 8, 2002*
- *Parivar Sewa Sanstha Vs. Deputy Director of Income-tax [2005] 1 SOT 71 (Del)*
- *Action for Welfare & Awakening in Rural Environment (AWARE) Vs. Deputy Commissioner of Income-tax [2003] 130 Taxman 82 (AP)*
- *Little Tradition Vs. Deputy Director of Income-tax (Exemption), Trust Circle-IV, New Delhi [2009] 119 ITD 127 (Del)*
- *Director of Income-tax Vs. Maruti Center for Excellence 208 Taxman 236 (Del)*
- *Teleprolu Bapanaiah Vidyadharma Nidhi Trust Vs. Commissioner of Income-tax 167 ITR 482 (AP)*

5.14 As regards to the submissions of the assessee that as per the proviso to section 164(2) of the Act where the whole or any part of the relevant income was not exempted under section 11 or 12 of the Act, by the virtue of the provision of Section 13(1)(c) or Section 13(1)(d) of the Act, tax shall be charged on the relevant income or part of relevant income, at the maximum marginal rate, the Ld. Pr. CIT observed that the judgments relied by the assessee related to the period when the provisions of section 12AA(4) of the Act was not in the statute which was inserted w.e.f 01/10/2014 and provides that if the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 of the Act do not apply to exclude either whole or any part of income of such trust or institution due to operation of sub section (1) of section 13 of the Act then the Ld. Pr. CIT or the Commissioner may by an order in writing cancel the registration of such trust or institution. Therefore the registration under section 12AA of the Act can be cancelled even if the provisions of section 11 & 12 of the Act do not apply to the part of the income due to operation of section 13(1) of the Act.

5.15 According to the Ld. Pr. CIT there is no specific provision to restrict the denial of exemption to the relevant income or part of relevant income only while cancelling the registration under section 12AA(4) of the Act. He was of the view that the provisions of section 13(1)(c) of the Act are intended to eliminate any possibility of the funds of the trust enjoying exemptions u/s 11 and 12 of the Act, being used for the benefit of any specified person and once there is a violation of the aforesaid provisions, the provisions of section 11 and 12 of the Act shall not operate so as to exclude any income of the trust from the total income of the previous year, whereby the total income of the assessee either by voluntary contribution or income derived from its property or any surplus income earned during the discharge of charitable activities would be income in normal course and shall be chargeable to tax. He further observed that the said interpretation was also buttressed by the fact that sub section (4) of section 13

of the Act gives the specific situation where notwithstanding what is there in section 13(1)(c) of the Act, exemption under section 11 & 12 of the Act will be denied only on part of the income and that the assessee was not covered by this sub section. The reliance was placed on the following case laws:

- *Director of Income Tax Vs. Bharat Diamond Bourse (2003) 179 CTR SC 225 (SC)*
- *Agappa Child Centre Vs. Commissioner of Income-tax [1997] 226 ITR 211 (Ker.)*
- *Director of Income-tax(Exemption) Vs. Charanjiv Charitable Trust (2014) 43 taxmann.com 300 (Del)*
- *Pt. Kanahya Lal Punj Charitable Trust Vs. Director of Income Tax [2008] 297 ITR 66 (Del)*
- *Commissioner of Income Tax Vs. M/s Audh Educational Society [2011] 203 Taxman 0166 (All.)*
- *Tekprolu Bapanaiah, Vidyadharma Nidhi Trust Vs. CIT [1987] 167 ITR 482 399(AP).*

5.16 The Ld. Pr CIT was of the view that once the provisions of section 13(1)(c) r.w.s 13(3) of the Act are invoked, surplus is brought to tax, payment made in excess of what is reasonable is disallowed and added to income and the total income so calculated is taxed at maximum marginal rate as per section 164(2) of the Act.

5.17 As regards to the submissions of the assessee that the issue of cancellation of registration under section 12AA of the Act shall be dealt upon by the CIT(E) only and not by Pr. CIT(Central). The Ld. Pr. CIT mentioned that there were three notifications issued by the CBDT under section 120 of the Act in respect of the jurisdiction of the Income Tax Authorities which may be relevant to decide the issue. Those notifications were as under:

S.No.	Details of Notification	Jurisdiction of Income Tax Authority
1.	NOTIFICATION NO. S.O. 2754(E) [NO. 52/2014 (F.NO. 187/38/2014 (ITA-I))] DATED 22.10.2014	Commissioner of Income-tax (Exemption)
2.	NOTIFICATION NO. S.O. 2752(E) [NO. 50/2014 (F.NO. 187/38/2014 (ITA-I))] DATED 22.10.2014	Jurisdictional Principal Commissioner of Income-tax
3.	NOTIFICATION NO. S.O. 2915(E) [NO. 70/2014 (F.NO. 187/37/2014 (ITA-I))] DATED 13.11.2014	Principal Commissioner of Income-tax (Central)

5.18 The Ld. Pr. CIT observed that the aforesaid notification no. 70/2014 dt. 13/11/2014 provides for the jurisdiction of Pr. CIT(Central), Gurgaon and as per the Clause B of the notification, the Principal Commissioners/Commissioners of Income-tax(Central) or Joint Commissioners of Income-tax, subordinate to them shall exercise powers and perform the functions as stipulated in the Income-tax Act, 1961 in respect of such cases or classes of cases or such persons or classes of persons, assigned to Assessing Officers subordinate to them, under section 127 of the said Act, from the date of publication of the notification. He further observed that a conjoint reading of the notifications and provisions of the Act make it amply clear that the CIT(Exemptions), Chandigarh does not exercise any jurisdiction in respect of the persons claiming exemption under section 11 & 12 of the Act which have been assigned to the A.O. subordinate to Pr. Commissioner of Income-tax (Central), Gurgaon under section 127 of the said Act and that once an order under section 127 of the Act is passed transferring the jurisdiction of the person, the transferee Income-tax Authorities as mentioned in section 116 of the Act shall exercise all the powers and perform the functions as stipulated in the Act in respect of all the proceedings which may be commenced after the date of such order in respect of any year. The reference was made to the following case laws:

- *Hind Charitable Trust Vs. Principal Commissioner of Income Tax, (Central), Lucknow [2018] 93 taxmann.com 483(All.)*
- *Principal Commissioner of Income-tax, Pune Vs. Sungard Solutions(I) (P.) Ltd. [2019] 105 taxmann.com 67 (Bom)*

5.19 The Ld. Pr. CIT(Central), Gurugram was of the view that he shall exercise all the powers and perform all the functions as stipulated in the Act in respect of the present case which was assigned under section 127 of the Act to the A.O. viz. ACIT Central Circle-2, Chandigarh who is subordinate to Pr. CIT(Central), Gurugram and that such power includes cancellation of registration under section 12AA of the Act.

5.20 As regards to the decision of the ITAT Jaipur Bench in the case of Wholesale Cloth Merchant Association Vs. PCIT(Central), Jaipur in ITA No. 688/JP/2019 relied by the assessee, the Ld. Pr. CIT observed that the facts of the said case were different from the assessee's case for the following reasons:

a. In the case of the assessee a search action u/s 132 of the Act was carried out on 03.10.2019 and as a part of the search, besides the assessee trust its key trustees/ members and other related persons were also covered. Consequent to the search and seizure action the case of the assessee trust was centralised and transferred from the DCIT/ACIT, Circle-1(E), Chandigarh to the ACIT, Central Circle-2, Chandigarh vide order F.No. CIT(E)/CHD/Tech/ 2019-20/133 dated 14.05.2020 passed u/s 127 of the Act by the CIT(Exemption), Chandigarh. Assessment proceedings u/s 153A of the Act have been initiated in this case for AYs 2014-15 to 2019-20, which are pending. Before passing the order, Pr. CIT (Central), Gurugram conveyed his concurrence to the CIT (Exemption), Chandigarh for transfer of the case to his charge under the Assessing Officer ACIT, Central Circle-2, Chandigarh vide letter No. 5480-91 dated 29.01.2020.

b. Since the transfer was from one Assessing Officer to other Assessing Officer having offices situated in the same city i.e. at Chandigarh, as per the provisions of section 127(3) of the Act there was no requirement to give a reasonable opportunity of being heard in the matter to the assessee.

c. Subsequent to the transfer of case, notices u/s 153A was issued by the Assessing Officer to the assessee. More than one month has expired since then and the assessee has not called in question the jurisdiction of the present AO i.e. ACIT, Central Circle-2, Chandigarh. In this regard, it is worthwhile to reproduce the provisions of section 124(3) of the Act which reads as under: -

"(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

c. where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.

5.21 The Ld. Pr. CIT held that the assessee was precluded from challenging the jurisdiction of the A.O. which was transferred to him vide order dt. 14/05/2020 under section 127 of the Act and the only remedy available to the assessee was challenge such an order in independent proceedings either before higher administrative authorities as per the Act or by way of writ petition or otherwise and if no such challenge is made at initial state, issue cannot be raised in an appeal against the assessment order and that the validity of the order under

section 127 of the Act cannot be challenged in the proceedings for cancellation of registration under section 12AA(3)/12AA(4) of the Act. Reliance was placed on the following case laws:

- Smt. Jaswinder Kaur Kooner Vs. CIT(A)(2007) 291 ITR 80 (P&H)
- A.R. Antulay Vs. R.S. Nayak & Anr. on 29 April, 1988, 1988 AIR 1531, 1988 SCR Supl. (1) 1(SC)

5.22 As regards to the issue that as to whether Section 127 of the Act empowers transfers of the jurisdiction of the cases amongst the A.O. only and not amongst the Commissioner of Income Tax, as a Commissioner is not an Assessing Officer and as per Notification Nos. 52/2014 & 53/2014 and the provisions of Section 120 & 127 of the Act, the Ld. CIT(E) cannot transfer his power to cancel the registration under section 12AA of the Act to other CIT of same rank and whether for doing so there has to be proper and separate proceedings in writing and an order in writing from higher authorities such as Chief Commissioner of Income Tax (Exemption) Delhi or CBDT and an opportunity of being heard to be given to the assessee, the Ld. Pr. CIT observed that since the transferor and transferee AOs are located in the same city there was no need for giving an opportunity of being heard to the assessee.

5.23 He further observed that the notification no. 52/2014, issued by CBDT under section 120(1) and 120(2) of the Act only authorizes the Commissioner of Income Tax to exercise and perform all the functions in respect of cases or classes of cases specified therein. This notification nowhere provides that power to grant/refuse the registration or cancel the registration u/s 12AA of the Act shall also be exclusively vested in the Commissioners of Income Tax(Exemption) only and no other Commissioner or Pr. Commissioner can exercise such power. He also observed that such power shall be governed by the provisions of the Income Tax Act which specifically gives this power to Pr. Commissioner or Commissioner. Once a case is transferred under section 127 of the Act, Pr.

CIT(Central) shall exercise all the powers and perform the functions as stipulated in the Income Tax Act, in respect of the case so assigned to the A.O. subordinate to him.

5.24 The Ld. Pr. CIT observed that Section 127 of the Act is a separate code of its own, sub section 1 of Section 127 of the Act empowers the Pr. Director General or Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner, as stipulated therein, to transfer any case from one or more A.O. subordinate to him. In other words the aforesaid authority can transfer the case records of an assessee from one A.O. to another functioning under his own charge. On the contrary, Section 127(2) of the Act, empowers the foregoing authorities to transfer the cases of assessee from the A.O. from his jurisdiction to the A.O. who are not functioning under his jurisdiction i.e; who are not subordinate to such authority. He further observed that in the cases covered under section 127(2) of the Act, if the Pr. Director General or Director General or Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner of the A.O. to whom the case of the assessee is proposed to be transferred, agrees for the transfer of the case, then the transfer of an assessee's case can be made under section 127(2)(a) of the Act. However, in case there is any disagreement between such authorities, the matter is required to be referred to the Board which in turn decides the issue of transfer or the CBDFT can then authorize an Income Tax Authority by notification as stipulated in clause(b) of sub section (2) of section 127 of the Act. The Ld. Pr. CIT observed that once transfer order of case of an assessee is issued under section 127 of the Act the legal effect will be that (i) all the proceedings of the assessee under the Act in respect of any year which may be pending on the date of such order will stand transferred, (ii) all the completed assessment order of the assessee on or before the date of transfer will also stand transferred and (iii) all proceedings under the Act in respect of the assessee which may be commenced after the date of such transfer order have to be undertaken by the transferred new A.O.

5.25 As regards to the jurisdiction over the assessee's case, the Pr. CIT held that the ACIT/DCIT, Circle-1(E), Chandigarh was divested of his jurisdiction over the assessee and the jurisdiction stood transferred in favour of ACIT / DCIT, CC-2 Chandigarh by observing as under:

j. The jurisdiction over the assessee's case initially was vested with the ACIT/DCIT, Circle-1(E), Chandigarh. The vesting of jurisdiction with the said officer was in terms of the Notification No. 52 issued by the CBDT u/s. 120(1) of the Act or by Income-tax Authorities (sec. 116) who were delegated the powers to issue orders/directions vesting the jurisdiction of assessment over the authorities subordinate to it. The said Assessing Officer enjoyed jurisdiction over the appellant upto 14.05.2020. Thereafter, by virtue of order dated 14.05.2020 passed by the CIT (Exemption) u/s 127(2), the said AO i.e. ACIT/DCIT, Circle-1(E), Chandigarh was divested of his jurisdiction over the assessee and the jurisdiction stood transferred in favour of ACIT/ DCIT, Central Circle-2, Chandigarh. From the plain reading of the order u/s 127(2) dated 14.05.2020, it may be seen that the transfer of jurisdiction over the appellant's case from the charge of ACIT/DCIT, Circle-1 (E), Chandigarh to ACIT/ DCIT, Central Circle-2, Chandigarh was absolute.

k. In the circumstances when one reads the definition of "case" as set out in the explanation to section 127 of the Act, then it means that when a Chief Commissioner or Commissioner makes an order for transfer of jurisdiction in exercise of the powers conferred by section 127 of the Act, from an AO who is vested with jurisdiction by virtue of direction/order issued under sub-section (1) or (2) of section 120 of the Act to another AO who is not vested with such jurisdiction as per direction/order issued u/s. 120(1) and (2) of the Act; then by virtue of such transfer order u/s. 127 of the Act, the jurisdiction of an AO vested on an AO as per sec. 120(1) or (2) of the Act is taken away. Accordingly, after 14.05.2020, ACIT/DCIT, Circle-1 (E), Chandigarh could not have exercised any powers conferred on the AO by the Act for the purposes of any proceedings against the appellant.

l. In the circumstances therefore, as discussed above, once transfer of the case of the assessee is ordered u/s 127 of the Act, the ACIT/DCIT, Circle-1 (E), Chandigarh, who was vested with the jurisdiction by virtue of the direction or order issued under sub-section (1) or (2) of sec. 120 of the Act stood divested of the same. Further, the CIT (Exemption) was also divested of his jurisdiction and all the powers, in respect of this case by virtue of transfer order u/s. 127 of the Act.

The reliance was placed on the following case laws:

- *Ramshila Enterprises (P.) Ltd. Vs. PCIT [2016] 68 taxmann.com 270 (Cal)*
- *Principal CIT, Pune Vs. Sungard Solutions (I) (P.) Ltd. [2019] 105 taxmann.com 67 (Bom)*

5.26 The Ld. Pr. CIT observed that Ld. CIT(E) does not exercise any jurisdiction in respect of the person claiming exemption under section 11 and 12 of the Act

which have been assigned to the A.O. subordinate to Pr. CIT(Central) Gurgaon under section 127 of the Act. He also observed that once an order under section 127 of the Act is passed transferring the jurisdiction of the person, the transferee Income-tax Authorities as mentioned in section 116 of the Act shall exercise all the powers and perform the functions as stipulated in the Act in respect of all the proceedings which may be commenced after the date of such order in respect of any year and such power includes passing the order registering a trust and also cancelling the registration. He further observed that once the registration is granted without carrying any enquiry then any violation found subsequently in any year would trigger the denial of exemption of section 115TD which tax the entire accreted income upon cancellation of registration also suggests that the registration is to be cancelled from beginning itself irrespective of the year where such specific violation has been noted and that the cancellation of registration under section 12AA(3) of the Act (which has come on statute w.e.f 01/10/2004) and 12AA(4) of the Act (which has come on statute w.e.f 01/10/2014) may be given effect either from the date from which the trust was found to be violating the conditions of registration under section 12AA or w.e.f F.Y. 2010-11 when the society was granted registration.

5.27 The Ld. Pr. CIT observed that at the time of granting registration except for the said objects and purpose of the trust, the fulfillment of other conditions for continuance of registration could not be verified and it was imperative that the fulfillment of those conditions must be tested, when after grant of the registration, the violation of any condition was found or conditions of the registration itself get vitiated. Therefore the cancellation of registration was required to be made for the period when the violation was done and not from the date when the violation was detected. The Ld. Pr. CIT further observed that if the withdrawal of registration was to be done only prospectively from the date of detection of violation then the exemption already availed for the period there was violation but detected subsequently would get allowed by default

which will prompt the unscrupulous trusts to violate the conditions of registration under section 12AA of the Act with impunity till it is detected and withdrawn from a prospective date which is neither the intention of the Act nor such interpretation is permissible, which allows the mischief to succeed even for the period for which the conditions are not found to be fulfilled on ground that the registration can be cancelled only prospectively w.e.f the date of detection of violation. The Ld. Pr. CIT cancelled the registration of the assessee w.e.f F.Y. 2012-13 i.e; from the year assessee was allegedly found to violate the provisions of section 12AA(3)/ 12AA(4) of the Act. Accordingly the registration granted to the assessee under section 12AA vide order dt. 22/02/2011 was cancelled w.e.f 01/04/2012. The reliance was placed on the following case laws:

- *Navodaya Education Trust Vs. UOI in a Writ Petition No. 3468-3472/2018 (Karnataka)*
- *Vidya Sewa Sangathna Vs. CIT Hubli, 71 Taxmann.com 152 (Bangalore Trib)*
- *Indian Medical Trust Vs. Pr. CIT(Central)Jaipur [2018] 99 taxmann.com 273 (Jaipur Trib)*
- *Young Indian Vs. CIT(E), New Delhi [2019] 111 Taxmann.com 235 (Delhi-Trib)*
- *U.P. Distillers Association (IT Appeal 830 of 2017) (Del HC)*

6. Now the assessee is in appeal.

7. The main grievance of the assessee is that the Pr. CIT neither gave any opportunity of being heard nor awaited examination by a competent Authority, vitiating the order passed and that he acted merely on the allegations, suspicions and surmises in the Report of the Investigation Wing without awaiting its appraisal by a Quasi Judicial Assessing Officer.

7.1 Ld. Counsel for the Assessee reiterated the submissions made before the Ld. Pr. CIT and submitted a Chart relating to the sequence of events, copy of which is placed at page no. 1 and 1A of the assessee's paper book which read as under:

S. No.	Date	Event
1.	22.02.2011	Registration Granted u/s 12AA
2.	2012	Chandigarh University Trust granted University Status as 'Chandigarh University'
3.	03.10.2019	Search Action u/s 132 of the Act
4.	14.05.2020	Cases Centralised u/s 127 vide order dated 14.05.2020 passed by CIT(E) Chandigarh
5.	07.09.2020	Notices issued u/s 153A by the ACIT Central Circle 2 Chandigarh.
6.	19.10.2020	Return of income for AYs 2014-15 to 2019-20 filed in reply to notices u/s 153A of the Act.
7.	05.11.2020	Notice u/s 143(2) issued selecting returns filed u/s 153A for scrutiny
8.	21.11.2020	Notice u/s 142(1) issued along with detailed questionnaire.
9.	24.11.2020	SCN issued by Pr. CIT(C) for cancellation of registration u/s 12AA
10.	04.01.2021 & 01.02.2021	<p>Partial Replies filed before PCIT(C) against cancellation of registration u/s 12AA. Briefly stated, Jurisdictional Objections raised in this regard were as under:</p> <ul style="list-style-type: none"> • Action of PCIT-Gurgaon in exercising jurisdiction to invoke powers u/s 12AA(3) and 12AA(4) of the Act premised report of Investigation Wing is premature as assessment proceedings u/s 153A of the Act for AYs 2014-15 to AY 2019-20 are pending. The jurisdictional AO is parallelly conducting an investigation in the matter. The AO is yet to form an opinion after take into consideration the findings of Investigation Wing and the replies of the appellant hence proceedings initiated u/s 12AA(3) /(4) should be kept in abeyance. • That as per CBDT Notification dated 22nd October 2014 PCIT-Gurgaon had no jurisdiction u/s 12AA over the matter. <p>Additional time was sought for submitting a detailed reply on merits of allegations levied in show cause notice</p>
11.	12.03.2021	Writ Petition Filed before the Hon'ble P&H HC against SCN so issued for cancellation of registration u/s 12AA by Pr. CIT(C)
12.	17.03.2021	<p>Writ Petition disposed of by Hon'ble P&H High Court. High Court has held as under:</p> <p><i>""Limited grievance of the petitioner is that show cause notice, and Annexure P-5 has been issued to it by the authority having no jurisdiction in the matter. Besides, the notice is premature as assessment proceedings are yet to be completed in the first instance. He submits that he had already submitted a reply to the show cause notice but no response has been received. Notice of motion. At this stage, Mr Tejender Joshi, advocate accepts notice on behalf of the respondent. He' submits in case reply to the show cause notice has been received, same shall be decided by the concerned authority at the earliest in any case not later than one month. In view of above, no further adjudication of the matter is necessary. Petition is disposed of."</i></p>
13.	22.03.2021	Cancellation order passed by the Pr. CIT(C) cancelling the registration of societies u/s 12AA
14.	30.03.2021	Notice u/s 148 issued by AO for AY 2013-14
15.	30-09-2021	Proceeding's u/s 153A getting time barred {As per Section 153B(1)(a) r.w 3 rd proviso to section 153B and Notification No. S.O. 966(E) dated 27-02-2021

7.2 The Ld. Counsel for the assessee submitted that the search and seizure operation was carried out on the assessee on 03/10/2019. It was further submitted that the assessee received a show cause notice dated 24/11/2020 from the office of Pr. CIT(C) Gurgaon running into 59 pages. The allegations against the assessee in the show cause notice was about the diversion of funds of Trust to Trustees, on that ground it had been suggested that the activity of the assessee were not genuine or were not being carried out in accordance with the object of the assessee society and it had been proposed that the registration of the assessee trust be cancelled by invoking the provisions of Section 12AA(3) and 12AA(4) of the Act. It was stated that the so called allegations mentioned in the show cause notice were only the prima facie inference as drawn by the department during the post search exparte investigation by the Director of Investigation, Panchkula and the matter has still not attained finality, therefore, the cancellation of registration validly granted to the assessee by the department would further jeopardize the conduct of educational activities as carried out by the assessee.

7.3 It was further stated that it was not in doubt that the assessee trust is engaged in imparting education to students and the group's Gharuan campus was granted a University status as 'Chandigarh University' in 2012 and that the group of colleges has a combined strength of 45,000 students. The primary object of the assessee society is to impart education which is being discharged very effectively and the same finds its support from the fact that the number of students as well as number of courses are increasing in each upcoming year since the inception of the Trust.

7.4 Ld. Counsel for the Assessee on the basis of the chart of sequence of events incorporated in the former part of this order submitted that search action under section 132 of the Act had taken place in the assessee's case on 03/10/2019 and the case was centralized under section 127 of the Act vide

order dt. 14/05/2020 passed by the Ld. CIT(E), Chandigarh. Thereafter notice under section 153A of the Act was issued by the Ld. ACIT, CC-2, Chandigarh on 07/09/2020, in response to thereof the assessee filed the return of income on 19/10/2020, the A.O. issued notice under section 143(2) of the Act for selecting the return of income filed under section 153A of the Act for scrutiny on 05/11/2020 and again issued detailed questionnaire under section 142(1) of the Act on 21/11/2020. Thereafter, the Ld. Pr. CIT issued the notice for cancellation of the registration under section 12AA of the Act on 24/11/2020, in response thereto, the assessee filed partial reply dt. 04/1/2021 and 01/02/2021 raising the objections that the jurisdictional A.O. was parallel conducting the investigation in the matter and he would yet to form an opinion after taking into consideration the findings of the investigation wing and the replies of the assessee who sought additional time for submitting the detailed reply on merit of the allegations levied in show cause notice. However the Ld. Pr. CIT had not disposed off the objections raised by the assessee therefore, a writ petition was filed before the Hon'ble P&H High Court against the show cause notice so issued for cancellation of the registration under section 12AA of the Act which was disposed off on 17/03/2021 by observing as under:

" Limited grievance of the petitioner is that show cause notice, Annexure P-4 has been issued to it by the authority having no jurisdiction in the matter. Besides, the notice is premature as assessment proceedings are yet to be completed in the first instance. He submits that he had already submitted a reply to the show cause notice but no response has been received.

Notice of motion.

At this stage, Mr. Tajender Joshi, Advocate accepts notice on behalf of the respondent. He submits in case reply to the show cause notice has been received, same shall be decided by the concerned authority at the earliest in any case not later than one month."

7.5 Ld. Counsel for the Assessee submitted that the Ld. Pr. CIT without giving any opportunity of being heard after the direction of Hon'ble P&H High Court passed the order on 22/03/2021 and cancelled the registration of the assessee society granted under section 12AA of the Act, even when he himself admitted

in para 3 of his order that the assessee asked more time for furnishing the reply on merit. It was stated that the Ld. Pr. CIT passed the impugned order in haste, after the direction given by the Hon'ble Jurisdictional High Court, without giving any opportunity of being heard to the assessee. It was submitted that the provisions contained in sub section 3 of section 12AA of the Act clearly provides that the reasonable opportunity of being heard to be given to the assessee. It was contended that the Ld. Pr. CIT neither gave proper opportunity of being heard nor considered the appraisal done by the concerned A.O before cancelling the registration granted to the assessee under section 12AA of the Act. Therefore, the impugned order passed by the Ld. Pr. CIT may be set aside. Reliance was placed on the following case laws:

- *Fedco(P) Ltd. and Ors Vs. S.N. Bilgrami and Ors* reported in AIR 1960 SC 415 (SC)
- *ITO Vs. Ashoke Glass Works* reported in 125 ITR 491 (Calcutta)
- *DCIT Vs. Sahara India Financial Corporation Ltd.* reported in 183 ITD 266 (Delhi-Trib)
- *CIT Vs. Parke Davis (India) Ltd.* reported in 239 ITR 820 (AP)
- *CIT, Faridabad Vs. Motorola India Limited* reported in 326 ITR 156 (P&H)
- *Ramshila Enterprises (P.) Ltd. Vs. CIT* reported in 383 ITR 546 (Calcutta)
- *PCIT, Pune Vs. Sungard Solutions (I)(P.) Ltd.* reported in 415 ITR 294 (Bombay)
- *State Bank of India Vs. Chandra Govindji(Km.)* reported in (2000) 8 SCC 532 (SC)
- *GKN Driveshaft (India) Ltd. Vs. ITO & Ors.* reported in (2003) 1 SCC 72 (SC)
- *P.N. Eswara Iyer and Ors. Vs. Registrar, Supreme Court of India* reported in (1980) 4 SCC 680 (SC)
- *Kalinga Institute of Industrial Technology Vs. CIT* reported in 113 TTJ 906 (Cuttack)
- *Kalinga Institute of Industrial Technology Vs. CIT* reported in 336 ITR 389 (Orissa)
- *Maharashtra Academy of Engineering & Education Research Vs. CIT* reported in 133 TTJ 706 (Pune)
- *Hind Charitable Trust Vs. PCIT* in Misc. Bench No. 7201 of 2018, order dated 11.04.2018 of Hon'ble Allahabad High Court.
- *Orient (Goa) Ltd. Vs. DCIT* reported in 66 ITD 479 (Pune)

7.6 It was contended that the material which was required, was furnished before the A.O, however, the Ld. Pr. CIT did not wait for the order passed by the A.O. on merit and did not give any opportunity of being heard after the

direction was given by the Hon'ble Jurisdictional High Court to dispose off the objection and to consider the earlier written submissions furnished in part by the assessee, within one month. However, the Ld. Pr. CIT passed the impugned order in haste without giving an opportunity of being heard to the assessee within 5 days of the direction given by the Hon'ble Jurisdictional High Court, although the time available was one month.

7.7 The Ld. Counsel for the assessee drew our attention towards page no. 45 of the assessee's paper book which is the copy of the reply dt. 04/01/2021 given to the Ld. Pr. CIT, Central by the assessee wherein it has been mentioned in para 3 that the point to point reply on the allegations as made in the show cause notice will require extensive working and some more time was required.

7.8 It was further submitted that the reliance was placed by the assessee, on the decision of the ITAT, Cuttack Bench in the case of Kalinga Institute of Industrial Technology Vs. CIT in Appeal No. 86 (Cuttack) of 2007, order dated 05/10/2007 wherein the facts were similar to the assessee's case i.e; the Ld. CIT(admin) has proposed the cancellation of registration under section 12AA of the Act and proceeded on the basis of the findings of the search and seizure operation and that the search and seizure operation was the basis for conclusion of the final assessment proceedings, the action of the Ld. CIT was held as premature (copy of the said order was also furnished which is placed on the record). It was stated that the aforesaid decision of the ITAT Cuttack Bench was not overruled. It was accordingly submitted that the Ld. Pr. CIT was not justified in cancelling the registration already granted to the assessee under section 12AA of the Act without giving due and reasonable opportunity of being heard to the assessee and without considering outcome of the assessment to be framed by the A.O. on merit.

8. In her rival submissions the Ld. CIT DR strongly supported the impugned order passed by the Ld. Pr. CIT. It was further submitted that the Ld. Pr. CIT has

just acted upon the direction given by the Hon'ble Jurisdictional High Court and decided the case of the assessee within one month which was the limit given by the Hon'ble High Court. It was further submitted that the Ld. Pr. CIT issued the notice dt. 24/11/2020 and the assessee furnished the reply dt. 04/01/2021 and thereafter on 01/02/2021, so it cannot be said that sufficient time was not given to the assessee for giving the reply. It was further submitted that the Hon'ble High Court directed the Ld. Pr. CIT to dispose off the objection furnished by the assessee which had been disposed off, therefore, the directions given by the Hon'ble High Court were complied by the Ld. Pr. CIT. It was also stated that reasonable opportunity of being heard was provided to the assessee on 05/01/2021, 19/01/2021 and 01/02/2021. Therefore it cannot be said that a due and reasonable opportunity of being heard was not given to the assessee. The Ld. CIT DR furnished the copy of the order sheet which is placed at page no. 1 & 2 of the paper book furnished by the Department. It was stated that a show cause notice under section 12AA(3) / 12AA(4) of the Act for cancellation of registration granted under section 12AA of the Act on 25/02/2014 in case of the assessee was issued on 23/11/2020, in response to which the assessee furnished email dt. 05/12/2020 and requested for adjournment on the request of the assessee, the case was fixed for hearing on 05/01/2021, on the said date the counsel for the assessee appeared and furnished the submission. Again, the matter was adjourned to 19/01/2021, on the said dated the counsel for the assessee attended and requested the adjournment for 01/02/2021 which was granted, on the said date the Ld. Counsel for the assessee appeared and on his request the matter was adjourned for 10/02/2021. However the assessee approached to Hon'ble Jurisdictional High Court in writ, wherein the direction vide order dt. 17/03/2021 was given to dispose off the objections of the assessee, furnished in response to the show cause notice and the same was to be decided by the concerned authority at the earliest in any case not later

than one month. Therefore, the Ld. Pr. CIT disposed off the objections of the assessee at the earliest on 22/03/2021.

9. In his rejoinder the Ld. Counsel for the assessee submitted that first notice was served upon the assessee on 03/01/2021 for hearing on 05/01/2021 i.e; after the gap of one day, however the assessee could not contact the counsel since the time was very short and therefore the adjournment was sought and the case was adjourned to 19/01/2021 on the said dated the assessee sought time to file the copy of the case laws on the issue as to whether the Director (Exemption) had a jurisdiction or the Ld. Pr. CIT was having the jurisdiction, therefore the case was adjourned to 01/02/2021, on the said date the assessee furnished the reply and submitted that the issue of jurisdiction goes to the root of the matter, it was also submitted that the exemption claimed by the assessee can only be withdrawn by the Ld. CIT(E) and not by the Ld. Pr. CIT, therefore, the case was adjourned for 10/02/2021. However, there was no discussion on the said date and the impugned order has been passed exparte on 22/03/2021 and the registration already granted to the assessee under section 12AA of the Act was cancelled. It was pointed out that even when the case was adjourned for 10/02/2021 at 11.00 A.M no entry in the order sheet has been made for the said date, the reference was made to page no. 2 of the Departmental paper book which is the copy of the order sheet. Accordingly it was submitted that the impugned order passed by the Ld. Pr. CIT without providing due and reasonable opportunity of being heard to the assessee and without considering the order passed by the A.O. on merit, may be set aside.

10. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case it is not in dispute that the Ld. Pr. CIT passed the impugned order exparte on 22/03/2021 and cancelled the registration already granted to the assessee under section

12AA of the Act by invoking the provisions of section 12AA(3)/12AA(4) of the Act. The said provisions read as under:

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 as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution.

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

(4) Without prejudice to the provisions of sub-section(3), where a trust or an institution has been granted registration under clause (b) of sub-section(1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently it is noticed that

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

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

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

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

From the provisions contained in proviso to sub section 3 of Section 12AA of the Act, it is crystal clear that no order under this sub section shall be passed unless such trust or institution has been given reasonable opportunity of being heard.

11. As regards to the issue relating to the reasonable opportunity of being heard, the Hon'ble Apex Court in the case of SBI Vs. Chandra Govindji (supra) held as under:

In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected

11.1 Similarly in the case of P.N. Eswara Iyer and Ors. Vs. Registrar (supra) it has been held as under:

The right to be heard is of the essence but hearing does not mean more than fair opportunity to present one's point on a dispute followed by a fair consideration thereof by fair minded judges. Presentation can be written or oral, depending on the justice of the situation. Where oral persuasiveness is necessary it is unfair to exclude it and therefore, arbitrary too. But where oral presentation is not that essential, its exclusion is not obnoxious. What is crucial is the guarantee of the application of an instructed, intelligent, impartial and open mind to the points presented.

From the ratio laid down in the aforesaid referred to cases it would be clear that the reasonable opportunity of being heard is to be given and the fact that in the past, adjournments had been sought for would not be of any materiality. In the present case, the Hon'ble Jurisdictional High Court directed the Ld. Pr. CIT vide order dt. 17/03/2021 to dispose off the objections raised by the assessee and the letters furnished in the response to the show cause notice. However, the Ld. Pr. CIT, without providing any opportunity of being heard to the assessee passed the impugned order on 22/03/2021 *ex parte* which is against the provisions contained in proviso to sub section 3 of section 12AA of the Act.

11.2 In the present case the Ld. Pr. CIT himself admitted at page no. 8 of the impugned order that the show cause notice has been issued to the assessee which was based on the statement, documents, and evidences etc collected during the search and post search proceedings and also on perusal of return of income and details examined by the A.O. during the assessment proceedings. However in the present case no assessment was framed by the A.O. therefore it is not clear that how and in what manner the Ld. Pr. CIT considered the details

examined by the A.O. when the assessment had not been completed by the A.O. In the instant case the Ld. Pr. CIT while cancelling the registration of the assessee trust considered the provisions contained in section 11, 12 and 13 of the Act and also mentioned that to decide the eligibility of section 12AA of the Act subsequently after having been granted earlier, the tests to be applied are as to whether the activity of the Trust are being carried out as per the stated object and income was derived only from the property held under the Trust (Source Trust) and as to whether the Trust was applying entire receipt / income solely for the charitable purpose of the Trust as required under section 11, 12 and 13 (application test). However, the application test under section 11, 12 and 13 of the Act, could have been applied only after the outcome of the examination by the A.O. from the record. In our opinion, the A.O. only after proper examination of the assessee's record may be in a position to come to the conclusion as to whether the benefit directly or indirectly from the property or the income has been derived by the person mentioned under section 13(3) of the Act or as to whether the assessee Trust record entire receipt or expenses in the books of accounts. In the present case nothing is brought on record to substantiate that the A.O. had undertaken aforesaid exercise as regards to the provisions contained in Section 11, 12 and 13 of the Act.

11.3 On a similar issue the Coordinate Bench of the ITAT at Cuttack in the case of Kalinga Institute of Industrial Technology Vs. CIT(supra) held as under:

Registration of a trust and cancellation of the same are administrative functions, whereas assessment of the trust is a quasi-judicial function. An administrative function and quasi-judicial function cannot be mixed up together. However, the power entrusted with the Commissioner for cancellation of registration should be in consonance with the provisions. In the instant case, the Commissioner had proposed the cancellation proceeding on the basis of the finding of the search and seizure operation. Therefore, the question for consideration arose as to whether the Commissioner should have waited till the final assessment was completed or not.

The apprehension of the revenue regarding continuance of registration to be against the interest of the correct on one hand; on the other hand, the cancellation of registration meant a great block for the assessee-society/trust to

continue its activities. Therefore, despite the fact that the 'had disclosed a sizeable amount for reasons best known to it, simply should not be a basis for immediate cancellation of registration without final determination/assessment in the search and seizure proceedings. It was premature and in clear cut judicial terms it was like hanging a person before pronouncement of a judgment. Even otherwise, going through the cancellation order of the Commissioner that the basis of cancellation was the search and seizure proceeding alone. No other finding depicted in the order. The Commissioner's apprehension and argument that continuance of registration would have a bearing on the search and seizure assessment proceedings was equally vital as the other hand cancellation of registration would also have a bearing on the assessment proceedings.

No doubt both, the cancellation as well as continuance of registration would have an effect and a bearing on the assessment proceeding. It does not mean that the assessment proceeding being a quasi-judicial proceeding should be interfered with like the instant case. Rather in all fairness the Commissioner should have taken precaution to complete the assessment expeditiously and then should have arrived at the conclusion of proposed cancellation of registration. The present act of the Commissioner amounted to interruption in the assessment proceeding. The power under section 12AA(3) enunciated under the Act is an unbridled power in the hands of the Commissioner to safeguard the interest of the revenue as and when he is satisfied to do so. It does not mean that this unbridled power given by the Act after much deliberations in the Parliament should be utilized without clear cut satisfaction. As per strict judicial discipline the power of punishment is an unbridled power like the present power of cancellation envisaged under section 12AA(3). But such unbridled power should be utilized quite cautiously and consciously. Therefore, the order of the Commissioner was a premature one which had been utilized at a premature stage in haste. Therefore, said order was to be set aside and the registration of the assessee-trust was to be continued.

11.4 In the present case also the Ld. Pr. CIT without waiting the outcome of the assessment framed by the A.O. cancelled the registration already granted under section 12AA of the Act vide order dt. 22/02/2011, the said action of the Pr. CIT in the present case was a premature one particularly when no submissions were made dt. 04/01/2021 & 01/02/2021 by the assessee on merits of the case and this fact has been pointed out by the Ld. Pr. CIT in para 6 at page 5 of the impugned order wherein it has been mentioned that the submissions contained mostly the legal issues.

11.5 We therefore considering the totality of the facts as discussed hereinabove are of the considered view that the due and reasonable opportunity of being heard was not provided by the Ld. Pr. CIT to the assessee

after the direction given by the Hon'ble Jurisdictional High Court on 17/03/2021 and the impugned order passed by the Ld. Pr. CIT on 22/03/2021 exparte, against the provisions as contained in the proviso of sub section 3 of section 12AA of the Act which provides that the reasonable opportunity of being heard is to be provided before cancellation the registration. In that view of the matter the impugned order passed by the Ld. Pr. CIT (Central) is set aside and the issue is remanded back to his file to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee and also by keeping in view the findings given by the A.O. as regards to the violation of the provisions contained in Section 13(1)(c) of the Act, if any.

12. Since the issue involved in other appeals of the assesseees i.e; ITA No. 97/Chd/2021 and ITA No. 98/Chd/2021 are similar and the facts are identical, therefore our findings given in the former part of this order in respect of ITA No. 96/Chd/2021 shall apply mutatis mutandis to those appeals also.

13. In the result, appeals of the assesseees are allowed for statistical purposes.

(Order pronounced in the open Court on 31/08/2021)

Sd/-

आर.एल. नेगी
(R.L. NEGI)

न्यायिक सदस्य/ Judicial Member

AG

Date: 31/08/2021

Sd/-

एन.के.सैनी,
(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File