IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. Nos. 2168 & 2169/Mum/2021

(**निर्धारण वर्ष** / Assessment Year:2022-23)

Chamber of Indian Charitable Trusts Gala No.328-332, Linkway Estates, New Link Road, Malad (W), Mumbai-400064.	**बनाम**/ Vs.	PCIT Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAICC9627J		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri P. J. Pardiwala & Mr. Sukhsagar Syal.
Revenue by:	Shri Nihar Samal (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 04/07/2022

घोषणा की तारीख /Date of Pronouncement: 28/09/2022

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee Trust against the imposition of certain impugned conditions in the orders passed by the Ld. CIT(E), Mumbai dated 24.09.2021 and 24.05.2021, whereby the Ld. CIT(E) granted registration u/s 12AB(1)(a) of the Income Tax Act, 1961 (hereinafter "the Act") and under clause (iii) of the second proviso to Section 80G(5) of the Act

2. The facts of the case are that, the assessee is a public charitable trust that was setup on 31st August, 2020. It filed an application before the Ld. CIT(E), seeking registration u/s12AA of the Act, in Form No. 10A dated 11th November, 2020. The registration under Section 12AA

was granted to the assessee by the Ld. CIT (Exemptions), Mumbai vide order dated 31st March, 2021. Later, by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('the Relaxation Act'), clause (ac) was inserted in sub-section (1) of Section 12A of the Act with effect from 1st April, 2021. As per sub-clause (i) of clause (ac), where a trust was already registered under section 12AA prior to the amendments made by the Relaxation Act, such Trust had to file a fresh application for registration. Accordingly, in terms of the amended law, the assessee filed a fresh application before the Ld. CIT(E) for registration under section 12A(1)(ac)(i) in the Form No. 10A dated 28th August, 2021 and the registration was granted to the assessee vide the impugned order dated 24th September, 2021 in Form No. 10AC notified under section 12AB(1)(a) of the Act.

3. It is noted that the grant of registration was made subject to several conditions imposed at Serial Number 10 of the impugned order. According to the assessee, this action of Ld. CIT(E) imposing conditions while according registration to the application made u/s 12A(1)(ac) of the Act was impermissible and in excess of the jurisdiction vested in him. It is the case of the assessee that the provisions contained in Section 12AB of the Act is only procedural in nature in as much as the said provision lays down the procedure to be followed by the Ld. CIT while processing the application u/s

12A(1)(ac) of the Act within the limits of the law and therefore, the said section 12AB does not empower the CIT to impose any conditions while granting such registration. Aggrieved by the Ld. CIT(E)'s action of stipulating several conditions while granting registration has been challenged by the assessee by preferring the present appeal.

4. In the present case, it is noted that the assessee trust was already enjoying registration under section 12A of the Act. By virtue of the amendment made by the Relaxation Act, the assessee had applied for registration to the Ld. CIT as prescribed u/s 12A(1)(ac)(i), in terms of which the Ld. CIT shall pass an order in writing registering the trust or institution for a period of five years. It is noted that the Ld. CIT has granted registration on 24.09.2021 u/s 12A for a period of five years from AY. 2022-23 to AY. 2026-27. By this act of granting registration u/s 12A of the Act, it can be safely presumed that Ld. CIT was satisfied with the genuineness of the activity of the trust or institution and the objects of the trust/institution. However, in the Form 10AC issued by the Ld. CIT granting registration u/s 12A of the Act, several conditions were stipulated at Serial No. 10 of the impugned order.

5. Assailing the action of Ld. CIT, according to Ld. Sr. Counsel Pardiwala, Section 12AB of the Act does not empower the CIT to impose any conditions while granting such registration. In this regard,

he took us through the relevant provision, i.e. clause)a(of section 12AB)1(which provides as under-

> *"12AB – Procedure for fresh registration*
> *(1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—*
> *(a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;"*

6. Therefore, according to him, in terms of the above procedural provision, the Ld. CIT has to only pass an order in writing registering the Trust. The said provision does not vest any further power whatsoever with the Ld. CIT to impose any conditions while granting registration. In support of his contention, the Ld. Sr. Counsel brought to our notice that this identical issue was adjudicated by this Tribunal in the case of Saifee Burhani Upliftment Trust vs. CIT (2022) (ITA 1305/Mum/21) wherein it was held that Section 12AB of the Act does not authorise the Principal Commissioner or Commissioner to impose any conditions for grant of such registration.

7. Per contra, the Ld. CIT-DR vehemently opposed the submission of the Ld. Sr. Counsel for the assessee. He sought to justify the action of Ld. CIT(E) to have prescribed conditions for grant of registration u/s 12AB of the Act. Drawing our attention to the Form 10AC prescribed by Rule 17A of Income Tax Rule (1962) (hereinafter

"the Rules"), the Ld. CIT-DR contended that the Ld. CIT(E) has passed the order in accordance with the prescribed Form 10AC notified by the Rules. Therefore, according to him, the prayer of the assessee seeking deletion of the conditions stipulated by the Ld. CIT in Form 10AC while granting registration u/s 12AB of the Act cannot be allowed by this Tribunal. He submitted that the Tribunal itself is a creature of statute (Income Tax Act, 1961) and therefore it cannot examine the vires of the Rules (Income tax Rules, 1962) and the Forms prescribed therein. Moreover, he submitted that the Rules & the Forms are placed before the Parliament in terms of Section 296 of the Act and therefore the Form 10AC containing the stipulated conditions has been impliedly approved by the Legislature. Accordingly, the Ld. CIT-DR contended that this Tribunal doesn't have the power to examine the conditions prescribed by the Rules and the Form. So, the Ld. CIT-DR did not want us to interfere with the conditions prescribed by the Ld. CIT(E) in the impugned order passed in Form 10AC.

8. In his rejoinder, countering the contention of Ld. CIT-DR, the Sr. Counsel Pardiwala painstakingly explained the concepts of subordinate and (delegated) legislation and also elucidated the powers conferred upon this Tribunal to interfere with the prescribed Forms. Taking us through the legislative history of Sections 12A and 12AA of the Act, he first showed us that even under the erstwhile regime of registration of charitable trusts under sections 12A and 12AA of the

Act, as they stood prior to the amendment by the Relaxation Act, the Courts have time and again reiterated the legal position that the Commissioner has no power to impose any extraneous conditions while granting registration to a charitable trust. For this, he placed reliance on the following judicial pronouncements:-

- CIT vs. RMS Trust (2010) (326 ITR 310) (Mad)

> "*4. In the above referred to decision in the case of New Life in Christ Evangelistic Associations v. CIT [2000] 246 ITR 532 (Mad), the condition precedent mentioned for registration under section 12A is stated and held that the application for registration should be made in time and accounts of institution should be audited and inquiry into objects of institution cannot be made under section 12A of the Act. It was further held that at the stage of enquiry, the Commissioner could not insist upon the society showing that its income was not going to be spent for religious purposes. The amended trust-deed is not a pre-requisite, as required by the Commissioner of Income-tax and it is not also not a pre-requisite condition for registering the applicant as a trust as per the provisions of the Act. The requisition made by the Commissioner is an extrastatutory requisition. Hence, the Tribunal, by reason of the impugned order, had set aside the rejection made by the Commissioner of Income-tax and remitted to decide the issue afresh after affording a reasonable opportunity of being heard. We do not find any ground to interfere with the order of the Tribunal."*

- CIT vs. Mahavir Jain Society (2018) (402 ITR 301) (P&H)

"As regards the plea that the assessee had offered no explanation about the registration of the Society twice, it was recorded by the Tribunal that registration of a society was not a pre-condition for granting registration under Section 12AA of the Act. Thus, it was rightly concluded by the Tribunal that the CIT was not justified in rejecting the application for registration of the assessee-Society by insisting on the conditions not contemplated by the statute."

- New Life in Christ Evangelistic Association vs. CIT (2000) (246 ITR 532) (Mad)

"*The language of the section does not show that in order to be able to get registration under section 12A, there is necessity of first establishing as to how the concerned institution or, as the case may be, the society would be able to claim the exemptions under section 11 or 12. There is nothing in the language to suggest that an institution of a religious nature is precluded from getting registration under section 12A. The question of exemptions under sections 11 and 12 or, as the case may be, under section 80G, would come only when the said exemptions are claimed by the society at the time when it is assessed to tax. To consider whether the said society would be entitled to the benefits under sections 11 and 12 or, as the case may be, under section 80G would be pre-judging the issues before the grant of certificate. At the stage of grant of certificate under section 12A, the only enquiry which could possibly be made*

would be whether the society has actually made an application in time and whether the accounts of the society are maintained in the manner as suggested by the said section. Beyond that, the scope of enquiry would not go. In insisting upon the society in changing or amending its bye-laws and in refusing to consider the application on the ground that those bye-laws have not been changed so as to exclude the religious aspect from those bye-laws, the Commissioner has clearly over-stepped his limits."

- DIT vs. Seervi Samaj Tambaram Trust (2014) (362 ITR 199) (Mad)

"9. In the present case also, the Revenue only questions the trust not having commenced its activity for the grant of registration. The provision under Section 12AA of the Income Tax Act does not stipulate such a condition for grant of registration. On the other hand, Section 12AA (1) contemplates satisfaction of the Commissioner about the objects of the Trust and the genuineness of the activities and make such enquiry as may be necessary for the purpose of grant of registration. In so considering the application, the Commissioner has to give an opportunity to the assessee as provided for under proviso to sub-section (1) of Section 12AA. Under sub-section (3) of Section 12AA, the Commissioner is given power to cancel the registration, if he satisfies that the objects of such trust are not genuine or not being carried on in accordance with the objects of the trust. When such an authority is vested with the Commissioner to cancel the registration in the event of the trust not being carried on in accordance with the objects of the trust, we do

not find any ground to say that merely on the date of the application, the assessee trust had not commenced its activities, hence, registration could not be granted. It is not denied by the assessee that on the date of the application under Section 12AA, it was yet to commence its operation. But nevertheless the genuineness of the objects of the trust were not questioned by the Commissioner. Considering the fact that the continuance of registration is further a subject matter of scrutiny by the Commissioner as contemplated under Section 12AA(3) of the Income Tax Act, we do not think that the Revenue would be justified in refusing the registration at the threshold."

9. Shri Pardiwala further pointed out that, the Commissioner of Income-tax is a quasi-judicial authority and can only exercise those powers which are expressly conferred upon him under the Act. Absent such explicit conferment, the Commissioner cannot be assumed to have any implied powers. In this regard, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of Industrial Infrastructure Development Corporation vs. CIT (2018) (403 ITR 1), wherein the Court held that prior to the amendments made by the Finance (No. 2) Act, 2004 which conferred on the Commissioner the power to cancel registration, no such implied power could be inferred. The relevant extract of the judgment is as under-

"21. <u>In our considered opinion, the CIT had no express power of cancellation of the registration certificate once granted by him to the assessee under Section 12A till 01.10.2004. It is for the reasons that, first, there was no express provision in the Act vesting the CIT with the power to cancel the registration</u>

certificate granted under Section 12A of the Act. Second, the order passed under Section 12A by the CIT is a quasi judicial order and being quasi judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power.

22. Indeed, the functions exercisable by the CIT under Section 12A are neither legislative and nor executive but as mentioned above they are essentially quasi judicial in nature.

27. It is not in dispute that an express power was conferred on the CIT to cancel the registration for the first time by enacting sub-Section (3) in Section 12AA only with effect from 01.10.2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence such power could be exercised by the CIT only on and after 01.10.2004, i.e., (assessment year 2004-2005) because the amendment in question was not retrospective but was prospective in nature."

10. Referring to the above judgments (supra), Shri Pardiwala submitted that, it is by now well settled that, the Commissioner can only perform those functions and only exercise that power which is expressly conferred upon him under the Act. According to him, this position of law continued even post the Relaxation Act. Taking us through the provisions of Section 12AB of the Act, he thus submitted that when the Commissioner has not been empowered under the Act to impose any conditions, his action of otherwise imposing the impugned conditions while issuing Form 10AC granting registration u/s 12A of the Act was bad in law.

11. Further, according to Shri Pardiwala, sub-sections (4) and (5) of the Section 12AB of the Act contained the conditions under which registration granted can be cancelled. The said provisions as they stood at the time of passing the impugned order are as follows-

> *"(4) Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.*
>
> *(5) Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that—*
>
> *(a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or*
>
> *(b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,*
> *then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable*

opportunity of being heard, cancel the registration of such trust or institution."

12. Therefore, according to Shri Pardiwala, the provision as it stood at the time of passing the impugned order contemplated only four conditions, the violation of which could be a ground for cancellation of registration. These four conditions were-

i) the activities of the trust are not genuine;

ii) the activities are not being carried out in accordance with the objects of the trust;

iii) the activities are being carried out in a manner which attracts section 13(1) of the Act; and

iv) the trust has violated the provisions of any other law and the order holding that such violation has occurred, has attained finality.

13. In the light of the above, according to Shri Pardiwala, where the Parliament has expressly provided for four (4) conditions, the violation of which can lead to cancellation of registration, it was not open to the Commissioner to, in effect, legislate and prescribe several other conditions and hold the trust accountable to the satisfaction of such conditions. Inviting our attention to paras 9 and 10 of the impugned order, he showed us the several conditions which were imposed by the Ld. CIT in the order stating that the registration will be withdrawn if there are violations thereof. According to Ld.

Counsel, this action of Ld. CIT(E) directly goes against the ratio laid down by the jurisdictional High Court in the case of DIT vs. Khar Gymkhana (2016) (385 ITR 162) and Circular No. 21 of 2016 issued by the CBDT, wherein it has been stated that a registration granted to a charitable trust can only be cancelled in the circumstances set out in section 12AA (now section 12AB) and not under any other circumstance or conditions.

14. For the sake of completeness, the Ld. Sr. Counsel further submitted that section 12AB(4) of the Act has been again amended by the Finance Act, 2022 with effect from 1st April, 2022. Under the amended provisions, registration can now be cancelled where the Commissioner is satisfied that one of the six 'specified violations' has occurred. The 'specified violations' are defined in the Explanation to sub-section (4). They are as under-

> *"Explanation.—For the purposes of this sub-section, the following shall mean "specified violation",—*
>
> *(a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or*
>
> *(b) the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained*

by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not enure for the benefit of the public; or
(d) the trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

(e) any activity being carried out by the trust or institution—
(i) is not genuine; or
(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

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

15. According to Shri Pardiwala, it is worth noting that even the Finance Act, 2022 has only amended the provisions dealing with cancellation of registration and the provisions dealing with granting of registration are not amended. Be that as it may, according to him, the amendments are prospectively introduced with effect from 1st April,

2022 and cannot have any bearing on the present proceedings which relate to the order passed by the Commissioner in September, 2021.

16. Shri Pardiwala further submitted that if one accepts the contention of the Ld. CIT-DR that, a Commissioner has an implied power to impose conditions while granting registration, then it would lead to absurd consequences. According to him, not only is there no provision granting such a power, but also there is no provision in the Act which would regulate such a power. In such circumstances, it would become open to the Commissioner to impose any number of conditions on any charitable trust and then cancel the registration on the specious plea of non-adherence to such conditions. According to him, the Legislature could not have intended to grant such unbridled powers to the Commissioner. Consequently, the Commissioner may then impose different conditions on different trusts which would result in treating two similarly placed assessees unequally which would also be violative of Article 14 of the Constitution of India. According to him, an interpretation which results in absurdity and which renders a provision unconstitutional should not be adopted.

17. Further, it was pointed out by Shri Pardiwala, that cancellation of registration has grave consequences. Not only does it lead to termination of the benefits of exemption under section 11 of the Act, it could also potentially lead to the imposition of tax on accreted income under section 115TD of the Act, which provides for a levy of

tax on the fair market value of the net assets at the maximum marginal rate. Therefore, these consequences impinge on the very existence of a charitable trust and, accordingly, the provisions must receive a strict interpretation.

18. Countering the submission of the Ld. CIT-DR, that Form 10AC permits the Ld. CIT to prescribe conditions, Shri Pardiwala submitted that, while Form 10AC, as notified by the Central Board of Direct Taxes ('the Board'), does contemplate the imposition of conditions, but even then the said Form cannot override the express provisions of the Act, which as discussed above, set out only four (4) specific conditions, the violation of which can lead to cancellation of registration. In this regard, the Ld. Sr. counsel placed reliance on the following judgments, wherein it has been held that a Form notified by the Board cannot override the Act or have any effect on the operation of the statute:-

- CIT vs. Tulsyan NEC Ltd. (2011) (330 ITR 226) (SC)

> *"13. Lastly, it is immaterial that the relevant form prescribed under Income-tax Rules, at the relevant time (i.e., before 1-4-2007), provided for set off of MAT credit balance against the amount of tax plus interest i.e., after the computation of interest under section 234B. This was directly contrary to a plain reading of section 115JAA(4). Further, a form*

prescribed under the rules can never have any effect on the interpretation or operation of the parent statute."

- CIT vs. Hindustan Construction Co. Ltd. (1995) (211 ITR 535) (Bom)

"In any event, the language of the statute cannot be overridden by a form prescribed under the Rules framed under the Act."

- CIT vs. Apar Industries Ltd. (2010) (323 ITR 411) (Bom)

"26. A form provided by a rule-making authority which is a delegate of the Legislature cannot override a statutory provision. Forms are subservient to legislation. Forms are intended to facilitate the implementation of legislation. Forms cannot supplant legislation."

- CIT vs. Bombay State Transport Corporation (1979) (118 ITR 399) (Bom)

"Now, it would be permissible for the rule-making authority to provide different percentages of depreciation on the four types of assets as are mentioned in section 10(2)(vi), viz., buildings, machinery, plant or furniture as the property of the assessee. But the question is whether it is permissible for the rule-making authority in view of the language of section 10(2)(vi) to provide for a nil rate of depreciation irrespective of whether this is for a class of asset or a class of cases

based on the period for which the asset is held by the assessee. It would appear to us that there is much to be said in favour of the view that this is not within the competence of the rule-making authority. To put it in other words, a rule made, in this manner which provides for a nil percentage of depreciation on a certain class of asset, or a class of cases, to use the language of section 10(2)(vi), cannot be accepted as a rule made for carrying out the purposes of the Act; indeed, such a rule may be regarded as patently violative of the purposes of the Act, i.e., of section 10(2).”

19. Shri Pardiwala further submitted that where a delegated authority is empowered to provide for a ‘Form’, it can only provide for a ‘Form’ to carry out the purposes of the Act. It cannot expand the scope of such prescription and lay down any conditions or qualifications which are outside the realm of its powers or which are not contained in the provisions of the Act. For this, he relied on the following judgments:-

- CIT vs. Nagpur Hotel Owners Association (1994) (209 ITR 441) (Bom)

“The Supreme Court decisions referred to above are clear. <u>They specifically speak of the rules and not the form. In principle also no distinction between the form and the rule can be drawn to judge the extent of delegation under section 11(2)(a) where the language does not permit delegation of power to prescribe limitation to give notice.</u>

The conclusion is thus inevitable that the Income-tax Rules could not fix a time-limit for submitting the application in Form No. 10 under rule 17 and, therefore, the Tribunal was correct in its conclusion."

- Sales Tax Officer vs. KI Abraham (1967 AIR SC 1823)

"The decision of the question at issue therefore depends on the construction of the phrase "in the prescribed manner" in s. 8(4) read with s. 13 of the Act. In our opinion, the phrase "in the prescribed manner" occurring in s. 8(4) of the Act only confers power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. But the phrase "in the prescribed manner" in s. 8(4) does not take in the time-element. In other words, the section does not authorities the rule-making authority to prescribe a time-limit within which the declaration is to be filed by the registered dear…In Stroud's Judicial Dictionary it is said that the words "manner and form" refer only "to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it. "

- Dr. Sri Jachani Rashtreeya Seva Peetha vs. State of Karnataka (2000 AIR (Karnataka) 91)

"36. A reading of the provisions contained in Section 32 of the Central Act, makes it clear that the National Council has

been empowered to frame regulations generally for the purposes of carrying out the provisions of the Act. Clause (e) of sub-section (2) of Section 32 specifically spells out that the regulations may provide for the form and the manner in which an application for recognition is to be submitted under sub-section (1) of Section 14 of the Central Act.

39. The question therefore is as to whether the National Council was within its statutory competence to prescribe a condition precedent like the requirement of obtaining 'No Objection Certificate' from the State Government even for maintaining an application for grant of recognition in terms of sub-section (1) of Section 14 of the Central Act?

40. The answer lies in the literal and judicial meanings of the words 'manner' and the 'condition'. The content and meanings of the words 'manner' and 'conditions' are quite eloquent and clear. As per the Webster's International Dictionary, 'Manner' means 'method or mode or style'. Whereas, "Condition" means "essential quality; property, attribute, that which must exist as the occasion or concomitant of something else; that which is requisite in order that something else should take effect; an essential qualification; stipulation; terms specified; a clause in a contract, or agreement, which has for its object to suspend, to defeat, or in some way to modify, the principal obligation".

42. From the above, it is clear that while exercising the power of making regulations for providing "manner" in which application for grant of recognition is to be filed, the National Council could not have laid down a substantiate substantial condition precedent like obtaining of 'No Objection Certificate' from the State Government for entertainment of such an application, thereby defeating the very right of seeking recognition at the pleasure of the State Government.

43. Keeping in view the considerations, the National Council, for the purposes of making an application for recognition in terms of Section 14(1) of the Central Act, could have only prescribed the form, the manner and mode in which the application was required to be filed. But, in the guise of the said power it has prescribed the condition precedent for maintainability of such an application in the form of seeking No Objection Certificate from the State Government thereby virtually abdicating its statutory powers in the State Government and that too without there being corresponding obligation on the State Government for grant of such certificate by exercising its discretion within the framework of defined guidelines. Therefore, incorporation of the impugned clause (e) in the Central Regulations is clearly ultra vires the powers of the National Council."

20. In view of the aforesaid judicial precedents, Shri Pardiwala thus submitted that while prescribing a 'Form', the Board could not have made any substantive qualifications to the provisions of the Act by laying down additional conditions for grant of registration, which is not even provided in the Act. He rightly showed us that Rule 17A(5) of the Rules only provides for prescribing a 'Form' to pass an order. The relevant portion of the Rule is reproduced hereunder-

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

applicants making application as per clause (i) of the sub-rule (1).”

21. Thus, according to Shri Pardiwala, the above Rule does not empower the CIT to impose additional conditions while passing the order. Instead, the Rule only contains the machinery provision enabling the Commissioner to pass an order granting registration in terms of section 12AB of the Act.

22. Countering the submission of Ld. CIT-DR that the Rules & Form are laid before Parliament, so the same have the approval of the Parliament and therefore the vires of the same cannot be entertained by the Tribunal, Shri Pardiwala submitted that, in terms of section 296 of the Act, every Rule made under the Act has to be laid before each House of Parliament for a total period of thirty days. He submitted that what is laid before the Parliament is the ‘Rule’, and not the ‘Form’ and in the present case, the Commissioner seeks to take shelter under the ‘Form’ while imposing conditions and that ‘Form’ is not laid before the Parliament. He further submitted that, be that as it may, it is a settled position of law that even if a subordinate legislation is laid down before the Parliament, it neither acquire the force of its parent enactment nor it can be equated with parent statute and can therefore, never run contrary to it. In this regard, he drew our attention to the following decisions-

- Bharat Hari Singhania vs. CWT (1994) (207 ITR 1) (SC)

"17. Dr. Gauri Shanker submitted that inasmuch as section 46 provides for the rules being laid before both the Houses of Parliament for the specified period, it must be deemed that the Parliament has approved these rules. The consequence, according to the learned counsel, is that the rules have acquired a higher status - almost as good as that of the statute itself. It is not possible to agree. The requirement of laying before the House is one form of Parliamentary control. But by that means the rules do not acquire the status of the statute made by the Parliament….To reiterate, the rules even after they are laid before both Houses of the Parliament for the specified period, yet continue to be delegated legislation. All that may be said is that the Parliament did not find any justification to amend or modify the rules and nothing more."

- Kerala State Electricity Board vs. The Indian Aluminium Co. Ltd. (1976 AIR SC 1031) (SC) (Constitution Bench)

"In India many statutes both of Parliament and of State Legislatures provide for subordinate legislation made under the provisions of those statutes to be placed on the table of either the Parliament or the State Legislature and to be subject to such modification, amendment or annulment, as the case may be, as may be made by the Parliament or the State Legislature. Even so, we do not think that where an executive authority is given power to frame subordinate legislation within stated limits, rules made by such authority if outside the scope of the rule making power should be deemed to be valid' merely because such rules have been placed before the legislature and are subject to such

modification, amendment or annulment, as the case may be, as the legislature may think fit. The process of such amendment, modification or annulment is not the same as the process of legislation and in particular it lacks the assent either of the President or the Governor of the State, as the case may be. We are, therefore, of opinion that the correct view is that notwithstanding the subordinate legislation being laid on the table of the House of Parliament or the State Legislature and being subject to such modification, annulment or amendment as they may make, the subordinate legislation cannot be said to be valid unless it is within the scope of the rule making power provided in the statute."

- Hukam Chand vs. Prithvi Chand (1972 AIR SC 2427) (SC) (Constitution Bench)

"15. The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with Section 40 of the Act."

- Regional Transport Officer vs. Associated Transport Madras (1980 AIR SC 1872)

"The second ground pressed before us by learned Counsel for the appellant is that the rules had to be placed on the table of and approved by the legislature. This was sufficient indication, in his submission, for us to infer that retrospectively in the rule-making power was implicit. We cannot agree. The mere fact that the rules framed had to be

placed on the table of the legislature was not enough, in the absence of a wider power in the Section, to enable the State Government to make retrospective rules. The whole purpose of laying on the table of the legislature the rules framed by the State Government is different and the effect of any one of the three alternative modes of so placing the rules has been explained by this Court in Hukam Chand etc. Vs. Union of India (UOI) and Others."

- ITO vs. MCT Trust (1976) (102 ITR 138) (Mad)

  "Another contention that was urged for the department was that section 296 of the Act provided that the Central Government should cause every rule made under the Act to be laid as soon as possible before each House of Parliament for a period of thirty days and that the House had power to modify the rules. The submission was that when once the rules had been so made, then they could not be called in question. The Supreme Court has pointed out in Hukam Chand v. Union of India AIR 1972 SC 2427, 2431 as follows. That was also a case where rules could be made to carry out the purposes of that Act. It was further added that the Act of the Central Government in laying the rules before each House of Parliament would not, however, prevent the courts from scrutinising the validity of the rules and holding them to be ultra vires if on such scrutiny the rules are found to be beyond the rule-making power of the Central Government. Thus, section 296 does not add any greater force to the rules than what they ordinarily have as pieces of subordinate legislation."

- V. Verghese and Anr. vs. DCIT (1994) (210 ITR 526) (Kar)

"The mere fact that the rule had been laid before Parliament in terms of section 296 of the Act would not elevate the rule into legislation enacted by Parliament. We may usefully refer in the context to the decision of the Supreme Court in Kerala State Electricity Board v. Indian Aluminimum Co. Ltd., AIR 1976 SC 1031."

- Amar Dye Chem vs. ITO (1983) (3 SOT 384) (Mum) (Special Bench)

  "The fact rules framed in delegated legislation are placed before the Legislature and are subject to such modification, amendment or annulment as the Legislature may think fit, and for certain purposes, including for purposes of construction, are to be treated as if contained in the Act, does not in any way detract from the position that they continue to be rules subordinate to the Act, as pointed out by the Supreme Court in Chief Inspector of Mines v. Karam Chand Thapar AIR 1961 SC 838 and Kerala State Electricity Board v. Indian Aluminium Co. [1976] 1 SCR 552."

23. Shri Pardiwala further countered the submissions of Ld. CIT-DR, that the Tribunal, being a creature of statute, cannot look into the vires of the subordinate legislation. He submitted that the Tribunal has the power to test the vires of subordinate legislations and the Rules. In this regard, he referred to the decision of the **Constitutional Bench** decision of **Hon'ble Supreme Court in L. Chandra Kumar (Infra)** and Special Bench of the Tribunal in the case of Amar Dye Chem vs. ITO (1983) (3 SOT 384) wherein it was held as under-

"21. If this be the legal position, a Tribunal constituted under the Act to administer it cannot also afford to suffer or yield to a rule that is inconsistent and incompatible with or which tarnishes or makes inroads into any substantive provision of the Act. For, the very reason that the Tribunal is a creature of the statute would compel it to enforce and uphold the provisions of the statute and resist any attempt of the rule to ravage or whittle them down. As pointed out by the highest court of the land in Venkatraman's case (supra) an authority created by a statute must act under the Act. The Court observed there that if such authority acts on the basis of a provision of the statute which is ultra vires, to that extent it would be acting outside it. That being so, it would certainly not be open to the authority to pay any respect or regard to a framed rule if it goes against the spirit of the section in the statute to which the rule can only be a subordinate addenda.

22. The apprehension expressed on the side of the department that by treating a rule thus as inconsistent with the provisions of the statute or as derogatory to them and ignoring it, for such reason, for the purposes spoken by it, the Tribunal would in an indirect manner be really striking it down as ultra vires the section and thus exercising the very same powers which in Venkatraman's case (supra) and the other cases that followed and reiterated it the Supreme Court has in unmistakable terms made clear it has not, appears to us to stem from an improper appreciation of the totally divergent legal effects of an order striking down a particular rule as ultra vires and an order passed ignoring that rule as ineffective for its conflict with the parent statute. As pointed out by the Delhi High Court in P.C. Mehtra v. D.R. Khanna AIR 1971 Delhi 1 FB, when a competent court

declares a particular provision void and strikes it down, that provision would become non est and be deemed to have never existed in the statute book. There is then no scope for curing the defect which voided it by means of any amendment to that provision. In the eye of the law, it had never been born and is hence not capable of being subjected to any alteration by way of amendment. If in the administration of the statute a particular rule is found ineffective on account of it being repugnant to the parent section, and for that reason ignored, there is no erasure of the rule from the statute book, and it would still be open to the competent authority to cure its defect by necessary amendment to make it consonant with the parent section and effect. Or with the necessary amendment to the parent section too, the rule can once again be invigorated. Once the defect is cured and it is brought in line with the statute, it becomes effective again. In the former case the declaration erases the provision completely out of the book. In the latter case it is only silenced so long as it utters against the parent statute. That the Tribunal, even as a creature of the statute, has not only the right to do the latter but is even bound to do it is amply made clear by the Supreme Court in Venkatraman's case (supra) when it observed that an authority created by a statute bound to act under the statute would be acting outside the statute if it acts on the basis of a provision that is ultra vires. In other words, it would be the duty of the Tribunal to uphold and act under the statute by ignoring any rule framed in delegated legislation which strikes a contrary or repugnant note to the statute."

24. Reliance was also placed on the decision of this Tribunal in the case of Ginners & Pressers vs. DCIT (1993) (46 ITD 185) (Mum), wherein it was held as follows-

> *"The contention of the learned Departmental Representative is that the Tribunal being creature of the statute does not have the power to declare the rule ultra vires and has to proceed on the basis of the provisions contained therein. Here again, I do not find any force in the submission of the learned Departmental Representative. Rules are for carrying out the purposes of the Act and cannot overtake the power of the Legislature. An assessee cannot be denied a benefit under the statute or penalise for its Inaction to conform to the limitation prescribed by the rule-making authority, if it has not been provided under the statute and the rule to that extent can be ignored."*

25. The Ld. Sr. counsel explained that, when a provision affects substantive rights of a citizen, it must be dealt with by the Legislature alone. The same cannot be inferred from the Rules or any other subordinate legislation unless such a power is expressly conferred on the subordinate authority. In this regard, reliance is placed on the judgement of the Supreme Court in the case of Bharat Barrell and Drum Mfg. Co. Ltd. vs. The Employees State Insurance Corporation (1972 AIR SC 1935)-

> *"Such a provision affects substantive rights and must therefore be dealt with by the legislature itself and is not to*

be inferred from the rule making power conferred for regulating the procedure unless that is specifically provided for. It was pointed out that in the Constitution also where the Supreme Court was authorised with the approval of the President to make rules for regulating generally the practice and procedure of the Court a specific power was given to it by Art. 145 (1) (b) to prescribe limitation for entertaining appeals before it. It is therefore apparent that the legislature does not part with the power to prescribe limitation which it jealously retains to itself unless it intends to do so in clear and unambiguous terms or by necessary intendment."

26. Applying the ratio laid down in the aforesaid judgments to the instant case, the Ld. Sr. counsel submitted that the Act did not authorize the Commissioner to prescribe any conditions while granting registration. Even Section 12AB(4) and (5) of the Act, as it stood at the relevant time, provided only four conditions, whose violation could have led to cancellation of registration. Accordingly, he contended that the Board could not have conferred such a power, which was not granted by the statute, on itself, that too while prescribing a Form in which an order was to be passed under Rule 17A of the Rules.

27. Without prejudice to any of the above contentions, the Ld. Sr. counsel submitted that even if it is to be held that the Commissioner does have the power to impose conditions while granting registration, then also he could have only imposed one or more of those conditions

which are specifically provided for under the Act. In this regard, he submitted that only one of the conditions imposed in the impugned order, i.e. condition at para 10(m), is a condition prescribed in the Act, which reads as under-

> *"The registration so granted is liable to be cancelled at any point of time if the registering authority is satisfied that activities of the Trust/Institution/Non Profit Company are not genuine or are not being carried out in accordance with the objects of the Trust/Institution/Non Profit Company."*

28. The Ld. AR submitted that none of the other conditions are in conformity with what is prescribed in the Act and are, therefore, liable to be struck down.

29. It was further brought to our notice that the Board vide Circular no. 11 of 2022 has clarified that the conditions imposed in all the orders passed under section 12AB of the Act between 1st April, 2021 and 3rd June, 2022 shall be substituted by the following eleven (11) conditions :-

> *"1. Any income derived from property held under trust, wholly or in part for charitable or religious purposes, shall not be applied, other than for the objects of the trust or institution.*

2. The trust or institution shall not have income from profits and gains of business which is not incidental to the attainment of its objectives.

3. Separate books of account shall be maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives.

4. The trust or institution shall not apply any part of its income from the property held under a trust for private religious purposes, which does not enure for the benefit of the public.

5. The trust or institution established for charitable purpose created or established after the commencement of this Act, shall not apply any part of its income for the benefit of any particular religious community or caste.

6. No non-genuine activity shall be carried out by the trust or institution.

7. No such activity shall be carried on by the trust or institution which is not in accordance with all or any of the conditions subject to which it was registered.

8. The trust or institution shall comply with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1) of section 12AB.

9. The form for registration in Form No 10A has been duly filled in by providing all the information or documents and no false or incorrect information or documents have been provided.

10. Where the trust or institution is required to furnish application for registration under sub-clause (ii) of clause (ac) of sub-section (1) of section 12A the said trust or institution shall furnish such application within the time allowed under that clause.

11. Where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, the trust or institution shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution, within a period of thirty days from the date of the said adoption or modification."

30. To this, the Ld. Sr counsel submitted that, while the Board has, by way of the above Circular, expressly mandated the conditions that can be imposed by the Ld. CIT/ PCIT, the Board has continued to propose conditions which are not provided in the Act and therefore the said Circular was ultra vires the provisions of the Act. He pointed out that, out of the above eleven (11) conditions, only the conditions mentioned in Sr Nos. 6 & 8 find a reference in section 12AB(4) and (5) of the Act as it then stood then. The assessee therefore urged that all the other conditions must be struck down.

31. We have heard both the parties and perused the relevant provisions of law and the judicial decisions cited before us. Let us first address the initial objection of the Revenue that this Tribunal is not empowered to look into the vires of the conditions stipulated in Form 10AC notified in terms of Rule 17A of the Rules. As held by the Hon'ble Supreme Court (Constitutional Bench) in the case of L Chandra Kumar Rao vs. UOI (1997 AIR SC 1125), that even though this Tribunal is indeed a creature of the Statute, it is empowered to

test the vires of subordinate legislation and rules. The relevant portion of the judgment rendered by the Hon'ble Apex Court is as follows:

> *"The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional."*

32. Having held so, we now proceed to adjudicate the objections/grounds raised by the assessee in this appeal against the conditions stipulated by the Ld. CIT(E) in his order at Sl No. 10 passed in Form 10AC. Having regard to the rival submissions, we agree with the Ld. AR that the language employed in Section 12AB of the Act does not suggest that while granting registration u/s 12A of the Act the Ld. PCIT/CIT is empowered to stipulate any conditions subject to which registration shall be granted. We are unable to agree with the Ld. CIT-DR's contention that the Ld. CIT(E) was justified in stipulating these conditions as it was set out in prescribed Form 10AC, which at serial 10 says about *"conditions subject to which registration being granted"*. For the elaborate contentions set out by the Ld. Sr. Counsel, as already discussed above, and the case laws cited according to us, the Form prescribed by the CBDT in terms of Rule 17A cannot over-ride or expand the scope of the statutory provision

contained in Section 12AB of the Act, we agree with the Ld. AR that the subordinate/delegated legislation which is placed before the Parliament in terms of section 296 of the Act, does not elevate such subordinate legislation to the level of the law enacted by the Parliament, as held by the Hon'ble Supreme Court in the case of Bharat Hari Singhania Vs CWT (supra) and the Hon'ble Karnataka High Court in the case of V. Verghese and Anr. Vs DCIT (supra). Moreover, as rightly pointed out by the Ld. Sr. counsel, it was the relevant Rule as prescribed by the statute, i.e. Rule 17A that was placed before Parliament u/s 296 of the Act and not the Form. We note that there is no mention of conferring of power upon the Ld. CIT to stipulate conditions for granting registration in Rule 17A (already reproduced above) of the Rules. Hence, the contention of the Ld. CIT-DR, that the conditions stipulated at Sl No. 10 of Form 10AC had been placed and impliedly approved by the Parliament cannot be accepted. Even otherwise, if the said Form was indeed placed before the parliament, in view of Hon'ble Supreme Court decision in the case of Hukum Chand Vs UOI (supra), it cannot stipulate anything more than what is contained in the extant section/ provision of law as enacted by the Legislature [ie. in this case, Section 12AB of the Act]. We thus agree with the submissions of the Ld. Sr. counsel that the Ld. CIT(E) could not have been empowered to stipulate conditions while granting registration in Form 10AC, which is otherwise not expressly provided in provisions contained in Section 12AB of the Act.

33. Further, It is noted that this issue at hand, stands covered in favour of the assessee by the decision of the co-ordinate bench of this Tribunal in the case of Saifee Burhani Upliftment Trust vs. CIT (supra). In the said decision, two grounds, as extracted herein-below were raised before the Tribunal-

> *"1. That appellant is entitled to Regular Registration for 5 years as mandated under section 12 AB and DIT was wrong in granting only provisional registration to the appellant.*
>
> *2. That conditions are imposed for registration u/s 12 AB are unwarranted, unjustified and without authority of law."*

34. Insofar as the first ground was concerned, this Tribunal in that case i.e. Saifee (supra) noted the scheme of section 12A and section 12AB of the Act and concluded that if a Trust was already registered under section 12AA of the Act prior to the promulgation of the Relaxation Act, such a trust would be entitled to a regular registration and not a provisional registration, which had been granted to the assessee in that case. To that extent, the Tribunal remanded the matter back to the Commissioner to consider the application under section 12A(1)(ac)(i), i.e., regular registration as opposed to provisional registration, and further directed the Commissioner to grant registration in accordance with that provision. In so far as the second question regarding imposition of conditions was concerned, the Tribunal held that section 12AB of the Act does not authorise the Commissioner to impose any conditions while granting registration.

In this regard, the relevant para 11 of the decision is reproduced herein-below-

> *"However, in the present case, the assessee trust was already holding certificate dated 30.10.2009 issued under section 12AA of the Act. We noticed that section 12AB(1)(a) of the Act, which deals with grant of Regular Registration for a period of 5 years does not authorise the Principal Commissioner or Commissioner to impose any conditions for grant of such registration."*

35. Similar view expressed by the coordinate Bench of this Tribunal in the case of Bai Hirabai Jamshetji Tata Navsari Charitable Institution Vs CIT (141 taxmann.com 120). The relevant findings of the Tribunal are as follows:

> *"7. As a plain look at the above statutory provision shows, under the scheme of the Act, all that the Commissioner of Income Tax, or the Principal Commissioner of Income Tax- as the case may be, is empowered, in the process of exercising discretion for the registration of a charitable institution in terms of an application under section 12A(1)(ac)(i)- that the application in question admittedly is, is to "(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—(A) the genuineness of activities of the trust or institution; and (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects". Once he does so, he may take a call on grant of registration, or*

decline to grant the registration, (ii) "after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i)". The Commissioner has the authority to, upon such exercise being completed, to "(A) pass an order in writing registering the trust or institution for a period of five years; or (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard". So far as the questions of objects of the trust and genuineness of activities are concerned, these are subjective calls, and obviously, there cannot be any conditions attached to the findings thereto; either one is satisfied with the objects of the trust and about the genuineness of the activities, or one is not. The finding on this aspect cannot be conditional…

8. However, on a perusal of conditions subject to which the registration is granted, we find these conditions are with respect to the conduct of the trust and the circumstances in which the registration granted to the appellant can be cancelled. These are the matters which are regulated by the specific provisions of law, and the observations of the learned Commissioner, no matter how well intended, cannot have the independent force of law. If the conditions set out in the registration order have the sanction of the law, irrespective of these conditions being attached to the registration of the trust or not, the law has to take its course, but when the scheme of the law does not visualize these conditions being part of the scheme of the registration being granted to the applicant trust, learned Commissioner

cannot supplement the law by laying down these conditions either.

9. Learned Commissioner ought to have realized the limitation of the role he plays when the registration of trust, under section 12A, comes up for his consideration. As we have seen earlier, while looking at the scheme of section 12AB, there is a limited role that the learned Commissioner could have played under section 12AB(1). It was open to him to "call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—(A) the genuineness of activities of the trust or institution; and (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects" and then proceed to take a call on whether to grant the registration under section 12A or not "after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i)". As to when and how should cancellation of the registration be made, it is not for the learned Commissioner to decide at the point of time of granting the registration. There are specific provisions of law which govern the cancellation of registration, and these provisions can neither be diluted or supplemented by the learned Commissioner. The consequences of any lapses by the assessee, even with respect to the points covered by these conditions, cannot simply be, or confined to be, cancellation of the registration, as is stated in the impugned, unless the law specifically so provides. To give a simple example, learned Departmental Representative cannot even seriously argue

that if the appellant fails to quote PAN in its communication with the income tax department, this lapse per se can be reason enough for the cancellation of registration under section 12A, but then, going by the words of the impugned order, that is what the impugned order states. That brings home the short point that no matter what the conditions attached to the registration granted under section 12A state, these conditions are to be tested on the scheme of the law, and, if that be so- as indeed is the case, these conditions serve no purpose in law. We are therefore unable to see any legally sustainable merits in the approach adopted by the learned Commissioner.

10. Learned Commissioner's guidance about the conduct of the assessee- which is what in substance, the conditions attached to the registration, signify, cannot be treated, no matter how well intended is it, as a condition attached to the registration, nor this fact per se will govern, or limit, the consequences of lapses in this regard. While the assessee will be well advised to bear in mind and carefully examine his conduct vis-à-vis the points made by the learned Commissioner, these observations cannot be construed as legally binding in the sense that non-compliance with such guidance will not have any consequence, unless and beyond what is specifically envisaged by the statute- such as in section 12AB(4) and (5) as indeed elsewhere, nor the implications of not doing what is set out in the conditions will remain confined to the cancellation of registration when the law stipulates much harsher consequences. To this extent, and in these terms, the legal effect of these conditions, as visualized in the conditional grant of registration dated 24th September 2021, stands vacated."

36. Respectfully following the above decisions (supra), we hold that the Ld. CIT(E) could not have stipulated conditions on his own (other than what is stipulated in law) while granting registration under section 12AB of the Act as the scheme of the law does not visualize these conditions being part of granting of registration to charitable trusts. Accordingly, the grounds raised in the appeal by the assessee stands allowed.

37. We may however clarify that our above findings vacating the action of Ld. CIT(E) of stipulation of conditions in the impugned order, will not and cannot have any consequence, in case the assessee is at any time found to be at fault for the violations specified in Section 12AB(4) and (5) of the Act, which implications may lead to cancellation of registration or any other harsher consequences, as may be stipulated in law.

38. Now we take up the appeal in ITA No. 2169/Mum/2021. It is noted that, the assessee trust had submitted an application u/s 80G of the Act and vide order dated 28th May, 2021 in Form No. 10AC, the Ld. CIT(E) granted the registration under clause (iii) of the second proviso to section 80G(5) of the Act. It is noted that the Ld. CIT(E) again imposed conditions while passing the impugned order. Being aggrieved by the Ld. CIT(E)'s action of stipulating several conditions while granting registration u/s 80G, the assessee is in appeal before us.

39. It was brought to our notice by the Ld. Sr Counsel appearing on behalf of the assessee that, clause (vi) of Section 80G of the Act provided that the Trust has to be approved by the PCIT or CIT. He thereafter invited our attention to the provisos the said Section which lays down the form and manner for the PCIT or CIT for granting of approval. Taking us through the same, the Ld. AR submitted that the Ld. PCIT / CIT were not conferred with any powers to impose conditions while granting provisional approval u/s 80G and therefore urged that these conditions be struck down. He pointed out that, similar to section 12AB, the second proviso to section 80G(5) only grants the Commissioner the power to grant registration. And no power to impose any conditions has been conferred on the Commissioner. For this, Shri Pardiwala invited our attention to clause (iii) of the second proviso, which reads as under-

> *"(iii) where the application is made under clause (iv) of the said proviso, pass an order in writing granting it approval provisionally for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the institution or fund"*

40. For completeness, Shri Pardiwala further showed us that section 80G lays down six (6) conditions, the violation of which can lead to the cancellation of the approval. The said conditions are contained in the second proviso to section 80G(5) and read as under-

(ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—

(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of such institution or fund; and

(B) the fulfilment of all the conditions laid down in clauses (i) to (v);

(b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of sub-clause (a),—

(A) pass an order in writing granting it approval for a period of five years; or

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

41. Further, the conditions specified in clauses (i) to (v) read as under-

"(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23AA) or clause (23C) of section 10 :

Provided that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if—

(a) the institution or fund maintains separate books of account in respect of such business;
(b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and
(c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;

(ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(iv) the institution or fund maintains regular accounts of its receipts and expenditure;

(v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 253 of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognised by the Government or by a University established by law, or affiliated to any

University established by law, or is an institution financed wholly or in part by the Government or a local authority;"

42. Referring to the above, Shri Pardiwala submitted that, in law, an approval under section 80G can only be cancelled if the activities of the Trust are not genuine or the conditions specified in clauses (i) to (v) above are violated. He pointed out that none of the conditions imposed in the impugned order are in conformity with the six (6) conditions mentioned in the second proviso to section 80G(5) of the Act.

43. It was submitted that Circular no. 11 of 2022 has also retrospectively modified the conditions imposed in all orders passed under section 80G of the Act between 1st April, 2021 and 3rd June, 2022. The said circular provides for the following (4) four conditions-

"1. The registration granted under section 12AB or approval granted under clause (23C) of section 10 has not been cancelled by the Principal Commissioner or Commissioner for specified violations as mentioned in sub-section (4) of section 12AB or under fifteenth proviso to clause (23C) of section 10.

2. The form for approval in Form No 10A has been duly filled in by providing all the information or documents and no false or incorrect information or documents have been provided.

3. The registration granted under section 12AB or approval granted under clause (23C) of section 10 has not been cancelled by the Principal Commissioner or Commissioner as authorised by the Board for non-compliance of conditions mentioned in rule 2C or rule 17A of the Income-tax Rules, 1962.

4. Where the institution or fund is required to furnish application for approval under clause (ii) of first proviso to sub-section (5) of section 80G, the said institution or fund shall furnish such application within the time allowed under that clause."

44. Correlating the above conditions with the provisions of Section 80G, the Ld. Sr. counsel submitted that only the first condition mentioned in the aforesaid Circular is in accordance with section 80G of the Act. Therefore, without prejudice to any of the aforesaid submissions, even if the Commissioner can be said to have the power to impose conditions, then also it was only the first condition of the aforesaid Circular that could at the most be sustained and under any circumstances, the other conditions ought to be struck down. All other submissions made by the Ld. Sr. counsel on the correctness of the order passed under section 80G was *mutatis mutandis* to the submissions made in relation to the grounds raised in the appeal filed in ITA No.2168/Mum/2021 against the order u/s 12AB of the Act. Per contra, the Ld. CIT-DR was unable to point out any provision in the Act or Rule which could allow the Ld. PCIT/ CIT to prescribe/impose

the conditions other than what is stipulated in statute while granting approval u/s 80G of the Act.

45. Therefore, following our conclusions drawn while adjudicating the appeal in ITA No.2168/Mum/2021 holding that the Ld. CIT(E) did not enjoy the power to prescribe/impose any conditions on his own (other than what is stipulated in law) while granting the registration u/s 12AB of the Act (supra), we similarly hold that the Ld. CIT(E) lacked jurisdiction to impose any conditions on his (other than what is stipulated in law) while granting the approval u/s 80G of the Act as well. Accordingly, this appeal also stands allowed. Needless to say, any violations of the conditions prescribed by the statute, will have consequence as sanctioned by law and our observation set out in Para 37 above shall apply with equal force in the context of this registration accorded by the Ld. CIT(E) u/s 80G of the Act as well.

46. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open court on 28/09/2022.

Sd/-	Sd/-
(GAGAN GOYAL)	**(ABY T. VARKEY)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 28/09/2022.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**