

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA No. 396/ Jodh/2019  
(ASSESSMENT YEAR- 2019-20 )**

M/s. Mahadevia Charitable Trust C/o Ahemdabad Dental College And Hospital, Vevekanand Society, Opp. Hare Krishna Mandir, Raanchodpura Road Bhadaj, Ahemdabad	Vs	The Pr. CIT (Central) Jaipur
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AAATH 6812C</b>		

<b>Assessee By</b>	Shri P.C. Parwal, CA
<b>Revenue By</b>	Smt. Alka Rajvanshi Jain (CIT-DR)
<b>Date of hearing</b>	03/11/2022
<b>Date of Pronouncement</b>	25 /01/2023

**ORDER**

**PER B.R. BASKARAN, AM**

The assessee has filed this appeal challenging the order dated 27-08-2019 passed by Ld PCIT (Central), Rajasthan cancelling the registration granted to the assessee u/s 12AA of the Act. The Ld PCIT (Central) has also mentioned

that the cancellation shall take effect retrospectively from 1.4.2009 u/s 12AA(3) and from 1.10.2014 u/s 12AA(4) of the Act.

2. The appeal is barred by limitation by 14 days. The assessee has filed a petition requesting the bench to condone the delay. It was explained that there was delay in getting legal advice and accordingly, it is prayed that the delay may be condoned. We have heard the parties on this preliminary issue. Having regard to the submissions made by the assessee, we are of the view that there was reasonable cause for the assessee in filing this appeal belatedly. Accordingly, we condone the delay and admit the appeal for hearing.

3. The facts relating to the case are set out in brief. The assessee herein is a charitable trust providing educational services. It runs a dental college under the name "Ahmedabad Dental College & Hospital". The assessee was granted registration u/s 12A of the Act on 22.3.1996 subject to certain conditions. One of the conditions is that the assessee trust should adhere to the provisions of sec.13 of the Act.

4. The revenue carried out search and seizure operations in the hands of the assessee and other connected persons on 26.8.2015. Consequent thereto, the search assessments were completed u/s 153A of the Act. It is the case of the revenue that during the course of search proceedings and post search assessment proceedings, certain incriminating documents were unearthed. They revealed that the assessee is wholly controlled by Sri B R Agarwal and family and the

trust is being managed with the sole purpose of providing personal benefits to them, which are in violation of sec. 13(1)(c) r.w.s 13(3) of the Act. The assessing officer completed the assessment, wherein he has stated that there are various instances of application of property of the assessee trust for the benefit of the persons specified in sec. 13(3) of the Act. The AO had listed out the instances of transfer of money to the B R Agarwal and family, which were in the form of building maintenance charges, equipment repair charges, salary payments etc. In the assessment proceedings, the AO denied exemption u/s 11 of the Act to the assessee.

5. Based on the findings given in the assessment order, the Ld PCIT (Central) took the view that the registration granted to the assessee u/s 12A of the Act is liable to be cancelled as per the provisions of sec.12AA(3) as well as sec.12AA(4) of the Act. Accordingly, the Ld PCIT (Central) issued show cause notice to the assessee, vide his notice dated 21.06.2019, seeking explanation from the assessee as to why the registration granted u/s 12A should not be cancelled as per the provisions of sec.12AA(3) and 12AA(4) of the Act. In response thereto, the assessee furnished a detailed reply, vide its letter dated 25.7.2019, wherein the assessee contended that various payments were made to the persons specified in sec. 13(3) towards the services received from them and further the payments have been made only at market rates. Accordingly, it was contended that there is no violation of the provisions of sec. 13 of the Act. It

was also contended that the assessee is carrying on its activities in accordance with the objects of the trust only. Accordingly, it was contended that the registration given to the assessee should not be cancelled u/s 12AA(3) or sec. 12AA(4) of the Act.

6. However, the Ld PCIT (Central) expressed view that there is no proof for receipt of services like building maintenance or equipment repair, which were claimed to have been performed by the concerns belonging to the related persons. The Ld PCIT also observed that the said concerns have not performed such kind of services to third parties. He also expressed the view that the payments of salary to related parties are not justified. In effect, the Ld PCIT (Central) took the view that the assessee did not prove the receipt of services at all. He further noticed that the assessee has given funds to other charitable trusts, which are sister concerns of the assessee and their AO had rejected the claim of exemption u/s 11 of the Act in their hands also. Accordingly, the Ld PCIT (Central) concluded as under:-

*“15. In view of the discussion made above, I am satisfied that activities of the assessee trust M/s Mahadevia Charitable Trust are not genuine and are not being carried out in accordance with the objects of the assessee-trust. Therefore, the registration of the assessee-society u/s 12A is hereby cancelled by invoking section 12AA(3) with effect from 1.4.2009, i.e., financial year from which irregularities in the functioning of the assessee have come to notice. I am also satisfied that the activities of the assessee are being carried out in a manner that the provisions of*

*Sections 11 & 12 do not apply to exclude the income of the assessee-society due to operation of Section 13(1). Accordingly, the registration of the assessee-society u/s 12A is hereby cancelled by invoking section 12AA(4) with effect from 1.4.2014, i.e., the date from which this sub-section has come into force.”*

7. Aggrieved by the order passed by Ld PCIT (Central), the assessee has filed this appeal challenging the order passed by him.

8. At the time of hearing, the ld A.R raised two legal grounds, viz.,

(a) Whether the PCIT (Central) has the authority to cancel the registration in the facts and circumstances of the case?

(b) Whether the registration can be cancelled with retrospective effect, even if it is assumed that there was authority for him?

9. With regard to the first legal issue, it is the submission of Ld A.R that the jurisdiction to grant/withdraw registration u/s 12AA of the Act lies with the Ld Commissioner of Income tax (Exemption), Jaipur (CIT(E)). It is submitted that the CBDT has designated the CIT(E) as the authority to grant registration in all the cases of persons in the territorial area of the State of Rajasthan, vide Notification No.52/2014 and 53/2014 both dated 22.10.2014 under various sections of sec.10, sec. 11, sec.12, sec.13A and sec.13B of the Act. It was submitted that the case of the assessee was transferred to PCIT (Central) for carrying out the assessments only, consequent to the centralization of cases subjected to search. Accordingly, it was contended that the impugned cancellation order passed by Ld PCIT(Central) is not valid, since he has no

jurisdiction with regard to the registration granted or cancellation of the registration u/s 12AA of the Act. In support of this contention, the Id A.R placed his reliance on the decision dated 06-01-2021 passed by the Jaipur bench of Tribunal in the case of Wholesale Cloth Merchant Association vs. PCIT (Central) in ITA No. 688/JP/2019.

10. We heard the parties on this legal issue and perused the record. We notice that an identical legal issue has been considered by this bench in a group case, viz., Pacific Academy of Higher Education and Research Society (ITA No. 04/Jodh/2020) and this issue has been decided in favour of the assessee in line with the decision taken in the case of Wholesale Cloth Merchant Association (supra). For the sake of convenience, we extract below the relevant discussions made and the decision taken on this legal issue:-

“4. It is further submitted that the jurisdiction to grant/ withdraw exemption u/s 12AA lies with the CIT(E), Jaipur. The Pr. CIT (Central) Rajasthan, Jaipur has no jurisdiction to withdraw the exemption. This is because CBDT in pursuance to Sec. 120(3) vide Notification No. 52/2014 and 53/2014 both dated 22.10.2014 has given power to CIT (Exemption) Jaipur for the state of Rajasthan for all cases of persons in the territorial area specified in column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and

section 13B of the Income-tax Act, 1961 and assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014. Thus, from the 22 October 2014, CIT (Exemption) has been constituted separately for these class or type of cases. Hence, the case of the assessee falls in the jurisdiction of CIT (Exemption). Copy of Notification is enclosed (**PB 179-183**).

The said notification do not provide that the CIT(E) can transfer its power or jurisdiction to other CIT or Pr. CIT. In the said notification the CBDT has authorized the CIT(E) to issue order in writing for the exercise of the powers and functions by the Add. CIT or JCIT or TRO who are subordinate to him, and has authorized the Add.CIT to issue order in writing for the exercise of the powers by the Assessing Officer who are subordinate to him. In section 124 Jurisdiction of Assessing Officer has been given, not the Jurisdiction of Commissioner. Further in Sec. 127 power of transfer of cases has been given and transfer of cases is given from one Assessing Officer to other Assessing officer not from CIT to CIT.

Hence the registration u/s 12A can be withdrawn only by the Prescribed Authority who is empowered to grant the same and by the Notification No 52/2014 and 53/2014 dt. 22.10.2014 the CIT(E) is empowered for the same. The Pr. CIT has no power to cancel and

therefore order passed by him cancelling the registration is without jurisdiction and thus not sustainable. In this connection reliance is placed on the decision of ITAT Jaipur Bench in the case of **Wholesale Cloth Merchant Association vs. Pr. CIT (Central), Jaipur (Rajasthan) ITA No. 688/JP/2019 vide order dated 06/01/2021 (PB 184-240)** where the order passed by Pr.CIT(Central), Jaipur withdrawing the registration u/s 12AA(3)/12AA(4) of the Act after detailed discussion in para 11 to 21 of its order, held that the Pr. CIT had no jurisdiction to pass order u/s 12AA(3) & 12AA(4) and accordingly quashed the order of cancellation.

In view of above the order of Ld. PCIT withdrawing the registration u/s 12AA of the Act is bad in law and the same be quashed.”

.....

6.2 First of all, we would like to deal with legal objection raised by the assessee with regard to the jurisdiction of Pr. CIT(Central) in issuance of show cause notice and in passing of consequent order. In this respect, our attention was drawn towards Section 120(3) and CBDT Circular No. 52/2014 and 53/2014 both dated 22/10/2014. As per provisions of Section 120(3) of the Act, the criteria of Jurisdictions of Income Tax Authorities has been provided by the CBDT and as per provisions of Sec. 120(3) of the Act, there are four criteria for deciding the jurisdiction and the same are reproduced below:

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorized by it may have regard to any one or more of the following criteria, namely: —

- (a) territorial area;
- (b) persons or classes of persons;
- (c) incomes or classes of income; and
- (d) cases or classes of cases.

Therefore, in furtherance of the said provisions, the CBDT vide notification Nos. 52/2014 and 53/2014 both dated 22/10/2014 had given powers to Id. CIT(Exemption) Jaipur for the State of Rajasthan for all cases of persons in the territorial area specified in column (4), claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Act and assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014. Thus, in this way from Oct. 2014 Id.CIT(Exemption) has been constituted separately for these class or type of cases. Hence, the case of the assessee admittedly falls in the jurisdiction with the Id. CIT (Exemption).

6.3. We found from perusal of the record that a search and seizure operation has been carried out in the case of Pacific Group of Udaipur on 26.08.2015. Warrant of authorization under section 132(1) of the Act was

also issued and duly executed in respect of the assessee trust being part of the Pacific Group. The Notification referred above does not provide that Id. CIT (E) can transfer his power or jurisdiction to other CIT or PCIT. In the said notification the CBDT has authorized the CIT (E) to issue order in writing for the exercise of powers and functions by the Addl. CIT or JCIT or TRO who are subordinate to him, and has authorized the Addl. CIT to issue order in writing for the exercise of powers by the Assessing Officer who are subordinate to him. In section 124 jurisdiction of Assessing Officer has been given, not the jurisdiction of Commissioner. Further, in section 127 power of transfer of cases has been given from one Assessing Officer to other Assessing Officer and not from CIT to CIT. Therefore, registration under section 12A or approval under section 10(23C)(vi) can be withdrawn only by the prescribed authority who is empowered to grant the same. Notification No. 52/2014 and 53/2014 dated 22.10.2014 only empower the CIT (E) to withdraw the registration/approval. The Pr. CIT has not been given power to withdraw/cancel the registration/approval.

6.4 Further, in the said notification, there is no mention where CIT(E) can transfer to other CIT or Pr.CIT. The said notification of CBDT has authorized the CIT(E) to issue order in writing for the exercise of the powers and functions by the Addl.CIT or JCT or TRO who are

“subordinate” to them and has authorised the Addl.CIT to issue order in writing for the exercise of the powers by the Assessing Officer who are the subordinate to them. In section 124 of the Act, the jurisdiction of Assessing Officer has been given and not ‘Jurisdiction of Commissioner’.

6.5 Further in Sec. 127 of the Act, the power of transfer of cases is given from one Assessing Officer to another Assessing officer not from CIT to CIT. For ready reference, we reproduce Sec. 127 of the Act, which provides as under:

*127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.*

*(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—*

*(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose*

*jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;*

*(b) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.*

*(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.*

*(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.*

*Explanation.—In [section 120](#) and this section, the word "case", in relation to any person whose name is specified in any order or direction issued there under, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.*

6.6 Sec. 120 (4) to 120(6) also provide the work assigned to the subordinate officers which is reproduced below:

*(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,—*

*(a) authorise any Principal Director General or Director General or Principal Director or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;*

*(b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.*

*(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.*

*(6) Notwithstanding anything contained in any direction or order issued under this section, or in [section 124](#), the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification.*

We also observe that as per Sec. 120(6) of the Act, the CBDT by its Notification No. 52/2014 and 53/2014 dated 22.10.2014 has given power to CIT(Exemption) Jaipur for the State of Rajasthan for all cases of persons in the territorial area specified in column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Act and assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014. Thus firstly as per above notification and provisions of Sec. 120 and 127 the Id. CIT(Exmp.) cannot transfer or hand over or given his work or power or duties to the other same rank of CIT at all to cancel the Registration u/s 12AA. However, in case, if it is necessary to do so then there has to be proper proceedings in writing. As there has to be some order in writing from higher authorities i.e. from Chief Commissioner of Income Tax (Exmp.) Delhi or CBDT in writing and an opportunity of being heard is to be given to the assessee before

transferring the case whereas all these are absent in the present case and nothing has been demonstrated by the department.

6.7 We further observe that Sec. 127 of the Act empower to transfer cases among Assessing Officers but not to Commissioners of Income Tax as CIT is not an Assessing Officer. In our view, to pass an order u/s 12A for registration or cancellation is not within the jurisdiction or power of an Assessing Officer. Hence registration u/s. 12A can be withdrawn only by the 'Prescribed Authority' who has been empowered to grant the same and by the Notification dated 22.10.2014 the Id.CIT(Exmp.) has empowered for the same, hence the Pr.CIT (Central) cannot cancelled the same.

6.8 In assessee's case, the case u/s 127 was transferred to the Central Circle for limited purpose of Co-Ordinate assessment admittedly which do not mean that the Section 12A proceeding has been transferred to the Pr. CIT(Central) Automatically, when both the proceedings are separately or independent and also has to be done or conducted by the different rank Authorities. More particularly when for the purpose of Exemption cases or 12A registration a Separate Commissioner of Income Tax has been Authorized for whole of Rajasthan by the CBDT by its Notification dated 22.10.2014. In support of the above contention, the Id AR has relied on the

decision in the case of **Dilip Tanaji Kashid vs. M.I. Karmakar PR. CIT& ANR. (2018) 304 CTR 0436 (Bom)** wherein It has been held

*Transfer of jurisdiction—Power of competent officers—Centralization of case—Dissenting note—Assessee was issued notice enshrining proposal for transfer of his case from Kolhapur to Mumbai, so as to centralise cases relating to D.Y. Patil Group—Assessee objected that such notice did not referred to any agreement being reached by officers of equal rank at Mumbai and Kolhapur—These objections were however overruled and assessee’s case was transferred—High Court quashed purported transfer u/s 127—Held, “Centralisation Committee” which took decision for transfer of jurisdiction, is not authority envisaged u/s 127(2)—Counter-affidavit filed on behalf of Revenue does not disclose that there was any agreement between authorities of equal rank, as a pre-condition for invoking powers u/s 127—“Absence of dissenting note” from officer of equal rank who has to agree to proposed transfer would not constitute agreement, envisaged u/s 123(2)(a)—Assessee’s petition allowed. “*

Following the above said decisions rendered by this bench and co-ordinate bench, we hold that the PCIT (Central) does not have power to cancel the registration granted u/s 12A of the Act. Accordingly, the order passed by him is nullity in the eyes of law and accordingly, we quash the same.

11. We also noticed that the registration has been cancelled by Ld PCIT (Central) with retrospective effect from 1.4.2009. Since we have quashed the impugned order, this issue becomes academic. Nevertheless, we notice that the question as to whether the registration could be cancelled with retrospective effect has also been considered and decided in the case of Pacific Academy of Higher Education and Research Society (supra) as under:-

“6.9 We further observe that the Id. Pr.CIT (Central) cancelled such approval from A. Y. 2014-15, though the assessee has already assessed from A.Y. 2014-15 under section 143(3)/148 of the Act. It is also settled legal position of law that Registration cannot be cancelled from retrospective effects. In this regard, the Id AR has relied on the decision of the Hon'ble Supreme Court in case of **State of Rajasthan and others vs Basant Agrotech India Ltd. and other 388 ITR 81(SC)** wherein it has been decided that

*“only a legislation can make a law retrospective and prospectively subject justifiability and acceptability within the constitutional parameters. The subordinate legislation can be given with retrospective effect if a power in this behalf is contained in the principle Act. In the absence of such conferment of power the Government the delegated authority has no power to issue a notification with retrospective effect. Therefore, in the absence of any provision contained in legislative Act the delegatee cannot make a delegated legislation with retrospective effect. When no power has been conferred by the act on the competent authority to withdraw the approval retrospectively, then the withdraw of the approval u/s 10(23C)(vi) of the Act can only be prospective. Hence such of approval gentled under section 12A from back date are also not according to the law and facts of the case and at the worst after the year of notice it can be done if any.”*

In the case of **Indian Medical Trust V/s PCIT (Central) 2019 (6) TMI 996 (Rajasthan)** it has been held that:

*28. Indisputably, the order dated 16th Jan, 2018, made by the Commissioner of Income Tax thereby canceling the registration granted under section 12A and withdrawing the approval given under section 10 (23C) (v) & 10 (23A) (via) of the Act of 1961, to the petitioner Trust with*

*retrospective effect from the date of 01st April, 2006, was arbitrary in the face of the provisions of the Act of 1961; and therefore, cannot be deemed to be in consonance with any possible interpretation to be valid or legal. This court is of the opinion that the provisions of section 12AA (3) of the Act of 1961, empowers the Commissioner of Income Tax to initiate steps for cancellation of the registration of a Trust, but, the legislation had no intention of giving the said provision, a retrospective effect. For in such a situation, the same would have been clearly specified in the said provision. Interpretation of the said provision has to be harmonious rather than being prejudicial to the institutions as it would instigate and create a fear of the Income Tax Department. I find support in my opinion from the following cases with reference to the issue of cancellation or withdrawal of registration with retrospective effect:*

**In the case of Oxford Academy for Career Development Vs. Commissioner of Income Tax: (2009) 315 ITR 382, it was thus observed that:**

*16. In the instant case, the petitioner is a registered society, which was earlier granted registration under Section 12A on 1-4-1999. A survey was conducted at the business premises on 20-9-2002, from where documents were impounded. The registration was cancelled for the assessment years 2000-01 and 2001-02 for the reasons that the surplus was quite heavy. In the impugned order, it was mentioned by the CIT that there was an unusual huge margin and the petitioner was engaged in the commercial activities rather than charitable. As per the balance-sheet, huge amount from the student was charged. The profit margin embodied in the charges taken from the students are so huge and it proves the profit motive of the petitioner. The funds were misused by the president and his family members of the petitioner.*

*20. The expression "charitable purpose" is defined in Section 2(15) of the IT Act, 1961. It is of inclusive nature as revealed in the language. Earlier the words "the advancement of any other object of general public utility" in this definition were succeeded by the words "not*

*involving the carrying on of any activity for profit". These words were omitted by the Finance Act, 1983, w.e.f. 1st April, 1984.*

*26. In the light of the above discussion and by considering the totality of the facts and circumstances of the case, we hold that the order dt. 9th March, 2004, passed by the CIT (Annex. No. 15 to the writ petition) as per the then law is without power and jurisdiction and therefore, it is liable to be set quashed.*

*27. Accordingly, the impugned order dt. 9th March, 2004, passed by opposite party No. 2 withdrawing/rescinding the order granting registration on 1st April, 1999, to the petitioner's society under Section 12A of the Act, is quashed. Consequently, the registration granted to the petitioner's society on 1st April, 1999, stands restored for the assessment years under consideration."*

..... Registration u/s 12A cannot be made from retrospective effect. Even otherwise we are also of the view that no retrospective cancellation could be made as neither in the Sec. 12AA(3) nor in Sec. 12AA(4) it has been provided or is seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively no cancellation for the past years could be ordered. In this regard, the Hon'ble Madras High Court on the question as to whether the cancellation will operate from a retrospective date has dealt in the case of **Auro Lab vs. ITO (2019) 411 ITR 0308 (Mad) 20** wherein it was held as under:

*The amendment to Section 12AA(3) is prospective and not retrospective in character. The courts reasoned that even when the*

*parliament had plenary powers to enact retrospective legislation in matters of taxation, the amended section is not seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively, the cancellation cannot operate from a past date.*

*21. On the third question of the effective date of operation of the cancellation order, it was held that the cancellation will take effect only from the date of the order/notice of cancellation of registration. Since the act of cancellation of registration has serious civil consequences and the amended provision is held to have only a prospective effect the effect of cancellation, in the event the pending Tax Appeal is decided in favour of the Revenue, will operate only from the date of the cancellation order, that is 30.12.2010. In other words, the exemption cannot be denied to the petitioner for and up to the Assessment Year 2010-11 on the sole ground of cancellation of the certificate of registration. Also refer **Indian Medical Trust v/s Pr. CIT & ors 182 DTR 252(Raj.)** is held that cancellation of registration with retrospective effect is invalid.”*

Therefore, in view of the decision of Hon’ble High Court, we are also of the view that cancellation of registration with retrospective effect is invalid in the present case.”

12. We noticed earlier that the Ld PCIT (Central) has held that the provisions of sec.12AA(3) and 12AA(4) have been violated and for arriving at this conclusion, he has entirely relied upon the view expressed by the assessing officer in the assessment order. Thus there was no independent application of

mind on the part of Ld PCIT (Central). In any case, the assessment order has been challenged by the assessee and the Ld A.R stated that the same is pending before Ld CIT(A) and hence it would not be proper for us to express any view on the same at this stage. Since we have quashed the impugned order on jurisdictional issue, all these issues shall become academic and we decline from addressing them.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(B. R. BASKARAN)  
ACCOUNTANT MEMBER

Dated : 25 /01/2023

*\*Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
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Assistant Registrar  
Jodhpur Bench