

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.610/Bang/2023
Assessment Year: 2021-22

M/s. Islamic Academy of Education Nithyananda Nagar PO Deralakatte Mangalore 575 018 Karnataka  <b>PAN NO : AAATI3176M</b>	<b>Vs.</b>	The PCIT (Central) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Ms. Neera Malhotra, D.R.

<b>Date of Hearing</b>	:	21.12.2023
<b>Date of Pronouncement</b>	:	28.02.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of PCIT passed u/s 12AB(4)(ii) of the Income Tax Act, 1961 (in short “The Act”) dated 21.6.2023.

**2.** The assessee has raised following grounds of appeal:

*“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The impugned order passed u/s 12AB[4] of the Act, dated 21/06/2023, withdrawing the exemption granted u/s. 12A of the Act, dated 04/06/1992 and 12AB of the Act, dated 23/09/2021 is opposed to law and facts and circumstances of the appellant's case and consequently, the impugned order passed deserves to be quashed.*

*3. The learned PCIT ought to have appreciated that the provisions of section 12AB[4] of the Act does not empower him to either examine "specified violations" for the assessment years covered by registration granted u/s. 12A of the Act or cancel such*

*registration granted u/s. 12A of the Act for such assessment years and that the power to examine and cancel registration u/s. 12AB[4] was limited to registration granted u/s. 12AA[1][b] or u/s. 12AB[1] of the Act and therefore, the impugned order passed cancelling registration u/s. 12A of the Act for the assessment year 2021-22 and as a further consequence thereof, cancelling the registration granted u/s. 12AB of the Act for the subsequent years is bad in law and the same requires to be quashed.*

*3.1 Without prejudice to the above, the impugned order passed cancelling the registration of the appellant u/s 12AB[1] of the Act obtained by the appellant from the AY 2022-23 to the AY 2026-27 is also bad in law in as much as there are no specified violations that are noticed or found by the learned PCIT for the aforesaid assessment years 2022-23 to 2026-27 under the facts and in the circumstances of the appellant's case.*

*4. Without prejudice to the above, the learned PCIT is not justified in cancelling the registration granted u/s. 12A[1][b] of the Act dated 04/06/1992 and the registration granted u/s. 12AB of the Act, dated 23/09/2021 under the common order passed u/s. 12AB[4] of the Act, dated 21/06/2023 without appreciating that the registration granted u/s. 12A[1][b] and 12AB of the Act were under two separate orders / proceedings, which operated for different assessment years and therefore, separate proceedings ought to have been taken for each order of registration and concluded by a separate order and thus, the common order passed cancelling the registration u/s 12A/12AB of the Act from the FY 2020-21 and all subsequent previous years is a nullity.*

*5. Without prejudice to the above, the learned PCIT erred in taking up the proceedings for cancellation of registration alleging "specified violations" when the facts on the basis of which the allegation of "specified violations" were made have already been examined by the learned A.O. in assessment proceedings for the assessment year 2021-22 taking a particular view, which had not yet reached finality due to the pending appellate proceedings, thereby transgressing the jurisdiction of the first appellate authority to render a factual findings on the issues raised in the assessment proceedings and therefore, the impugned order passed by the learned PCIT is in excess of the jurisdiction u/s. 12AB[4] of the Act under the facts and circumstances of the appellant's case.*

*6. Without prejudice to the above, the learned PCIT is not justified in invoking the power to cancel registration u/s. 12AB[4] of the Act in terms of clause [a] thereof, which power to cancel would only be available where the assessment proceedings had not yet commenced or completed and not after the completion of the assessment especially when no such allegation of specified violation was made in the assessment order passed and thus, the impugned order passed cancelling the registration granted is bad in law under the facts and in the circumstances of the appellant's case.*

*7. Without prejudice to the above, the learned PCIT ought to have appreciated that there were no specified violations noticed in the case of the appellant trust and that the alleged cash collections etc., regarded as specified violations related to*

*institutions being run by Yenepoya [Deemed to be University] and not the appellant trust and hence, the entire proceedings taken against the appellant trust is opposed to law and facts of the appellant's case.*

*8. Without prejudice to the above, the learned PCIT failed to appreciate that there was no case to hold that the appellant had collected cash from students in as much as the appellant had only provided concession to its students under the facts and in the circumstances of the appellant's case.*

*8.1 The learned PCIT ought to have appreciated that the cash was collected from students allegedly noticed at the time of search were actually cash collected by two of the employees of Yenepoya University viz. Mr Mohammed Bava and Mr Umar Farooq, without the knowledge of the management in lieu of the concession granted by them and thus, it cannot be regarded that the appellant had made cash collection from students under the facts and in the circumstances of the appellant's case.*

*8.2 The learned PCIT failed to appreciate that the aforesaid 2 employees viz. Mr. Mohammed Bava and Mr, Umar Farooq, have since been terminated from services and a portion of the amount collected by them has been recovered from them, which proves the bonafides of the appellant under the facts and in the circumstances of the appellant's case.*

*8.3 The learned PCIT failed to appreciate that the statement of the employees viz. Mr. Mohammed Bava and Mr. Umar Farooq recorded u/s 132[4] of the Act have that has been relied upon by him has since been retracted by these persons vide affidavits filed by them and thus, no reliance can be placed upon such statements recorded at the time of search under the facts and in-the circumstances of the appellant's case.*

*8.4 The learned PCIT erred in not considering that assessments were concluded by the Department in the case of Mr. Mohammed Bava and Mr. Umar Farooq wherein the cash collected by them has been treated as their undisclosed income establishing their guilt and thus, the adoption of a contrary view by the learned PCIT is bad in law under the facts and in the circumstances of the appellant's case.*

*9. The learned PCIT erred in holding that the income earned by the appellant was utilized for the benefit of Mr. Mohammed Farhad and thus not applied for the objects of the appellant thereby concluding that there was a specified violation as per Explanation [a] to Section 12AB of the Act, which finding of the learned PCIT is based on purely on suspicion and surmise, assumptions and presumptions apart from being a mere conjecture under the facts and in the circumstances of the appellant's case.*

*10. The learned PCIT erred in holding that the action of collection of cash from students over and above regular fees cannot be considered as income from profits and gains of business, which is incidental to the attainment of its objects and thus, there was a specified violation as per Explanation [b] to Section 12AB of the Act, which finding of the learned PCIT is contrary to the material on record as there was no cash collected by the appellant under the facts and in the circumstances of the appellant's case.*

11. *The learned PCIT ought to have appreciated that the activities of the appellant were genuine and that mere collection of higher fees from students based on the concession agreement entered into by the appellant and other professional colleges with the Government that permits collection of higher fees from a small portion of the students admitted under the said scheme does not mean that the appellant was not charitable in nature and thus, there was no specified violation as per Explanation [e] to Section 12AB[4] of the Act under the facts and in the circumstances of the appellant's case.*

12. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

**3.** The assessee has raised following additional grounds of appeal:

1. *Without prejudice to the grounds raised in the original grounds-of appeal, the impugned order passed u/s. 12AB(4) of the Act by the learned Pr. CIT, Central, Bengaluru, dated 21/06/2023 is bad in Law and void ab-initio in as much as the learned Pr. CIT, Central, Bengaluru, has not been vested with the power to discharge the function of the Income tax authority for purposes of section 12AB(4) of the Act considering the Notification No. 52 & 53 dated 22/10/2014 under the facts and in the circumstances of the appellant's case.*

2. *Without prejudice to the above, the cancellation of registration u/s. 12A of the Act for the financial year 2020-21 relevant to the assessment year 2021-22 is also bad in Law in as much as the provisions of section 12AB(4) of the Act invoked have been substituted by the Finance Act, 2022 with effect from 01/04/2022 and the said provisions being substantive provisions dealing with cancellation of the registration have to be construed prospectively and thus, do not empower cancellation of the registration for the period before 01/04/2022 under the facts and in the circumstances of the appellant's case.*

3. *The appellant craves leave to add, alter, amend, substitute, change or delete any of the grounds of appeal.*

**3.1** The assessee has filed a petition for admission of additional grounds stating as follows:

**3.2** The Id. A.R. submitted that the above additional grounds of appeal, which were not urged specifically before this Tribunal in the original grounds of appeal filed at the time of institution of appeal due to inadvertence. These grounds do not involve any investigation

of any facts otherwise on the record of the department and are also pure question of law. He prayed before us that the additional grounds may be admitted and disposed off on merits for the advancement of substantial cause of justice. He placed reliance on the decision of the Hon'ble Apex Court in the case of National Thermal Power Company Limited Vs. CIT, reported in 229 ITR 383 and also on the ratio of the decision of the Hon'ble Karnataka High Court in the case of Gundathur Thimmappaa Sons Vs. CIT, reported in 70 ITR 70. The facts relevant for appreciation of these grounds are set-out below by the Id.A.R. for the assessee:-

**3.3.** The Id. A.R. submitted that the assessee trust was constituted under the Deed of declaration of Trust dated 13/11/1991 with the charitable object of imparting education. Soon after formation of the trust, the assessee has been granted registration u/s 12A of the Act, vide No. Accts-718/10A/VOL.BII/1-53-92/CIT-III dated 04/06/1992 with effect from the date of formation of the trust by the learned Commissioner of Income-tax, Karnataka III, Bangalore. This registration was granted under the applicable provisions of section 12A of the Act at that time, which is before-the insertion of section 12AA of the Act, with effect from 01 /04/1997. Thereafter, and by virtue of the amendment made by insertion of section 12AB requiring fresh registration with effect from 01/04/2021, the assessee trust, applied for and was granted recognition u/s 12AB by the learned CIT, CPC on 23/09/2021 for the assessment years 2022-23 to 2026-27. Thus, the assessee trust was registered u/s. 12A of the Act upto and inclusive of the assessment years 2021-22 and thereafter, the assessee trust had secured the registration u/s. 12AB of the Act for the assessment years 2022-23 to 2026-27.

**3.4** He submitted that there was a search conducted in the premises of the assessee trust on 17/02/2021. During the course of the said search, there was no incriminating material in the form of any

undisclosed assets or undisclosed income of the assessee trust that was either found or seized, for there existed none. However, during the course of search proceedings certain documents were seized which is suspected to contain details of the alleged cash collection for admissions of students to "Yenepoya Dental College" and "Yenepoya Ayurveda Medical College". In course of search, certain employees of the assessee trust as well as Managing Trustee of the assessee trust were examined and their statements were recorded from time to time with regard to the aforesaid materials found in course of search. Even at the time of search itself, it was explained that there was no case of cash collections for admission of students and the entries in the seized materials actually represented concession provided to the students by the Management.

**3.5** Thereafter, the case of the assessee was centralized by the learned Pr. CIT(Exemption), Bangalore vide order u/s 127 of the Act in Order No. ITBA/COM/F/17/2020-21/1031876262(4) to the DCIT/ACIT, Central Circle-1, Mangaluru from the DCIT(E), Circle-1, Mangaluru. In this order, the learned Pr. CIT(Exemptions) acting as CIT(E) has transferred the case to the learned DCIT/ACIT, Central Circle-1, Mangaluru for purpose of completion of assessment in order to facilitate effective and coordinated investigation.

**3.6** He submitted that under the provisions of the Act, section 120 deals with the jurisdiction of Income tax authorities. Section 120(1) of the Act, empowers the Income tax authorities to exercise the powers and perform the functions conferred under the Act in accordance with the directions of the CBDT for exercise of the powers and performance of the functions by those *authorities*. Section 120(2) of the Act, empowers the CBDT to issue directions under which Income tax authorities may authorize other income tax authorities who are subordinate to such income tax authorities to exercise powers and perform functions under the Act. Section 120(3) of the Act sets out the criteria for the CBDT for issuing directions in terms of section 120(1) & 120(2) of the Act and

these criteria includes determination of the jurisdiction based on territorial area, persons or classes of persons, incomes or; classes of income and cases or classes of cases.

**3.7** Accordingly, the CBDT in pursuance to the provisions of section 120(3) of the Act has issued Notifications No. 52/2014 and 53/2014 both dated 22/10/2014 under which the Commissioner of Income tax (Exemptions), Bangalore has been given jurisdiction in the state of Karnataka & Goa 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 21 to 34 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014. The said notification bearing S.O. 2752 dated 22<sup>nd</sup> October, 2014 is a notification issued u/s. 120(1) & (2) of the Act under which the Pr. Commissioner or Commissioner of Income tax are given jurisdiction over cases based on territorial area, class of persons and class of cases. Sl. No. 21 to 34 of the said notification relates to state of Karnataka and includes all cases and classes of persons except cases and classes of persons who are claiming exemption u/s. 11 of the Act and other similar provisions.

**3.8** He submitted that the provisions of section 124 of the Act are relevant, which confers jurisdiction on the Assessing Officers by virtue of the directions issued u/s. 120(1) or 120(2) of the Act. It states that the Assessing Officer shall be vested with the jurisdiction over any area, then such Assessing Officer shall have jurisdiction over any person who carries on business or profession within that area and in respect of any other person who is residing within that area. It has to be noted that under section 124 of the Act, the Jurisdiction of Assessing Officer has been given and not the Jurisdiction of Commissioner.

**3.9** Lastly, the provisions of section 127 of the Act are also relevant, which empowers the Pr. Director General or Director General or Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner to transfer cases from one Assessing Officer to another Assessing Officer and prescribes the procedure to be followed in such cases. Thus, in terms of section 127 of the Act, the power of transfer of cases has been given from one Assessing Officer to another Assessing officer not from one Commissioner to another Commissioner,

**3.10** He submitted that from a combined reading of the aforesaid statutory provisions of the Act and the Notifications issued by the CBDT, it is submitted that the learned PCIT, Central Circle, Bangalore has no jurisdiction to withdraw the exemption u/s. 12AB(4) of the Act. This is because the CBDT in pursuance to Section 120(3) of the Act has assigned territorial jurisdiction vide Notification No. 52/2014 and 53/2014 both dated 22/10/2014 and has given power to the learned CIT (Exemption), Bangalore for the state of Karnataka for all cases of persons 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 21 to 34 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014. Thus, from the 22<sup>nd</sup> October 2014, the learned CIT (Exemptions), Bangalore has been constituted for class of assesseees claiming exemption under the aforesaid sections of the Act and therefore, he alone is empowered to grant registration or withdraw the same.

**3.11** He submitted that there cannot be transfer of the powers vested with the CIT(Exemption) to the Pr. CIT (Central) u/s. 127(2) of the Act. Even the aforesaid notifications issued by the CBDT do not provide that the learned CIT (Exemptions), Bangalore can transfer power or jurisdiction to any other CIT or Pr. CIT. In the said 'notifications, the CBDT has authorized the learned CIT (Exemptions), Bangalore 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.

**3.12.** Hence, he submitted that the registration u/s 12A cannot be withdrawn by the learned Pr. CIT (Central), Bangalore, who is not the income tax authority empowered to grant the same in first place and therefore, the learned Pr. CIT (Central) has no power to cancel and withdraw the same. Thus, he submitted that the impugned order passed by him cancelling the registration is without jurisdiction and not sustainable in law.

**4.** We have heard the both the parties on admission of additional grounds. In our opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above ground. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) we inclined to admit the additional grounds for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and the action of the assessee is bonafide.

**5.** Facts of the issue are that the assessee trust was constituted under the Deed of declaration of Trust dated 13/11/1991 with the charitable object of imparting education. The assessee trust had established the "Yenepoya Dental College" in the year 1991, the "Yenepoya Institute of Nursing Sciences" in the year 1992, the

"Yenepoya Medical College" in the year 1998 and the "Yenepoya Physiotherapy College" in the year 2003. In the year 2007, the assessee trust decided to sponsor the formation of a new trust with the sole purpose of creating a Deemed-to-be University. It is submitted that the Ministry of Human Resource Development, Union of India, on the recommendation of the University Grants Commission granted recognition to Yenepoya University Trust, a Deemed-to-be University status under section 3A of the UGC Act 1956 in the year 2008. Upon formation of the new trust, the "Yenepoya Dental College" was brought under the ambit of the "Yenepoya Deemed-to-be University" in terms of the Gazette Notification dated 27/02/2008. Thereafter, in terms of the Gazette Notification dated 09/02/2009, the Central Government on the advice of the University Grants Commission recommended for bringing the following educational institutions under the ambit of the "Yenepoya Deemed to be University" from the academic year 2009-10 and thereafter:-

- (i) Yenepoya Medical College, Mangalore;
- (ii) Yenepoya Nursing College, Mangalore, and
- (iii) Yenepoya Physiotherapy, College Mangalore,

**5.1** Yenepoya (Deemed to be University) started other educational institutions viz., Yenepoya Pharmacy College, Yenepoya Degree College, Yenepoya Ayurveda Medical College, Yenepoya Homeopathic Medical College from time to time. Accordingly, the aforesaid educational institutions were being run and administered by the "Yenepoya Deemed to be university Trust" having PAN AAATY1645F and approval under section 12AA(1)(b)(i) and renewed under section 12AB of the Act. As a result of the above, the following Institutions are presently being administered under the banner of "Yenepoya (Deemed to be University)":

SI No.	Name of the Institute	Address
01.	Yenepoya Medical College	YMDC Campus University Road Nithyananda Nagar, Deralakatte Mangalore - 575 018
02.	Yenepoya Dental College	YMDC Campus University Road Nithyananda Nagar, Deralakatte Mangalore - 575 018
03	Yenepoya Nursing College	Kollarakodi Naringana Village, Deralakatte Post Mangalore 575 018
04	Yenepoya Physiotherapy College	Kollarakodi Naringana Village, Deralakatte Post Mangalore 575 018
05	Yenepoya Pharmacy College & Research Centre	Kollaakodi Naringana Village, Deralakatte Post Mangalore 575 018
06	Yenepoya Institute of Arts, Science Commerce and Management	Balmatta road, Mangalore 575002
07	Yenepoya School of Allied Health Professional	Mudipu Campus, Near Soorya Tech Park, Kayargoli, Kurnad Post, Bantwal taluk 574 153
08	Yenepoya Ayurveda Medical College	Kollarakodi Naringana Village, Deralakatte Post Mangalore 575 018
09	Yenepoya Homeopathy Medical College	Kollarakodi Naringana Village, Deralakatte Post Mangalore 575 018
10	Yenepoya Naturopathy & Yogic Science College	Kollarakodi Naringana Village, Deralakatte Post Mangalore 575 018

**5.2** Furthermore, as a result of the above arrangement, only the following educational institutions continue to be run and administered under the banner of M/s Islamic Academy of Education, the assessee before this Tribunal:

SI No.	Name of the Institute	Address
01.	Yenepoya Institute of Technology	N.H.13, Thodar, Vidyanagar, Moodabidri, Mangaluru, Karnataka 574225
02.	The Yenepoya College	N.H.13, Thodar, Vidyanagar, Moodabidri, Mangaluru, Karnataka 574225

03.	Yenepoya Institute of Nursing Sciences	Kollarakodi Naringana Village, Deralakatte Post Mangalore - 575 018
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APPROVALS & EXEMPTIONS OF THE ASSESSEE TRUST:

**5.3** Soon after formation of the trust, the assessee viz. M/s Islamic Academy of Education was granted registration u/s 12A of the Act, vide No, Accts-718/10A/VOLBII/1-53-92/CIT-III dated 04/06/1992 with effect from the date of formation of the trust by the learned Commissioner of Income-tax, Karnataka - III, Bangalore. This registration was granted the applicable provisions ejection 12A of the Act at that time, which is before the insertion of section 12AA of the Act, w.e.f. 01/04/1997.

**5.4** Thereafter, and by virtue of the amendment made by insertion of section 12AB requiring fresh registration with effect from 01/04/2021, the assessee trust applied for and was granted recognition u/s 12AB by the learned CIT, CPC on 23/09/2021 for the assessment years 2022-23 to 2026-27.

**5.5** Thus, the assessee trust was registered u/s, 12A of the Act upto and inclusive of the assessment years 2021-22 and thereafter, the assessee trust had secured the registration u/s. 12AB of the Act for the assessment years 2022-23 to 2026-27.

**SEARCH:**

**5.6** There was a search conducted in the premises of the assessee trust on 17/02/2021. During the course of the said search, there was no incriminating material in the form of any undisclosed assets or undisclosed income of the assessee trust that was either found or seized, for there existed none.

**5.7** However, during the course of search proceedings certain documents were seized which is suspected to contain details of the alleged cash collection for admissions of students to "Yenepoya Dental College" and "Yenepoya Ayurveda Medical College". In course of search, certain employees of the assessee trust as well as Managing

Trustee of the assessee trust were examined and their statements were recorded from time to time with regard to the aforesaid materials found in course of search. Even at the time of search itself, it was explained that there was no case of cash collections for admission of students and the entries in the seized materials actually represented concession provided to the students by the Management.

ASSESSMENT PROCEEDINGS FOR AY 2021-22:

**5.8** An order of assessment was passed by the learned A.O. for the AY 2021-22 u/s 143[3] of the Act dated 30/03/2022, wherein the learned A.O. has made an addition of Rs. 1,31,85,000/- for the alleged violation of the provisions of section 13[1][c] of the Act. In the assessment order so passed, it has been held that the assessee had collected certain amounts in cash from students of BAMS & BDS courses, which has not been accounted in the regular books of accounts. It has been held that the said cash receipts from students were collected by the trustees and hence, constitutes benefit provided to the trustees that is hit by the provisions of section 13[1][c] of the Act. The following are the pertinent observations / findings of the learned A.O. in the assessment order passed:-

[a] In course of search conducted, digital evidence was found in the computer operated by Mr. Umar Farook, Accounts Superintendent, YENOPOYA [DEEMED TO BE UNIVERSITY] along with hard copy of certain excel sheets containing the list of students admitted and the amounts collected from them and the same was seized and inventoried as A/BC01 /06;

[b] In these the seized excel sheet, there were certain amounts recorded under the column 'concession', which actually represents the cash receipt for providing admissions to the students of the aforesaid courses and this was clear from the following statements of the employees and other materials found and seized at the time of search conducted:-

[i] Statement of Mohammed Bava, vide his answer to Q 28 of the statement u/s 132[4] of the Act dated 18/02/2021, had stated that cash was handed over by the students to either Mr. Ronald Ivan Soans, Admission Manager or Mr. Y. Mohammed Farhad, Pro Pro-Chancellor/Trustee.

[ii] WhatsApp conversation found in the mobile phone of Mr. Umar Farooky, Accounts Superintendent with mobile number 7259751111 saved as "Mr. Preethi Adm Office", showed names of the persons who paid the cash along with the amount paid.

[iii] Statement of Mr. Umar Farookh, Accounts Superintendent recorded u/s 132[4] of the Act dated 17/02/2021 explaining that the chats indicate the name of the student and the ID No. And the figures mentioned against their name represents cash collected from them which is not recorded in the books of accounts.

**5.9** Based on the aforesaid seized materials and statements recorded at the time of search, the learned A.O. arrived at the conclusion that the accounting treatment of this cash receipt is done by recording it as concession in the books of account, and the same is a colourable way to disguise the entries of cash receipt.

**5.10** While doing so, the learned A.O. has also noted that Mr Y Mohammed Farhad, the Pro Pro-Chancellor, had repudiated the statement of the employees, in his statement u/s 132[4] of the Act, dated 19/02/2021. It was categorically stated by Mr. Y Mohammed Farhad that the assessee does not collect any cash for admissions. Further, during the course of post search proceedings, Mr. Y Mohammed Farhad vide statement dated 25/03/2021 had stated that some of the employees alongwith some agents have misappropriated the money in the name of concession and that no cash was collected by the trust. It was explained that the institution has granted the bona fide concession to the students and the assessee trust was unaware of these malpractices carried out by the employees as well as some agents. He also stated that an enquiry

officer was appointed to conduct an enquiry on these matters that has now come to light.

**5.11** The aforesaid statements of Mr. Y Mohammed Farhad, are also corroborated by the following materials / statements recorded u/s. 131 of the Act in course of the post search appraisal operations from the following persons:-

[i] Affidavit of Mr. Mohammed Bava dated 26/02/2024 and letter containing the affidavit dated 24/03/2021 filed on 26/03/2021 before the Investigation Wing confessing to have collected cash in lieu of concession and misappropriating the same;

[ii] Letter containing the affidavit of Mr. Umar Farookh dated 24/03/2021 filed on 26/03/2021 before the Investigation Wing confessing to have collected cash in lieu of concession and misappropriating the same;

[iii] Statement of Preethi recorded on 05/07/2021 in which she has explained that the Whatsapp chats with Umar Farookh as relating to cash collected by agents;

[iv] Statement recorded from Umar Farookh on 12/07/2021 in which he has explained that the cash was collected by the agents and it was not known to the management;

[v] Statement recorded from the agents Tobin Joseph, Suja Mohammed and Alex Alexander who have all admitted to have collected cash from students instead of passing on the concession provided by the assessee.

**5.12** However, the learned A.O. did not accept the truthful explanation tendered by Mr. Mohammed Farhad right from the date of

search. He has observed that all the agents except Mr. Tobin Joseph who are alleged to have collected the cash from some of the students and embezzled the same are nothing but salaried employees of the college and this is nothing but a case where the agents have collected cash from some of the students upon the instructions of their employer, i.e., the trust and hands over the same to college, after deducting their commission for admissions made.

**5.13** Thus, the learned A.O. concluded that *"it is clear that the trust is also involved in the process of cash collection from some of the students and the same was accepted by Mr. Mohammed Bava, finance officer and Mr. Umar Farookh, Account officer during the search action. Both of them even confirmed that the cash was collected on instruction of Mr. Y. Mohammed Farhad. But in their post search proceedings, Mr. Y. Mohammed Farhad disclosed that the employees only were involved in collection of cash without knowledge of management. It is nothing but the management wants to wash off their hands by shifting the complete blame on their employees"* and accordingly added a sum of Rs. 1,31,85,0007- as the unaccounted cash receipt from students and brought the same to tax u/s 13[1][c] of the Act.

**5.14** Being aggrieved by the order of assessment so passed, the assessee filed an appeal before the CIT [Appeals] on 30/04/2022 and the appeal so filed is pending disposal. Thus, the issue raised and considered in the assessment proceedings is under challenge and the same cannot be considered as having attained any finality.

**SHOW CAUSE NOTICES FOR PROCEEDINGS U/S. 12AB[4] AND REPLIES**

**5.15** The Learned PCIT, Central Circle, Bangalore, issued show cause notices dated 15/11/2022 and 28/04/2023, in response to which the assessee filed detailed objections vide letter dated 28/11/2022 and 04/05/2023, objecting to the cancellation of registration u/s 12A/12AB of the Act. The learned PCIT, Central Circle, Bangalore had taken up the proceedings without considering the fact that the assessee has already filed an appeal against the assessment order passed for the AY 2021-22 and the same was pending disposal.

**5.16** In course of the proceedings before the learned PCIT, Central Circle, Bangalore, it was explained by the assessee that it was providing concession to its students" in furtherance of its object of charity. However, two employees viz. Mr. Mohammed Bava and Mr. Umar Farooq had collected cash in lieu of passing on the concession to the students and had misappropriated the cash so collected, which came to the knowledge of the assessee only during the course of search conducted. The assessee trust submitted that action was taken against the said employees, who were removed from service. In short, there was no violation committed by the assessee.

**5.17** After considering the objections raised by the assessee, the learned PCIT, Central Circle, Bangalore has passed the impugned order dated 21/06/2023 cancelling the registration of the assessee as granted under section 12A/12AB of the Act, from the previous year 2020-21 relevant to the assessment year 2021-22 onwards, holding that there were specified violations^ as per Explanation [a], [b] and [e] of the Act.

**6.** First, we will consider the additional ground Nos.1 & 2 along with main ground Nos.2, 3 & 4.

**6.1** The ld. A.R. submitted that in this case, registration u/s 12A of the Act was granted vide Certificate dated 4.6.1992 and registration u/s 12AB of the Act was granted vide Certificate dated 23.9.2021. According to the ld. A.R., the assessee was granted registration in terms of section 12A(a) of the Act as stood before 4.6.1992. Thereafter, section 12AA of the Act was inserted w.e.f. 1.4.1997 prescribing the procedure to be followed for grant of registration. He drew our attention to section 12AA(1) & 12AA (3) of the Act. He submitted that w.e.f. 1.10.2004, section 12AA(3) of the Act empowers the PCIT to grant registration, which reads as follows:

*"Section 12AA(3) - Where a trust or on institution has been granted registration under clause (b) of sub-section (1) and subsequently the 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".*

**6.2** Thereafter, he submitted that the provisions of Section 12AA[3] of the Act were amended with effect from 01/06/2010 to give power to cancel registration granted under the provisions of section 12A of the Act before 01/04/1997. The provisions of Section 12AA[3] of the Act as amended w.e.f. 01/06/2010, read as under:

*Section 12AA(3) - Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996)]] and subsequently the 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".*

**6.3** He submitted that as can be seen from the above, there was a power conferred u/s. 12AA[3] of the Act to cancel registration granted u/s. 12AA[1][b] of the Act from 01/10/2004. Thereafter, the specific power to cancel the registration granted u/s. 12A as it stood before amendment by the Finance [No.2] Act, 1996 was enabled with effect from 01/06/2010. Thus, it is only thereafter that the registration granted u/s. 12A could be cancelled. This clearly bring out the fact that the registration granted u/s. 12A is different from the registration granted u/s. 12AA[1][b] of the Act.

**6.4** He submitted that upon the introduction of Section 12AB of the Act w.e.f 01/04/2021, subsection [5] to Section 12AA of the Act was inserted stating that "Nothing contained in this section shall apply on or after 01/04/2021". In other words, the power to cancel registration granted u/s. 12A and the registration granted u/s.

12AA[1][4] of the Act can no longer be done in terms of section 12AA[3] of the Act after 01/04/2021.

**6.5** He submitted that several amendments were carried out by the Finance Act, 2021 to the provisions relating to the assessment of charitable institutions. Firstly, section 12A was amended by inserting clause [ac] to sub-section 1 which required all trusts that were enjoying registration under the erstwhile provisions of section 12A or under section 12AA of the Act to compulsorily apply for a fresh registration u/s 12AB[1] of the Act. Secondly, the procedure for grant of registration was specified under the new provisions of section 12AB of the Act. The said provisions of Section 12AB contained sub-section [4] whereunder the power to cancel registration granted was conferred.

**6.6** He drew our attention to the provisions of Section 12AB[4] of the Act, as introduced by the Finance Act, 2021 with effect from 01/04/2021, which reads as under:-

*"Section 12AB(4) - Where registration of an institution has been granted under douse (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner of Commissioner is satisfied that the activities of such trust or institutions **are not** genuine or are not being carried out in accordance with the objections 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".*

**6.7** Thereafter, he submitted that the above provisions of Section 12AB [4] of the Act was substituted by the Finance Act, 2022 with effect from 01/04/2022 to empower the learned PCIT to cancel registration granted u/s 12AA [1] of the Act or u/s 12AB[1] of the Act.

**6.8** He submitted that as can be seen from the above, the provisions of section 12AB [4] of the Act introduced with effect from 01/04/2021 before substitution with effect from 01/04/2022 only enabled the cancellation of registration granted under clause [a] or clause [b] of sub-section 1 i.e., limiting the power of cancellation to the registrations under section 12AB [1] of the Act. No power to cancel registration

granted u/s. 12AA[1][b] of the Act or for that matter under section 12A of the Act was conferred. Thereafter, with effect from 01/04/2022, the registration granted under section 12AA[1][b] of the Act has been included. However, there is no power to cancel registration granted u/s. 12A of the Act.

**6.9.** Now coming to the facts of the assessee's case, he submitted that the assessee had first secured registration u/s. 12A of the Act, dated 04/06/1992 which was effective till the assessee secured registration u/s. 12AB of the Act, dated 23/09/2021 for the AY 2022-23 to AY 2026-27. There was no requirement for the assessee to apply for registration u/s 12AA of the Act as it was already registered u/s. 12A of the Act and thus, the same was never obtained.

**6.10** Thus, he submitted that from a plain reading of the aforesaid provisions of the Act, it is evident that the provisions of section 12AB [4] of the Act does not empower the learned PCIT to either examine "specified violations" for the assessment years covered by registration granted u/s. 12A of the Act or cancel such registration granted u/s. 12A of the Act for such assessment years. The power to examine and cancel registration u/s. 12AB [4] of the Act is limited to registration granted u/s.12AA [1] and 12AB [1] of the Act.

**6.11** Furthermore, he submitted that when the aforesaid provisions of section 12AB[4] of the Act are viewed in light of the erstwhile provisions of section 12AA[3] of the Act, it is clear that there was a power to cancel registration u/s. 12A in the provisions contained in 12AA [3], which is absent in the present provisions of section 12AB [4] of the Act.

**6.12** He submitted that in as much as the registration secured by the assessee u/s 12A of the Act was in force for the AY 2021-22 it is submitted that the impugned order passed cancelling registration u/s.

12A of the Act for the assessment year 2021-22 and as a result thereof cancelling the registration granted u/s. 12AB of the Act for the subsequent years is bad in law being ultra vires the provisions of Section 12AB [4] of the Act. Off this ground, the impugned order passed requires to be quashed. It is prayed accordingly.

7. The Id. D.R. relied on the order of lower authorities.

8. We have heard the rival submissions and perused the materials available on record. The main argument of the Id. A.R. is that the assessee was granted registration u/s 12A of the Act on 1.6.1992. Thereafter, due to amendment in provisions of section w.e.f. 1.4.2021 requiring registration to be restricted for 5 years, the assessee had filed an application and thereafter order of registration u/s 12AB of the Act was issued to the assessee by CIT-CPC on 23.9.2021 from assessment year 2022-23 to assessment year 2026-27 so as to enable the earlier registration granted on 4.6.1992 to be continued and in this case, the Id. PCIT vide order dated 21.6.2023 has cancelled the registration granted to the assessee u/s 12A/12AB of the Act w.e.f. previous year 2020-21 u/s 12A of the Act and for all subsequent previous years as per provision of section 12A(4) of the Act. Now the contention of the Id. A.R. is that registration for the previous year 2020-21 relevant to assessment year 2021-22 was u/s 12A of the Act and not u/s 12AB (1) of the Act. So the registration u/s 12A of the Act, which was granted to the assessee on 4.6.1992 cannot be cancelled u/s 12AB (4) of the Act. For understanding this issue, we will go through the section 12AB (4) of the Act, which reads as follows:

*“12AB(4) Where resignation or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,--*

- a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or*

- b) *the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or*
- c) *such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the Principal Commissioner or Commissioner shall—*
  - i) *call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;*
  - ii) *pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;*
  - iii) *pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations.*
  - iv) *Forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing officer and such trust or institution.*

*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; [or*
- g) *The application referred to in clause (ac) of sub-section (1) of section 12A is not complete or it contains false or incorrect information.]”*

**8.1** Now we will go through the importance of these provisions of the Act.

**8.1.1** The Finance (No. 2) Act, 2004 had inserted the sub-section to Section 12AA. By virtue of this sub-section (3), the Commissioner, with effect from 1st day of October, 2004 had the power to cancel the registration, if she is satisfied that the activities of such trust/institution are not genuine or are not being carried out in accordance with the objects of the trust or institution.

**8.1.2** The Finance Act, 2014 provided additional powers for cancellation under Section 12AA(4)(a), which provides cancellation due to the applicability of forfeiture of income under Section 13(1). It may be noted, under Section 13(1) various violations pertaining to investment, benefit to interested person etc are regulated.

**8.1.3** With effect from 1<sup>st</sup> September, 2019 again, additional powers have been provided for cancellation under Section 12AA(4)(b), wherein registration can be cancelled if the trust has not complied with the requirement of any other law which are material for the purpose of achieving its object and the order/decreed by whatever name called, holding such non-compliance has occurred and has either not been disputed or attained finality.

**8.1.4** Finance Act, 2020 had inserted a new Section 12AB. The existing Section 12AA providing for cancellation shall remain effective upto 31-03-2021. The new Section 12AB is applicable from 01-04-2021. It has the enabling provision on the same line as in the existing Section 12AA, empowering the Principal Commissioner or Commissioner to cancel the registration in specified cases, Section 12AB (5) corresponds to Section 12AA (4)

and the cancellation powers continue to remain similar except the fact that under Section 12AB(1)(b)(ii), the CIT may deny renewal of registration and also initiate cancellation proceedings at the time of renewal proceedings.

**8.1.5** The new provision has provided yet another power of cancellation under Section 12AB(1)(b)(ii)(B) which can be exercised during the process of renewal under Section 12AB. The new provisions also provide powers of cancellation under Section 12AB(4) and (5), which are analogous powers prior to enactment of Finance Act, 2020.

**8.1.6.** The additional power of cancellation during the renewal process empowers the CIT to invoke the powers available under Section 12AB(4) and (5) at the time of renewal also; In other words, there is no power for any arbitrary or ex parte order at the time of renewal. However, the CIT may additionally initiate cancellation proceedings.

**8.1.7** The Finance Act, 2022 substituted sub-sections (4) and (5) of the Section 12AB w.e.f. 1<sup>st</sup> April, 2022. This provides provisions regarding cancellation of the registration granted to a trust or institution on specified violations.

**8.1.8** Section 12AB(4)/(5) prior to amendment by the Finance Act, 2022 did not cover cases of provisional registration under Section 12AB(1)(c). Now, the substituted Section 12AB(4) covers cases of provisional registration as well and hence, registration granted for the first time can also be cancelled.

**8.1.9** Before the amendment by the Finance Act, 2022, Section 12AB(4) provided for cancellation of registration in case of any violation under Section 13. The amended Section 12AB(4) does not

consider a violation of Section 13(l)(c) and Section 13(l)(d) as specified violations. Consequently, the registration cannot be cancelled on the ground that the assessee has violated Section 13(l)(c) or Section 13(1)(d).

**8.1.10** The Finance Act 2023 has inserted clause (g) in Explanation to Section 12AB(4) to provide that giving incomplete, false, or inaccurate information in a registration application under Section 12A(1)(ac) will be deemed as a "specified violation" that can lead to the cancellation of registration.

**8.2** Thus, it means that the following registration could be cancelled:

**8.2.1** The PCIT/CIT can cancel the following registrations granted to a trust or institution:

- (a) Final registration or provisional registration granted under section 12AB(1)(a)/(b)/(c);
- (b) Final registration granted under section 12AA(1).

The erstwhile provision did not cover cases of provisional registration granted under section 12AB(1)(c). Now, the provisional registration granted for the first time can also be cancelled by the authorities.

**8.3** As seen from the above, since the assessee has secured the registration u/s 12A of the Act dated 4.6.1992, which was effective till the date of 23.9.2021 and this registration granted u/s 12A cannot be cancelled u/s 12AB(4)(ii) of the Act for the previous year 2020-21 covering the assessment year 2021-22. On the other hand, he could cancel the registration from assessment year 2022-23 onwards u/s 12AB(4)(ii) of the Act. In our opinion, if there is any violation in the previous assessment year 2020-21 relating to the assessment year 2021-22, this cannot be reason to cancel the registration granted for the assessment year 2022-23 to 2026-27 as the assumption of jurisdiction u/s 12AB(4)(ii) of the

Act is itself wrong on the reasons discussed herein above. The specific violation committed by the assessee in any of these assessment years is to be considered independently and not the violation committed in assessment year 2021-22 for cancelling the registration granted u/s 12AB of the Act for the assessment year 2022-23 to 2026-27. As such, we make it clear that the ld. PCIT at liberty to pass the fresh order of cancellation independently u/s 12AB(4)(ii) of the Act for these assessment years i.e. 2022-23 to 2026-27, if so advised. Accordingly, we allow this ground taken by the assessee. Ordered accordingly.

**8.4.** Even otherwise, we are of the opinion that this issue of cancellation of registration for the AY 2021-22 is covered by our earlier decision in the case of Amala Jyothi Vidya Kendra Trust in ITA No.458/Bang/2023 dated 1.12.2023, wherein held as under:

*“6. We have heard the rival submissions and perused the materials available on record. The main contention of the ld. A.R. is that the ld. PCIT has cancelled the registration granted to the assessee w.e.f. the previous year i.e. 2020-21 relevant to assessment year 2021-22 by applying the provisions as stood on 12.5.2023, which cannot be applied for the violations of the provisions of section 12AA or 12AB of the Act. According to the ld. A.R., the ld. PCIT has cancelled the registration granted to the assessee since the ld. PCIT was satisfied that one or more specified violations have taken place. The specified violations are mentioned in explanation to section 12AB(4) of the Act as follows:*

*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 ensure 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.

**6.1** Thus, the contention of the ld. A.R. is that these provisions have been inserted by Finance Act, 2022 w.e.f. 1.4.2022 and if there is a violation in previous year 2020-21 relevant to assessment year 2021-22, these provisions cannot be applied to the assessee's case. For clarity, we will go through the relevant provisions applicable to previous year 2020-21 relevant to assessment year 2021-22 as follows:

*“12AB(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.”*

**6.2** This section has been amended by Finance Act, 2022 w.e.f. 1.4.2022 as follows:

*12AB(4): Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,--*

- a) *The Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or*
- b) *The Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or*
- c) *Such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year;*

*The Principal Commissioner or Commissioner shall—*

- i. *call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;*
- ii. *pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;*
- iii. *pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;*

- iv. *forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.*

*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 ensure 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.*

**6.3** *As per section 12AB(4) of the Act as applicable to assessment year 2021-22, the ld. PCIT if he is satisfied that activities of the Trust or institution are not genuine or 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 reasonable opportunity of being heard. As per section 12AB(5) of the Act, when trust or institution complied wholly or in part of the income of such trust or institution in violation of section 13(1) of the Act or if they complied with any other law, for the time being in force by the trust or institution as are material for the purpose of achieving its objectives as mentioned in section 12AB(1)(b)(ii)(B) of the Act. However, in the present case, the ld. PCIT invoked the provisions of section 12AB(4)(a)(ii) of the Act as stood in the assessment year 2022-23. The objection of the ld. A.R. is that for the cancellation of registration for the assessment year 2021-22, he could not invoke the provisions of section 12AB(4)(ii) of the Act which is introduced by Finance Act, 2022 w.e.f. 1.4.2022 and applicable for the assessment year 2022-23 onwards.*

**6.4** *In the case of Isthmian Steamship Lines reported in 20 ITR 572 (SC) wherein the Hon'ble Supreme Court held that “it is a cardinal principle of the tax law that law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication”.*

6.5 *In the case of Karimtharuvi Tea Estate Ltd. Vs. State of Kerala reported in 51 ITR 129 (SC) the same view was taken by the Hon'ble Supreme Court.*

6.6 *Further, the Hon'ble Supreme Court in the case of Shree Chowdhary Transport Company Vs. ITO reported in 426 ITR 289 (SC) wherein held as under:*

17.4 *It needs hardly any detailed discussion that in income-tax matters, the law to be applied is that in force in the assessment year in question, unless stated otherwise by express intendment or by necessary implication. As per section 4 of the Act of 1961, the charge of income-tax is with reference to any assessment year, at such rate or rates as provided in any central enactment for the purpose, in respect of the total income of the previous year of any person. The expression "previous year" is defined in section 3 of the Act to mean "the financial year immediately preceding the assessment year"; and the expression "assessment year" is defined in clause (9) of section 2 of the Act to mean "the period of twelve months commencing on the 1<sup>st</sup> day of April every year".*

17.5 *In the case of CIT v. Isthmian Steamship Lines (1951) 20 ITR 572 (SC), a 3-judge Bench of this court exposted on the fundamental principle that "in income-tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied." This decision and various other decisions were considered by the Constitution Bench of this court in the case of Karimtharuvi Tea Estate Ltd. v. State of Kerala (1966) 60 ITR 262 (SC) and the principle were laid down in the following terms (at pages 264-266 of 60 ITR):*

*"Now, it is well-settled that the Income-tax, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force....."*

*The High Court has, however, relied upon a decision of this court in CIT v. Isthmian Steamship Lines, where it was held as follows:*

*'It will be observed that we are here concerned with two datum lines: (1) the 1<sup>st</sup> of April, 1940, when the Act came into force, and (2) the 1<sup>st</sup> of April, 1939, which is the date mentioned in the amended proviso. The first question to be answered is whether these dates are to apply to the accounting year or the year of assessment. They must be held to apply to the assessment year, because in income-tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied. The first datum line therefore, affected only the assessment year of 1940-41, because the amendment did not come into force till the 1<sup>st</sup> of April, 1940. That means that the old law applied to*

*every assessment year up to and including the assessment year 1939-40.'*

*This decision is authority for the proposition that though the subject of the charge is the income of the previous year, the law to be applied is that in force in the assessment year, unless otherwise stated or implied. The facts of the said decision are different and distinguishable and the High Court was clearly in error in applying that decision to the facts of the present case."* (emphasis supplied)

17.6 *We need not multiply on the case law on the subject as the principles aforesaid remain settled and unquestionable. Applying these principles to the case at hand, we are clearly of the view that the provision in question, having come into effect from April 1, 2005, would apply from and for the assessment year 2005-06 and would be applicable for the assessment in question. Putting it differently, the Legislature consciously made the said sub-clause (ia) of section 40(a) of the Act effective from April 1, 2005, meaning thereby that the same was to be applicable from and for the assessment year 2005-06; and neither there had been express intendment nor any implication that it would apply only from the financial year 2005-06."*

6.7 *Being so, we find force in the argument of ld. A.R. that in income-tax matters, law to be applied is the law in force in the assessment year unless otherwise stated or implied. In the present case, ld. PCIT is cancelling the registration granted u/s 12AA/12AB of the Act w.e.f. previous year 2020-21 relevant to assessment year 2021-22. In our opinion, the law as stated in the assessment year 2021-22 is to be applied and not the law as stood in the assessment year 2022-23.*

6.8 *Thus, we are of the view that no retrospective cancellation could be made u/s 12AB(4)(ii) of the Act as it has been provided or is seen to have explicitly provided to have a retrospective character or intended. Therefore, without a specific mention of the amended provisions to operate retrospectively, no cancellation for the earlier years could be made. In this regard, it is appropriate to place reliance on the judgement of Hon'ble Madras High Court on the question as to whether the cancellation will operate from a retrospective date in the case of Auro Lab Ltd. Vs. ITO (2019)411 ITR 308 (Mad) wherein held as under:*

“20. *On the second question as to whether the cancellation will operate from a retrospective date, it was held that the amendment to section 12AA(3) is prospective and not retrospective in character. The courts reasoned that even when 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 December 30, 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.”*

**6.9** *In this case, the ld. PCIT has cancelled the registration under the new provisions of the Act i.e. 12AB(4)(ii) of the Act, which specifically provides that cancellation can be done for such previous year and all subsequent previous years, which makes it clear that the cancellation cannot be retrospective, therefore, in view of the above discussion, we are of the opinion that cancellation of registration with retrospective effect is invalid in these cases. Since the ld. PCIT invoked the provisions of section 12AB(4)(ii) of the Act, which has been introduced by the Finance Act, 2022 w.e.f. 1.4.2022 so as to cancel the registration with retrospective effect from assessment year 2021-22, which is bad in law. We also note that same view has been taken by Coordinate bench of Mumbai in the case of Heart Foundation of India in ITA No.1524/Mum/2023 vide order dated 27.7.2023, wherein held that registration granted u/s 12A of the Act dated 21.7.1989 cannot be cancelled by ld. PCIT (Central) vide order dated 6.3.2023 w.e.f. assessment year 2016-17, by invoking the provisions of section 12AB(4)(ii) of the Act. Accordingly, we allow the primary ground nos.2, 3, 5 & 12 and order of ld. PCIT passed u/s 12AB(4)(ii) of the Act is quashed.”*

**8.5** In view of the above, this ground of appeal of the assessee is allowed.

**9.** Now we will adjudicate ground Nos.3.1 and 5 to 11 of the assessee's appeal with regard to which the ld. A.R. has submitted as follows:

**Ground No. 3. 1 :**

**10.** The ld. A.R. submitted that no specified violation noticed or found by PCIT for the assessment year 2022-23 to 2026-27 and since 12A cannot be cancelled, it follows that the registration granted u/s. 12AB cannot be cancelled in the absence of any specified violations for the assessment years 2022-23 to 2026-27.

**10.1** This ground is allowed in view of our findings in ground No.2 of this order as discussed above.

**Ground No. 4:**

**11.** The ld. A.R. submitted that the registration granted u/s. 12A and 12AB of the Act were under two separate orders / proceedings, which operated for different assessment years and therefore, separate proceedings ought to have been taken for each order of registration and concluded by a separate order and thus, the common order passed cancelling the registration u/s 12A/12AB of the Act from the FY 2020-21 and all subsequent previous years is a nullity.

**11.1** This ground is allowed in terms of our findings in ground No.2 of this order as discussed above.

**Ground No. 5 & 6:**

**12.** The ld. A.R. submitted that no power to take proceedings for cancellation of registration alleging "specified violations" when the facts on the basis of which the allegation of "specified violations" were made have already been examined by the learned A.O. in assessment proceedings for the assessment year 2021-22 taking a particular view, which had not yet reached finality due to the pending appellate proceedings, thereby transgressing the jurisdiction of the first appellate authority to render a factual findings on the issues raised in the assessment proceedings and therefore, the power to cancel registration u/s. 12AB [4] of the Act in terms of clause [a] thereof, would only be available where the assessment proceedings had not yet commenced or completed and not after the completion of the assessment;

**12.1** He submitted that the learned PCIT has firstly held that the pendency of appellate proceedings, does not bar him from invoking the provisions of Section 12AB [4] of the Act since the CIT [A] is an independent authority and does not report to the PCIT and

thus there is no transgression of the jurisdiction of the first appellate authority.

**12.2** In this regard, he submitted that the withdrawal of recognition u/s 12A/12AB of the Act by the learned PCIT has far reaching consequences as the appellant will not be entitled to exemption u/s. 11 of the Act. It is worth mentioning here that the learned A.O. has allowed the exemption u/s. 11 of the Act in the assessment order passed for the AY 2021-22 and has only chosen to bring to tax the sum of Rs. 1,31,85,000/- as income that is hit by the provisions of section 13[1][c] of the Act. In coming to the said conclusion, the learned A.O. has considered and evaluated the very same materials that are being considered by the learned PCIT, Central Circle, Bangalore for withdrawal of the registration u/s. 12A of the Act that is available until assessment year 2021-22 and registration u/s. 12AB of the Act that is applicable for the assessment years 2022-23 to 2026-27.

**12.3** He submitted that the impugned order passed by the learned PCIT, Central Circle, Bangalore is to set at naught the appeal filed by the appellant before the learned CIT [A], who would be unable to consider the merits of the argument put forth before with regard to the materials found in course of search and render a finding as to whether the appellant had in fact accepted cash from students and diverted the same to the trustees as held by the learned A.O, Thus, the view taken by the learned PCIT that the learned CIT [A] would not be bound by the views of the learned PCIT since he does not report to the learned PCI T is of little consequence since the CIT [A] would not be able to decide the addition that has been made by the learned A.O. in the assessment order on merits of the submissions made by the appellant and the materials on record. It is submitted that the existence of registration is a

precondition for allowance of exemption u/s. 11 of the Act and thus, the learned CIT [A] would be forced to issue directions for enhancement of income by denying the entire exemption u/s. 11 of the Act as a result of the impugned order of the learned PCI T, which has been consciously allowed by the learned A.O. in the assessment order passed.

**12.4** He submitted that at this stage, it is also relevant to point out that there is an inference or findings that has to be drawn from facts based on the materials found in course of search. Such findings have already been recorded in the assessment order passed for the assessment year 2021-22. On the same facts, action is taken by the learned PCI T for cancellation of registration. These facts and inference drawn by the learned A.O. are subject matter of an appeal before the learned CIT [A] at present and thereafter, the same would have to be considered by the Hon'ble ITAT, which is final fact-finding authority in second appeal, if any.

**12.5** Thus, he submitted that the parallel action taken for cancellation of the registration when a view has already been taken on the facts found is unwarranted at this stage and thus, the power so exercised to cancel the registration during the pendency of the appeal requires to be vacated.

**12.6** Further, he submitted that the circumstances for the invocation of Section 12A [4] did not exist since the condition mentioned in Section 12AB [4][a] of the Act would apply only to such situations where the assessment proceedings had not yet commenced or completed. It was further contended that once the assessment proceedings had commenced and was pending, the power to cancel registration would be in terms of Section 12AB(4)(b) of the Act based on reference by the learned AO. However, the learned PCI has held that he only has to notice the occurrence of

specified violations in terms of Clause[a] and there is no specific manner provided in the Act for noticing the same and that the source of the information was inconsequential.

**12.7** The Id. A.R. has reproduced the relevant provisions of section 12AB[4] of the Act, which reads as follows:

(4) Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 12/1/4, as the case may be, and subsequently:—

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the Principal Commissioner or Commissioner shall,—

.....”

**12.8** He submitted that as can be seen from the above, there are 3 circumstances mentioned which are mutually exclusive of each other. Under either of the conditions, the PCIT can act to cancel the registration. The first condition is when he notices the violations by himself, which could be at a stage before the completion of the assessment and not thereafter. This is because both the other conditions in [b] & [c] also talk of the proceedings being taken up before completion of the assessment and not thereafter. Once the assessment is completed, the cancelation of the registration could not be done when the matter is before the

appellate authorities. Thus, section 12AB[4][a] also has to be construed in a manner that is harmonious with the other 2 clauses.

**13.** The ld. D.R. relied on the order of the ld. PCIT.

**14.** This ground is infructuous in view of our findings in ground No.2 of this order as discussed above.

**Ground Nos. 7 to 11:**

**15.** On merits, the ld. A.R. submitted that the sum and substance of the entire finding recorded by the learned F<sup>5</sup>CIT is that there is collection of cash from students that is not recorded in the books of the trust and that such cash has been diverted to the trustees and therefore, it is a specified violation. The assessee has denied collection of cash and has submitted that it had conducted an enquiry whereby it was discovered that two employees had misappropriated the discounts allowed by management and collected cash. In support of the said stand and explanation tendered vide submissions filed before learned PCIT, the following documents forming part of the paper book were submitted and referred to:

8	No cash collection, only concession	Sample letters for concession	407-412
		Excel showing fees collected, concession provided	413-414
8.1	Misappropriation by employees in lieu of concession granted by mgmt.	Initial Enquiry report	339-357
		Final report – Enquiry	380-399
		Course Fee recovery ledger	404-405

		Bava recovery cheque	406
8.2	Termination of Bava and Farooq	Suspension Order	377,379
		Termination letters	400-403
8.3	Statement of Bava and Farooq has been retracted vide affidavits	Affidavits	328-338
8.4	Assessments concluded in the case of Bava and Farooq	Assessment orders AY 2020-21 & 2021-22	202-284
9	No specified violation as per 12AB explanation (a) – No utilization of income for the benefit of Mr. Farhad	Assessment orders of Farhad – AY 2020-21 & AY 2021-22	285-293
10	No specified violation as per 12AB explanation (b) – cannot be income from business		
11	No specified violation as per 12AB explanation (e) – higher fees does not imply activities is not charitable		

**15.1** He submitted that the learned PCIT has cancelled the registration on the ground that the appellant was collecting cash from students and was diverting the same for the benefit of the trustees. The said inference has been drawn based on the reliance placed upon the statement u/s 132(14) of the Act of 2 employees viz. Sri Umar Farooq and Sri Mohammed Bawa. It is pertinent to mention here that Sri Umar Farooq and Sri Mohammed Bawa have since retracted their statements recorded during search. They have admitted that cash was collected by them in lieu of the discounts provided.

**15.2** He submitted that these 2 persons have also been terminated from the services and this shows the bonafides of the

explanation tendered. The cash which was collected by Sri Umar Farooq and Sri Mohammed Bawa in lieu of the discounts provided to the students has also been assessed in their hands. Furthermore, the Pro Vice Chanc or of Yenepoya University viz. Sri Mohammed Farhad has denied any collection of cash by the appellants right from the date of search. In fact, there is no case at all to hold that any cash was collected by the appellants and diverted to the trustees, which is buttressed by the fact that the assessment for the AY 2020-21 and AY 2021-22 was concluded in the case of Sri Mohammed Farhad by accepting the returned income. Thus, there is no specified violations by the appellants at all to justify the cancellation of registration.

**16.** On the other hand, the ld. D.R. relied on the order of lower authorities.

**17.** This ground is infructuous in view of our findings in ground No.2 of this order as discussed above.

**18.** In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 28<sup>th</sup> Feb, 2024

**Sd/-**  
**(Madhumita Roy)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 28<sup>th</sup> Feb, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**