IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'A' BENCH, PUNE

BEFORE HON'BLE SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 714/PUN/2018

Ashwini Sahakari Rugnalaya & Research Centre
7107/1, Plot No. 180,
North Sadar Bazar, Solapur-413003.
PAN: AAAJA0041K ..... ***अपीलार्थी / Appellant***

बनाम / V/s

The Commissioner of Income Tax
(Exemption), Pune ..... ***प्रत्यर्थी / Respondent***

द्वारा / Appearances

Assessee by : Mr Pramod Shingte ['Ld. AR']
Revenue by : Mr Keyur Patel ['Ld. DR']
सुनवाई की तारीख / Date of conclusive Hearing : 08/01/2024
घोषणा की तारीख / Date of Pronouncement : 07/03/2024

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

The present appeal of the assessee was instituted on 12/04/2018 u/s 253(1)(c) of the Income Tax Act ['the Act' hereinafter] against the order of cancellation of registration dt. 28/03/2018 passed u/s 12AA(3) of the Act by the Commissioner of Income Tax (Exemption), Pune ['Ld. CIT(E)' hereinafter].

2. Briefly stated facts born out of the case records & rival arguments are that;

2.1 The assessee is an Association of Person ['AOP' hereinafter] registered as Co-operative Society under Maharashtra Co-operative Society Act, 1960. ['MCS Act' hereinafter] on 23/02/1983 which was on 28/04/2008 converted into multi-state Co-op. Society u/s 22 of Multi-State Co-Op. Society Act 2002 ['MSCS Act' hereinafter]

2.2 On 12/05/2003 the assessee society filed an application seeking registration u/s 10(23C) of the Act. The Chief Commissioner of Income Tax-II, Pune ['Ld. CCT' hereinafter] by an order dt. 31/03/2005 rejected the said application & denied to grant registration for holding the assessee as ineligible for registration u/c (via) of section 10(23C) of the Act, precisely for three bullet reasons as extoled therein viz; (i) complete absence of philanthropy in the operations-cum-objects of the assessee society, (ii) the operations of the assessee were at par with hospital running on commercial basis / principles (ii) assessee operating with a provision for distribution of profit to its members under its registered bye-laws.

The Hon'ble Supreme Court vide its order in Civil Appeal No. 3453/207 dt. 15/09/2021 [130 taxmann.com 366 (SC)] upheld the order of Hon'ble Bombay High Court [129 Taxmann.com 415 (Bom)] which in turn dismissed the assessee's Writ filed against aforestated order of rejection passed by the Ld. CCT. In result the observations, findings and reasonings of the Revenue in rejecting to grant registration u/s 10(23C) of the Act to the assessee society has attained the finality on 15/09/2021.

2.3 During the pendency of aforestated application for registration u/s 10(23) of the Act before the tax authorities, the assessee vide its application dt. 13/05/2003 had concurrently applied for registration u/s 12A of the Act also. Considering similar material as were placed in former 10(23) proceedings, the registering authority came to similar observations, equivalent findings & identical reasoning and resultantly by an order dt. 25/07/2006 rejected the application by holding the assessee society as ineligible for registration u/s 12A of the Act.

2.4 The assessee society impugned the aforestated rejection u/s 253(1)(c) of the Act in an appeal before the Tribunal. The Co-ordinate bench of this Tribunal vide its order 15/03/2007 directed the registering authority to grant 12A registration on deeming fiction for Revenue's failure to dispose-off the assessee's application within a statutory period of six months. The Revenue however did not assail the direction of the Tribunal. In result by an order dt. 14/12/2007 passed u/s 12AA(1)(b)(1) r.w.s. 254 of the Act, the assessee society was issued a certificate of registration w.e.f. 30/11/2003. Thus, this certificate of 12A registration subject to condition specified therein enabled the assessee society for the claim of exemption u/s 11 and 12 of the Act from AY 2004-05(Pg328-330/PB-1).

2.5 While assessing income in very first AY 2004-05, the Ld. AO denied the benefit of exemption to the assessee citing identical reasoning based upon which registration was initially denied to it. This denial and reasoning in turn formed as basis for initiating cancellation/withdrawal proceedings by service of notice dt. 23/05/2008 u/s 12AA(3) of the Act. Due to change in jurisdiction upon creation of separate exemption, by an office order dt. 25/08/2016 the case records of the assessee were transferred to Ld. CIT(E) jurisdiction. The Ld. CIT(E) vide notice dt. 24/03/2017 revived former cancellation proceedings and before culmination had granted reasonable opportunities to enable the assessee to rebut Revenue's negative observations/findings. After analysis of facts with an elaborate discussion laid in para 4, the Ld. CIT(E) by the impugned order dt.28/03/2018 has finally withdrawn/cancelled the registration w.e.f. first show case notice ['SCN' hereinafter] dt. 23/05/2008 served on the assessee.

2.6 In withdrawing/cancelling the registration u/s 12AA(3) of the Act, the Ld. CIT(E) made certain statistical observations of facts, his resultant findings and inductive reasoning's as marshalled out in the impugned order reads as under; (i) Philanthropic work is not being carried out by the assessee, (ii) The hospital is like any other Private Hospital (iii) The Hospital, is run on commercial lines, (iv) The hospital is a platform for personal gains of the Members of the society & as such, it exists for profit, (v) There is no element of Charity & Service to the Poor in the activities carried out by the assessee, (vi) The Property of the assessee is not held under Trust or any other Legal Obligation, (vii) From the objectives & also the Bye-Laws of the Society, the requirement of application of income for Charitable Purposes is not established or apparent.

3. Aggrieved by the aforestated cancellation/withdrawal of 12A registration, the assessee instituted this appeal u/s 253(1)(c) of the Act first on 12/04/2018 before the Tribunal. The Co-ordinate bench in first round of appeal, heard the matter at length and allowed the appeal of the assessee vide its order dt. 04/05/2019. Aggrieved thereby the Revenue vide ITA No 1105/2020 preferred an appeal before Hon'ble Bombay High Court. After a holistic consideration of matter, their Hon'ble Lordships vide order dt. 16/02/2022 have set-aside the order of Co-ordinate bench and remitted the matter back to the Tribunal for *de-nova* consideration with a direction to deal with it on merits in accordance with law after taking into account the decision of the Hon'ble Supreme Court in Civil Appeal 3453/2007 rendered in assessee's own case in context of denial to grant registration u/s 10(23) of the Act.

4. Now for the sake of brevity, we deem it necessary to reproduce the directions of Hon'ble Jurisdictional Bombay High Court here from para 3-4 of the order dt 16/02/2022 as;

"3. At the time of passing the impugned order, the pendency of a Special Leave Petition preferred by the assessee before the Hon'ble Supreme Court of India (Ashwini Rugnalaya and Research Centre Vs. Chief Commissioner of Income Tax, Civil Appeal No.3453 of 2007) was brought to the notice of the ITAT. The said civil appeal challenged judgment of this Court dated 54 December 2005, whereby this Court had upheld the denial of benefits to the assessee under Section 10(23C)(via)/ of the Act for Assessment Years 1999-2000 to 2002-2003.

4. Subsequent to the impugned order dated 24 May 2019 passed by the ITAT, the Hon'ble Supreme Court has finally decided Civil Appeal and confirmed the decision of this Court denying benefits under Section 10(23C) (via) to the assessee. ***This decision of the Hon'ble Supreme Court was, thus, not before the ITAT*** *at the relevant time when the impugned order was passed.*

5. In light of this subsequent development, we are of the view that the appeal of the assessee before the ITAT i.e., ITA No.714/PUN/2018, should be ***remanded for de novo consideration so as to enable the ITAT to consider the decision of the Hon' ble Supreme Court****.*

(Emphasis supplied)

5. The Tribunal, respectfully adhering to the directions of the Hon'ble Bombay High Court, on fast-track basis listed this remitted case for *de-nova* hearing first time on 15/02/2023. On the requests of rival parties, the matter was adjourned for as many as eight times, and for several times the matter either could not come for hearing or could remain part-heard due to paucity of time. The resultant delay (if any) in disposing this remitted matter is solitarily attributable towards rival parties detailed, lengthy, and repetitive submissions, over-lapping arguments *vis-à-vis* pleadings and delayed clarifications when posted by the bench.

6. In this factual background, before proceeding for adjudicating in terms of former directions (supra) we deem it necessary to reproduce grounds as;

> ***"1. On the facts and in the circumstances of the case and in law the learned CIT(Exemption) erred in passing order us 12AA(3) thereby rejecting the registration granted u/s 12AA, the action being perverse needs to be quashed.***
>
> ***2. On the facts and in the circumstances of the case and in law the learned CIT(Exemption) erred in passing order u/s 12AA(3) of the Income tax Act. 1961 in connection with proceedings initiated on 23/05/2008 which are concluded by passing order on u/s 28/03/2018. Such order passed after time gap of almost 10 years is bad in law, should become time barred.***
>
> ***Without prejudice to above ground your appellant intends to take following grounds on merit.***
>
> ***3. On the facts and in the circumstances of the case and in law the learned CIT (Exemption) erred in passing order u/s 12AA(3) by disregarding appellant's detailed contentions, merely on the basis of Learned Assessing Officer's action of rejecting exemption us 11 & 12 for AY 2004-05. The action***

is incorrect especially in light of the fact that Hon'ble ITAT, Pune has allowed the appeals on merit for A. Y. 2004-05.

The appellant caves for to leave, add, alter, modify, delete any of the ground of appeal before or at the time of hearing, in the interest of natural justice."

(reproduced)

7. Arguments and Pleadings of the appellant;

7.1 The Ld. AR Mr Shingte appearing for the appellant assessee at the outset of physical hearing recited that, the first & the third ground of the appeal are assailed purely against merits of the case, whereas the second ground challenges the impugned order on jurisdiction as well on the law of limitation. It is therefore submitted that all arguments & pleadings raised herein are commonly directed against these twin issues without any watertight compartment there between.

7.2 **Firstly, on merits** it is submitted that, (i) on direction of the Co-ordinate bench the Revenue had granted 12A registration to the appellant at the time when rejection of 10(23C) was under challenge before Hon'ble Jurisdictional High Court. By the time 10 (23C) rejections reached its finality much water had flown over assessment of various years. (ii) It is shown to us that, during the subsistence of 12A registration, while framing assessments for AY 2004-05 to 2009-10 and 2011-12 the claim of exemption u/s 11 and 12 were denied to the assessee which though confirmed in first appellate proceedings but came to reversed by the Tribunal in second appeal. Insofar as the AY 2010-11 & 2012-13 are concerned, the claim of exemption u/s 11 and 12 were passed

without scrutiny assessment through e-processing u/s 143(1) of the Act. Adverting to assessment of AY 2014-15 & 2015-16 it is also brought to our attention that, the claim of exemption for these years were however allowed under scrutiny assessments. Thus, the Revenue finally accepted the assessee as compliant of conditions precedent for claiming exemption u/s 11 and 12 of the Act. (iii) The Ld. AR also averred that, had the Revenue was doubtful of assessee's charitable activities being one of the pre-requisites, then it could not have recognised assessee's eligibility for granting approval u/s 80G(5) vide latest order dt. 30/03/2017 (Pg57-58/PB-2).

7.3 To bolster the assessee's eligibility for 12A registration and in turn its entitlement for exemption u/s 11 & 12 of the Act, the Ld. AR on the point of (i) ***'nature of operations or activities'*** adverting to registered Bye-laws (Pg326 to 337/PB1) vehemently contended that, the plain reading of provisions of its bye-law would satisfactorily show that the objects and functions of the assessee society are purely charitable in nature. The assessee established its hospitals, medical shops, nursing college & hostel etc., for providing medical services at reasonable rates so as to reach the general public from all sections of society without any discrimination. The assessee since its formation in 1983 relentlessly undertaking its medical operations/activities on philanthropic basis and without any scope or motive of earning or generating profit therefrom. The profit if any earned by it is merely incidental and not preplanned while fixing the rates for medical services, sale of medical drugs, fixation of nursing college fees etc. On the point of (ii)***'receipts of fees from operation'***, Ld. Mr Shingte submitted that,

the assessee's hospital falls in the category of multi-speciality hospital with state of health infrastructure/facilities and is the only one of such kind catering needs of entire Solapur District and adjacent district of state of Karnataka & Andhra Pradesh (now Telangana). The hospitals are equipped with best/imported available medical apparatus and well qualified team of expert member doctors and non-member doctors. Seeking our attention to Pg42-to70/PB-1 it is submitted that, the fees charged for rendering medical services are quite reasonable in comparison with similar type of hospital run at nearing district Pune. The charges in each type of treatment are based upon category of medical service rendered, type of category of patient (general or special, economy or deluxe etc.) service/attention of expert doctors made available and the overall financial condition of the patient. And lastly on the point of (iii) ***'sharing or distribution of surplus/profit'***, the Ld. AR adverting to amended Clause 45 and 46 of registered Bye-laws (Pg319/PB-1) has shown us that, owning to restriction placed in the registered bye-laws, no amount of incidental profit, reserves or capital can be distributed as dividend amongst the members or doctor members of the assessee society. The incidental profit earned by the assessee is invariably utilized in expansion of hospitals building, its operations, purchase of technologically advanced medical instruments/devices, laboratory equipments etc., and this in turn enabled the assessee in providing better & improved medical services at reasonable prices.

7.4 **Secondly, on the challenge against jurisdiction**, the Ld. AR contended that, the registration once granted u/s 12AA to assessee, in law can only be

withdrawn under two gunshot situations; that if the activities of the assessee are (i) either found not genuine or (ii) found not carried out in accordance with the objects with which it is registered. In the present case, the assessee carried all its activities strictly in accordance with its registered bye-laws and which are genuine & not spurious in any manner. However, the Ld. registering/cancelling authority withdrawn the registration without first showcasing as to how and to what extent the operation/activities of the assessee are not genuine or not in agreement with the object of registered bye-laws. It is further alleged that; the Revenue could lay no evidence in support negative conclusion drawn against the operation/activities of the assessee. It is also argued that, the provisions of cancellation cannot be invoked perfunctory for fanciful and petty reasons, it is indeed can only be touched in an inordinate circumstance with cogent evidences, but in the present case the Ld. CIT(E) unfortunately gave it a miss.

7.5 **On the point of limitation**, it is further shown to us that, the cancellation of registration proceedings in appellant's case was initiated way back in the year 2008 (Pg325/PB-1) and are culminated in the year 2018 (Pg1-8/PB-1) that too without taking cognizance of Tribunal's binding orders in relation to AY 2004-05 to 2009-10 and 2011-12 whereby benefit of exemptions were allowed on merits of the case. To end, it is also argued that, the cancellation/revocation process traversed over a decade since it was first initiated, hence such far-fetched proceedings are untenable in law in the light of binding judicial precedents laid in *'CIT Vs. NHK Japan Broadcasting Corporation*', reported in 305 ITR 137 (Del.); *'DIT Vs. Mahindra & Mahindra Ltd.*', finds placed in 365 ITR 560 (Bom).

7.6 **Lastly on the point of retrospective cancellation**, the Ld. AR remonstrated that the power to cancel registration granted u/c (b) of s/s (1) of section 12AA was brought to statute first time by Finance Act of 2004 by inserting s/s (3) to section 12AA of the Act which came into effect w.e.f. 01/10/2004. Subsequently Finance Act 2010 by amendment empowered registering authority to cancel registration obtained anytime u/s 12A. This cannot however entitle the Ld. CIT(E) go behind the first effective date of s/s (3) to section 12AA of the Act coming into force. The jurisdiction by first notice initiating the cancellation proceedings was assumed on 23/05/2008 that is much anterior to Finance Act 2010, thus the Ld. CIT(E) remains with no jurisdiction to cancel the registration.

7.7 The sum and substance of the arguments put forth by the appellant are that, (i) the appellant's hospitals, medical shops and nursing colleges etc., since 1983 were rendering medical services at very reasonable price to general public. (ii) the incidental profits earned by it are directly utilized in expansion of infrastructure without making them available for distribution to its members (iii) the appellant's activities of providing medical services through hospitals and medical stores & nursing college etc., are truly genuine and are in conformity with its registered objects. (iv) In view of these facts, there remained no scope for the Revenue to invoke cancellation jurisdiction u/s 12AA(3) of the Act. (v) In the impugned order, however the Ld. CIT(E) besides making general, bald and indicative observations, could bring no evidence in support of negative findings noted by him, therefore the impugned action of withdrawal of registration is arbitrary in nature and meritless to stand tall in the eyes of law.

7.8 Having elaborately argued at length on merits, jurisdiction and on the issue of limitation etc., Ld. Mr Shingte while resting his case denounced the Revenue's hot & cold blow for accepting assessee's eligibility on one hand by granting it 80G approval (Pg-57-58/PB-2) & claim of exemption under scrutiny assessment and withdrawing 12A registration arbitrarily on other hand. Underscoring this contradictory stance, the appellant demands this infirm action of the Revenue is fit case to be quashed and resultantly prayed for necessary direction to restore back the 12A registration with immediate effect.

8. Counter arguments & pleadings of the Revenue

8.1 *Per contra,* in vehemently defending the impugned order the Ld. CIT-DR Mr Keyur Patel, referring to Pg328/PB-1 recited that; (i) on 25/07/2006 the assessee's first application for 12A registration was also rejected in line with rejection of its earlier application for 10(23C) registration on 31/03/2005 which the Hon'ble Apex Court has upheld by the order dt. 15/09/2021. It is only upon the direction of this Tribunal, the assessee society piggybacked 12A registration under deeming fiction for not disposing-off its application within the period of six month. May it be (ii) but in all along for all assessment years barring automatic summarily processed returns u/s 143(1) of the Act, the Revenue right from the first assessment year 2004-05 have perennially denied the claim of exemption on merits thus the status of registration. The Ld. DR additionally submitted that, (iii) the assessee's activities/objects were ineligible for registration u/s 12A, thus were ineligible for any exemption claim u/s 11 & 12 of the Act. (iv) the deemed registration sacked by assessee u/s 12A is in itself bad in law as the tax

authorities believed that there is no concept of deemed registration under the statute. (v) The prescription of period of six months for disposal of application for grant of registration in the statute is directory in nature and delay in deciding would in no case results into automatic grant. To buttress this contention Ld. DR pressed into service catena of decisions including; *'CIT Vs Muzafar Nagar Development Authority',* reported in 57 taxmann.com 8 (Allahabad); *'CIT Vs Sheela Christian Charitable Trust*', reported at 32 taxmann.com 242 (Mad); *'CIT Vs Karimangalam Onriya Pengal Semipu Amaipu Ltd.',* reported in 32 taxmann.com 292 (Mad); and *'Mercedes Benz Education Academy Vs ITO',* reported in 65 Taxmann.com 73.

8.2 In knocking down the appellant's claim that in scrutiny assessment the tax authorities allowed the exemption to it on merits, the Ld. DR adverting to records shown to us that, during the subsistence of deemed registration the Revenue continued to deny the exemption to the appellant on following gunshot reasons; (i) absence of relief scheme for poor & weaker section of the society (ii) absence of evidence showcasing the medical relief granted (if any) (iii) receipts/income earned was not a from the property held under trust (iv) high fees/charges for medical services in comparison with other local hospital (v) doctor members are remunerated on value for service basis (vi) hospitals are running on commercial lines and exists for profit. (vii) Insofar as allowing the claim of exemption in AY 2014-15 & 2015-16 scrutiny assessment is concerned, it is very much on records that tax authorities allowed the claim to the assessee merely on earlier years binding precedents of this Tribunal and not on merits of the case.

8.3 In refuting the assessee's eligibility for exemption, the Ld. Mr Patel adverting to registered bye-laws has vehemently submitted that, (i) the assessee is not a Trust but a society registered to operate on co-operative principles (Pg-151-&-194/PB-1) and in first place established for sole benefit of its members and was never-ever granted any registration under the Act on merits. (ii) the assessee since not registered itself under the provisions of Bombay Public Trust Act, 1950 or Maharashtra Public Trust Act, 1950 ['BPT/MPT Act' hereinafter] therefore the hospital, medical store/dispensary nursing college/schools etc., properties are not held under Trust. (iii) the primary object of assessee society as can be seen from the first registered bye-laws (Pg-153-to-193/PB-1) is running a business of hospital, schools, dispensaries & hostels etc., and there is hardly any whisper or provision relating to object of medical relief/charity (iv) the principal object of the assessee as laid in clause 3(a) of its second registered bye-laws (Pg197/PB-1) is to promote the benevolence of its member. (v) Meticulously taking us through few entries of object clauses of the registered bye-laws it is shown to us that, not even a single sub-clause thereof refers to any provision of medical relief or even a concession for that matter. These registered objects with which the assessee is operating its hospitals, medical shops, nursing schools/colleges & hostel etc., evidently show to the satisfaction that, the assessee indeed a business establishment or commerce in the field of medical or health services and nothing more than a venture operating on commercial principles alike private hospitals.

8.4 Coming to the operations/activities of the appellant, referring to comparison of rate-chart (Pg35/PB-00), the Ld. DR counter argued that, the comparison

drawn by the assessee is with that of most leading & distinctive hospitals operating in Pune (Maharashtra). It is averred that, the assessee ingeniously tried to justify rates charged by it with an incomparable metro city hospital. The appellant did fail to prove balanced comparison with like hospitals located in & around its area of its operation or with hospital in operation in similar size & scale in like geographical condition/location etc. Calling our attention to Pg42-70/PB-1 it is accentuated that, the assessee has not shown separate rates for OPD/General Ward, Semi Private Ward and others. The Ld. DR has further drawn our attention to various other factors viz. the package rate for open heart surgery charged by the assessee and other hospitals. Touching to Pg98-&-207/PB-1 it is contended that, the symbolic charitable activities carried out by the assessee for senior citizens/donors and weaker section of society, etc. are negligible therefore too sketchy to colour whole operation as charitable. Relying on the decision of co-ordinate bench in *'Fernandez Foundation'* reported in 145 Taxmann.com 442 [66 CCH 352 & 221 TTJ 109] which in turn relied on the decision rendered in present appellant's case by the Hon'ble Apex Court reported in 130 Taxmann.com 366 (SC), it is contended that the assessee has not categorized the rates for each service category i.e. (a) price charged for providing medical facilities free of cost/charity, (b) subsidized rates and (c) full rates for other patients (d) charges for members & non-members etc., Further highlighting abnormality in rates, it is assailed that the rate card speaks aloud against the assessee society that its operations/activities are carried out very much on commercial basis/principles wherein it categorised charges according to class of patient viz; super deluxe, deluxe, economic for same medical treatment etc.

8.5 It is strenuously urged on behalf of the Revenue that, the profits generated from operations besides being shared with the doctor members in the form of remuneration and pay-outs, are utilized in expansion which in turn enabled the society to operate on a larger scale & size but on a commercial principle. In result more profits accrued to it and thus the accelerated remuneration to its members doctors over non-member doctors etc., with a much less charity. Adverting to Pg-284/PB-1 it is also brought to our notice that, the appellant for the purpose of extensive expansion had on year-to-year basis borrowed heavily from banking companies/financial institution. It is shown to us that, in the return of income filed for the respective assessment years the appellant claimed double deduction against such capital expansion i.e. once as an application of income when expanded and then as depreciation thereon. So, the extraneous profits generated from commercial operations were swept out by claiming double deduction so as to portrait that it is a charitable institution made meagre incidental profits.

8.6 Adverting to internal resolution placed at Pg230-to250/PB-1, for instance the Ld. Mr Patel submitted that, the Ld. AR's contention that pursuant Hon'ble Supreme Court Order dt. 15/09/2021 [whereby their Hon'ble lordship have upheld the rejection of its 10(23) application], the assessee has modified or changed its operations/policies is complete devoid of facts. This is so because, the assessee right from the beginning was operating not only on similar line but on same line with same operating, administrative and remuneration policy. This fact can very well be vouched from the scrutiny assessments framed where the exemption claimed were denied to the appellant owning to commercial nature of

its activities, remuneration to members and operating at par with private medical hospital etc. Further adverting to Pg-100 to 269/PB-1 certain contrary facts are also brought to our notice where even basic ambulance services are chargeable for everyone. It is additionally submitted that the assessee's no single official documents including broacher, cards, bills/ invoices letter heads, reports and other stationary could exhibit that it is a charitable hospital or engaged in providing medical relief in any manner.

8.7 Dismantling the applicability of all the case laws relied upon by the appellant, the Ld. DR's urged that, the judicial precedents relied by the appellant are no longer good law in view of the judgment of Hon'ble Supreme Court in *'CIT Vs Ahmedabad Urban Development Authority'*[2022] 115 CCH 131(SC), whereby their lordships have categorically held that, *it is not mere registration that entitles the assessee for claim of exemption but the ultimate determination of entitlement having regards to nature of assessee's constitution, principal purpose or object for which it is established, and nature of activities actually undertaken by it in conformity with charitable object/purpose and the shade of profit generated by it whether it is incidental or otherwise'.*

8.8 The sum and substance of elaborated arguments of the Ld. DR is that, (i) there is no or much less philanthropic work carried out by the hospitals, medical shops and colleges etc., run by assessee (ii) the hospitals & medical shops were charging fees is at par with any other private hospital operating with similar kind of infrastructure, (iii) there was neither any scheme of charity in force nor a free

medical scheme nor even a concessional treatment to the financially weaker sections of the society, (iv) the assessee's hospitals are business venture running on commercial basis/principles, (v) the hospitals were used as a platform for personal gains of the members of the assessee society who are remunerated on percentage basis as well on fixed sum basis irrespective of other determinative factors (vi) Substantial amounts of profits were distributed to member doctors under the grab of professional fees (vii) there is no element of charity and service to the poor (viii) the benefit of section 11(1) of the Act is available only to trust whereas, the assessee is a co-operative society and not a trust, hence, there is no binding legal obligation on the assessee society to apply its income for charitable purpose (x) the fees charged from patients cannot be characterised as voluntary contribution for the purpose of u/s 11 of the Act (xi) objects of the society nowhere mentioned that the funds are to be applied for charitable purposes.

9. Appellant's rebuttal to Revenue's counter arguments etc.

The appellant except reiterating all its earlier arguments and rearticulating former pleadings could hardly pull apart and confute the Revenue's version of factual submissions, averments and dislodgment of appellants claims.

10. We have heard the rival contentions of both parties at length; subject to provisions of rule 18 of Income Tax Appellate Rules, 1963 ['ITAT Rules' hereinafter] perused material placed on records and considered the facts of the case in the light of case laws pressed into service which are also forewarned to rival parties for their rebuttal.

Observations, findings and Adjudication

11. Jurisdiction and Limitation

11.1 Insofar as the deemed registration granted on the direction of co-ordinate bench is concerned, we are mindful to divergent views taken thereon by various Hon'ble High Courts. The Hon'ble High Court of Karnataka, Rajasthan and Kerala have ruled in favour of assessee on the other hand Hon'ble High Courts of Gujarat, Madras and Full Bench of Hon'ble Allahabad High Court have ruled against assessee. The issue is now *sub-judice* before the Hon'ble Apex Court in *'CIT(E) Vs Gettwell Health & Education Samiti' 284 Taxman 363(SC)*. Since, we are not at all dealing with legality or validity of deemed registration granted to the appellant assessee pursuant to direction of the co-ordinate bench, we are afraid of offering any comment thereon being *extra-territorial* to our present jurisdiction.

11.2 However, to begin with, the points canvassed by the Ld. DR Mr Patel that, the appellant before us do not hold certificate of registration on merits but holds the one which was issued to it pursuant to binding direction of the co-ordinate bench has been well noted for the purpose of adjudication.

11.3 We note that, by the first notice dt. 14/12/2007 u/s 12AA(3) of the Act the Revenue initiated the cancellation proceedings primarily based on fourfold grounds viz; (i) the appellant was operating on commercial principle by charging fees at par with private hospital (ii) lacking philanthropic objectivity and (iii) profit generate out of the operation is distributed to doctor members etc., through various mode of diversion for their personal gain and (iv) the society has ceased

to carry on the activities of the in accordance with the charitable principles. The registration was proposed to be withdrawn with effect from AY 2004-05. The said cancellation proceedings initiated way back in 2007-08 was slumbered until 2017. Following the amendments, the Ld. CIT(E) has issued a fresh notice to show cause on 24/03/2017 in view of the amended provision of sub-Section (3) of Section 12AA, which were brought into force with effect from 1st June 2010, which provided that any registration granted under Section 12A can also be cancelled by the registering authority. The Ld. CIT(E) accordingly invoked his powers under amended provisions of Section 12AA(3) and by impugned order cancelled/withdrawn the registration of the appellant for the eight precise reasons as spelt out in concluding para at Pg27/27 thereof (Pg27/PB-1) with a retrospective effective from AY 2004-05.

11.4 Without duplicating amended provisions of section 12AA(3) of the Act, we quote that, the subject matter of retrospective cancellation of registration is no-more *res-integra* in the light of settled legal position laid in *'Sinhagad Technical Education Society Vs CIT Central & Ors.'* reported as 343 ITR 23(Bom), *'Delhi Stock Exchange Association Ltd. Vs CIT',* reported in 225 ITR 235 (SC), *'Indian Chamber of Commerce Vs CIT'*, 101 ITR 796 (SC); *'Ideal Publications Trust Vs CIT'*, 305 ITR 143 (Kerala); *'CIT Vs National Institute of Aeronautical Engineering Educational Society'*, 315 ITR 428 (Uttarakhand); wherein it has been held that, the registering authority who is empowered to grant registration had inherent powers for cancelling it even before it has been specifically conferred by the amendment to section 12AA by the Finance Act, 2010.

11.5 As we noted that, first application dt. 13/05/2003 of the appellant seeking grant of 12A registration was rejected on 25/07/2006 by a well speaking order in line with the rejection of application for 10(23C) registration. Although the appellant wasn't eligible on merits but the binding direction of this Tribunal constrained the registering authority to issue 12A certificate on 23/05/2008. The tax authorities after due verification of objects and activities while assessing appellant's income under scrutiny assessment u/s 143(3) of the Act has denied the benefit of claim right in every first AY 2004-05. Based on the aforestated denial, the Revenue instantly by notice dt 14/12/2007 initiated the cancellation proceedings. The series of denial to grant benefit of claim of exemption u/s 11 & 12 continued by the Revenue until AY 2011-12, which came reversed by co-ordinate bench exclusively on the strength of survival of registration certificate and not on merits. We note that, the claim for exemption in subsequent years were not subjected to scrutiny but either passed through computerised e-processing (summary assessment) or under a shelter of previous years binding precedents wherein the co-ordinate bench allowed the exemption in the light of subsisting registration. So is the case of grant of 80G approval accorded (placed at Pg-57-58/PB2). That is to say, in true sense, right from very beginning the respondent Revenue never accepted appellant's eligibility for registration since the activities of the appellant were (a) neither genuinely charitable (b) nor in accordance with charitable objects. The entire episode brought on records clearly reveals us that, there is complete parity in the action of the Revenue which remained flawless, thus in our considered view cannot be faulted with now. The ground number 2 therefore rendered meritless, ergo stands dismissed.

We shall now deal with all the remaining grounds accordance with directions;

12. ***Complete absence of philanthropy in the registered objects and operations of the appellant;***

12.1 The objects without charity and no charitable objects;

12.1.1 The appellant was governed by the provisions of MCS Act till it was converted into a multi-state Co-op. society in the year 2008. On perusal of objects from both these registered bye-laws we noticed that, the primary object of the appellant was never consisting of any clause for providing medical relief or any clause relating to charity. In particular, the object clause 3 of its **first** registered bye-laws (Pgg153/PB-1) empowered the appellant predominantly to create & run hospitals, schools, dispensaries, medical shops & hostels. The clause 3(e) thereof did provide for giving better facilities to citizen / general public at a reasonable charge. However, evidently there was no object of medical relief as envisaged u/s 2(15) of the Act. There was complete absence of any object prescribing for providing medical help either free of cost or at nominal charge more precisely on charity basis. Insofar as the **second** registered bye-laws is concerned [by which the appellant converted itself into a multi-state society], from Pg194/PB-I it is evident that, the appellant as a part of its expansion programme has extended its operations to serve health interest of its members from small town Solapur, to Latur & Osmanabad (now Dharashiv) three districts of Maharashtra State and two district namely Gulbarga & Beedar of Karnataka State. Going through object clause 3 thereof placed at Pg-197-198/PB1 we note that, ***'the principal object of the society will be to promote the health interest of all its members to attain their social, economical and health betterment through self-help and mutual***

aid in accordance with the co-operative principals.'. The plain reading of this principal objects clause abundantly clarifies that the appellant is established on co-operative principal for social, economic and health betterment of its members exclusively and for operation in accordance with co-operative principles but without explicitly prescribing any provision for benevolence/charity of general public or indigent / poor / weaker section of general public who are not members of the appellant society. To sum up, neither the first bye-laws which was in force for AY 2004-05 to 2008-09 nor the second bye-laws which came into effect from AY 2009-10 did provide any object of medical relief or charity in its objects clause and nor did it provide any scheme or provision for economically disadvantaged section of general public. In the absence of any element of charity to general public the denial to continue registration & denial allow exemption finds support in *'MCD Vs Children Book Trust'* [1992] 63 Taxman 385 (SC).

12.1.2 *Per contra,* the appellant society is admittedly formed for its members and all its operations/activities solitarily were directed towards the benevolence of its members. Admittedly the constitutional documents, operational & administrative policies and operations completely lacks predominant or obvious philanthropy objects. For the reason we see strong force in the contention of the Revenue that, in the absence of pre-dominant charitable purpose *qua* medical relief the case of the appellant is squarely covered by the ratio laid first in *'M/s New Noble Education Society Vs CCIT'* [2022] 143 Taxmann.com 276 (SC) *'ACIT Vs Surat Art Silk Cloth Manufacturers Association'* 121 ITR 1 (SC) and in *'Queens Educational Society Vs CIT'*

reported in 372 ITR 699, *'Thiagarajar Charities Vs ACIT'* 225 ITR 1010 (SC) wherein their Hon'ble Lordship have laid that, in determining the true nature of existence of an entity what is necessary to be considered is whether having regard to all the facts and circumstances of the case, the dominant object of the activity is profit-making or carrying out a charitable purpose. If it is the former, the purpose would not be a charitable purpose. A similar ratio can also be traced in *'Yogiraj Charity Trust Vs CIT'* reported in 103 ITR 777(SC). Upon forewarning former judicial precedents, the appellant denied the application of these decisions stating that, these were rendered in context registration of educational society u/s 10(23C) of the Act and not in context of hospitals hence are inapplicable, this displacement could hardly make any difference in present adjudication. The real test to be applied is as to what is the dominant or primary purpose of the institution and the activities/operations it carries outs. In other words, certain cumulative factors will have to be taken into consideration in order to decide whether the institution/entity exists for philanthropic purposes and not for purposes of profit. In order to qualify for registration and exemption, the prime object must be philanthropic and in every activity of an assessee there must be an element of general public benefit or philanthropy has to be present. The reason why we stress on this aspect of the matter is if hospital is run on commercial lines, merely because it is engaged in medical services, it does not *per-se* entitles to exemption u/s 11 & 12 of the Act. This proposition is very well dealt with in *'CIT Vs Pulikkal Medical Foundation'* [1999] 210 ITR 299 (Mad) wherein their Hon'ble Lordships have categorically held that merely because assessee is running hospital/medical service will not by itself entitled to exemption.

12.2 Application of profits towards medical camps / programmes.

12.2.1 Adverting to clause 50(f)((iv) of first bye-laws placed at Pg188/PB-I the Ld. AR tried to canvass before bench that, the appellant society in its first registered bye-laws had provided for earmarking 10% of its divisible profit that may be applied for charitable purpose and out of such earmarked divisible profits certain free medical camps / programmes (Pg101-108/PB-1) were conducted. This free medical camps largely benefited weaker section and poor patient therefore, such activities of the appellant *per-se* sufficient to hold the society is in existence exclusively for charitable purpose. This however did not inspire any confidence to us for the reasons that, there is complete absence of charity obligation in the constitutional documents *vis-à-vis* in the operations of the appellant. Secondly the discretionary application of meagre amount of divisible profits for holding/arranging certain medical camps/programmes or for granting discretionary concession to certain patients do not sufficient to characterise the whole operation/activities as charitable. This view we see has been rightly fortified in the case of *'Yash Society Vs CCIT'* [2015] 231 Taxmann 256 wherein the Hon'ble jurisdictional Bombay High Court following the judicial precedents laid by Hon'ble Apex Court in *'Aditanar Educational Institution v. Addl. CIT* [1997] 3 SCC 346' and in *'CIT Vs Metha Charitable Prajnalay Trust'* [2012] 28 Taxmann.com 73 (Del.) in similar facts & circumstance upheld the denial to grant registration and exemption by holding that, meagre amount of profits spent by for the benefit of few people of general public do not *ispo-facto* enough to establish the existence of the assessee is solely for philanthropic purposes and not for the purpose of profit. Similarly, in *'Institute of Franciscan Missionaries of Mary Vs*

Commissioner' WP No 1639/2020 dt. 14/03/2022 the Hon'ble Madras High Court while adjudicating claim for property tax exemption has held that; merely because the petitioner is having few out-reach programmes which may be charitable in nature or that few patients are given concessional/fee treatment will not automatically term it as a charitable hospital. Merely because a meagre portion of service made available at concessional rate to small number of patients will not clothe such hospital with a tag of a charitable to claim exemption. If it is collecting money for medical services, it is not entitled to be called as charitable hospital. It is further held that, such out-reach camps / programme or concessional treatments to few patients *ispo-fact* do neither sufficient to prove that the hospital is charitable nor entitles it for exemption.

12.2.2 As rightly pointed out by Ld. Mr Patel that, in **second** bye-laws which is in force from AY 2009-10 there is no such provision for earmarking divisible profits for charity. This leaves the board/management with unfettered power to deal with its income/profits and property for any purpose. The appellant counter argument that, books of accounts and operations are subjected to annual audit and application of income/profit and property is vouched by the auditor therefore there was no scope left for discretionary or arbitrary application of income/profit or property, could hardly disprove the Revenue's contention.

12.2.3 We note that, in the absence of any definite obligation for part of the income, profits or property allocated to charitable purposes *qua* medical relief it would be open to the appellant to apply it to any non-charitable objects(in the

absence of charitable object in the registered bye-laws). In such circumstance their Hon'ble lordships in *'Yogiraj Charity Trust Vs CIT'* (supra) reiterating its ratio laid in *'Lakshmi Narain Lath Trust Vs CIT',* [1969] 73 ITR 402 '*East India Industries (Madras) Pvt. Ltd. Vs CIT'* [1967] 65 ITR 611 (SC) and *'Mohammad-Ibrahim Riza Malak Vs CIT'* AIR 1930 PC 226, have held that, the assessee is not eligible for registration, consequently *de-horsed* from claiming exemptions.

12.2.4 Insofar as discretionary utilization of profits for conducting few free or concessional medical camps for weaker/poor patients is concerned, in our considered view it all the most can be termed as application of taxable income and may qualify for a deduction u/c VI-A of the Act, but in no case it would capable of categorising existence of appellant solely for charitable purpose.

12.2.5 As an admitted fact we found that, the real objects of the appellant society were never charitable and items which are included in object clauses of its registered bye-laws, they merely enabled the appellant to carry on its medical business/services for its members on co-operative principles. Therefore, they were meant merely to enable it to carry on other than charitable objects in a more effective manner. It is also noted that items & sub-items included were not really objects in true sense but they are more in the nature of powers to facilitate carrying out principal object of running hospitals etc. In view of these findings, it is not possible us to hold that the prime object of the appellant was to carry on philanthropic/charitable object in any manner but certainly sufficient hold as carrying on the business of health or medical services, medical shops etc.

12.3 No records of charity and no charity in records of the appellant

12.3.1 On a specific query about the record of concession granted to any economically disadvantaged section, poor or indigent patient, the appellant expressed its inability stating that, old/earlier records after giving public notice are periodically weeded out. From a Photostat copy of one of such public notice dt. 19/04/2023 produced for our verification it is observed that, the appellant with a due notice to general public has weeded out all its medical records pertaining to calendar year 2017. No or much less other convincing evidential material relating to AY 2004-05 to AY 2017-18 were placed on records for our verification on the subject matter of charity and the weeding out of time-barred records.

12.3.2 *Albeit* there seems no single guideline demonstrating as to how long medical records needs to be preserved by hospitals, but All India Medical Association ['IMA' hereinafter] prescribed minimum retention period in line with the Directorate General of Health Services ['DGHS hereinafter] circular no 10-3/68 dt. 31/08/1968 this found reinforced in Hospital Manual-2002 published by DGHS. The Chapter 12 of such manual mandates' hospitals that, In-patient ['IPD' hereinafter] medical records are to be retained for a minimum period of Ten Years, Out-patient ['OPD' hereinafter] for Five Years. The Medico & Other registers are required to be maintained for a period of Ten Years. Leave apart aforestated minimum retention period, it shall not be out of the box to state that the appellant did even not bother to preserve such records for a minimum period of seven years from the close of accounting year as mandated u/r 6F(3) of the IT-Rules, though it closely applies to doctors in private medical practice.

12.3.3 As against the claim of the appellant that concession in deserving cases were actually allowed, the Ld. AR has sought out attention to entries of utilization recorded in newly opened IPF bank account for the AY 2018-19 and tried to canvassed the records indeed sufficient to showcase that charity is extended by the assessee in deserving cases. Such cases are low because those approaches with proper pre-requisite documents, in deserving cases the management sanctions the concession. It is apt to note that, no document or office order defining criteria of deserving cases for concession was placed anytime during the hearing. It is however submitted that, patient with yellow ration card that is to say Below Poverty Line ['BPL' hereinafter] cardholders have availed the concession. Such concession is allowed to the extent the management decides on case to case basis subject to cumulative satisfaction of conditions that; (i) claimant's family annual income must be below ₹15000/- and (ii) none of the family member be possessing any residential telephone and (iii) none of the family should own two-wheeler and other circumstantial attributes etc. After going through the records and vouching these cumulative riders, we are afraid to even foresee to whom and to what extent of actual concession were indeed extended on charity basis. In the absence cogent material/record brought before us showcasing any free or similar medical relief has been extended to any single patient belonging to indigent class, weaker section or economically disadvantaged section of general public during any of the AY 2004-05 to AY 2017-18, we see no convincing reasons for not concurring with the findings of the tax authorities that the operations of the appellant hospital badly lacks philanthropy or charity.

12.4 No Indigent Patient Fund [‘IPF’] for AY 2004-05 to AY 2017-18.

12.4.1 We quote that, the Hon’ble Jurisdictional Bombay High Court vide its decision in O.S. WP (PIL) No. 3132 of 2004, had approved ‘The Scheme for treatment to indigent patients and weaker section patients’ in relation to state-aided medical hospitals. The reference to above can also be traced in the recent decision of the Hon’ble Court in ‘Grant Medical Foundation Ruby Hall Clinic Vs State of Maharashtra’ [AD-HOC NO. WP-LD-VC-28 OF 2020]. The said Scheme is now enforced through provisions of section 41AA of BPT/MPT Act; relevant/applicable salient features thereof which are reproduced herein below;

(a) The public charitable hospitals falling within the definition of ‘State aided public trust’ are under a legal obligation

*(i) to reserve and earmark **ten per cent. of the total number of operational beds** at such medical centre, for medical examination and treatment in each department of the medical patients seeking admission or treatment, who shall be medically examined and treated and admitted as the case may be, **free of charge***

*(ii) and to reserve and earmark and **ten per cent. of the total capacity of patients treated at such medical centre**, for medical examination and treatment in each department of the medical patients seeking admission or treatment, who shall be medically examined and treated and admitted as the case may be, **free of charge***

(b) In addition to above, the public charitable hospitals falling within the definition of ‘State aided public trust’ are also under a legal obligation

*(i) to reserve and earmark **ten per cent. of the total number of operational beds** at such medical centre, for medical examination and treatment in each department of the*

*medical patients **for weaker section** of the people seeking admission or treatment, who shall be medically examined and treated and admitted as the case may be, **at concessional charge***

*(ii) and to reserve and earmark and **ten per cent. of the total capacity of patients treated at such medical centre**, for medical examination and treatment in each department of the medical patients for weaker section of people seeking admission or treatment, who shall be medically examined and treated and admitted as the case may be, **at concessional charge***

*(c) Every public charitable hospital shall create a separate fund to be named as **'Indigent Patients Fund' (IPF) and shall credit 2% of gross billing of all patients** (other than indigent and weaker section patients) without any deduction (clause 4). The amount credited to this account shall be utilized only for providing medical treatment to the indigent and weaker section patients (clause 7).*

*(d) Following **non-billable services are to be provided free of cost to the indigent as well as weaker section patients** :(a) Bed (b) RMO services (c) Nursing care (d) Food (if provided by the hospital) (e) Linen, Water, Electricity and Routine Diagnostics for treatment of general specialties ; and further House-keeping services (clause 8).*

(e) The relatives of the trustees of public charitable hospitals, the employees and their dependents are not to be included in the category of indigent and weaker section patients for the purpose of the said Scheme (clause 13). (emphasis supplied)

12.4.2 In context of aforestated mandates, we observed that, individually by grant of land and jointly by infusion of more than ½ of total share capital and initial financial assistance, for the relevant years admittedly the appellant society

was a State-aided hospital within the meaning of s/s 4(a) of section 41AA of MPT Act, 1950. However, the appellant society for AY 2004-05 to AY 2017-18 failed to effectively showcase that (i) it did reserve, provide & allow 10% of its total operating beds and 10% of its total treatment capacity for ***free medical treatment to indigent patient***, and further (ii) it did also fail to reserve, provide & allow 10% of total operating beds and 10% of total treatment capacity for ***concessional medical treatment to weaker section patient***. (iii) it also botched to created & maintain separate IPF bank account for all fourteen assessment years commencing from AY 2004-05 to AY 2017-18 and credit thereto 2% of its gross hospital receipts (iv) it also failed to maintain records of (a) non billable services if any rendered (b) free/concessional service availed by related parties.

12.4.3 It is worthwhile to note here that, the appellant society created and opened IPF account first time on 01/06/2017 i.e. AY 2018-19. The verification of such bank accounts *prima-facie* revealed that, the funds credited therein and debited claiming utilization therefrom does not to our satisfaction reflect in true sense free medical help or concessional operations offered to the indigent/weaker section patients. The verification of few specimens of IPF patient documents relating Oct, 2017 (Pg62-126 of Annexure-C) where concession claimed to have been provided did also fail to show us convincingly that such free medical or concession medical services are relating to non-billable services in terms of clause 8 of the scheme. On a specific query as to existence of any system in place to restrict the members of the society & their relatives and its employees & their dependents etc., from obtaining any concessional or free medical treatments, the

appellant could lay no documents to prove the existence of any such system in place. This being the admitted factual position, the adherence to clause 7 & 13 (supra) is also suffered from noncompliance.

12.4.4 In nutshell, the appellant society in-spite being a state-aided entity within the meaning of s/s clause 4 of section 41AA the MPT Act, has miserably failed to observe and comply with the prescribed mandates of section 41AA of the MPT Act for AY 2004-05 to AY 2017-18 in particular and for AY 2018-19 in general. It shall be worthy to note here that, by such violation / non-compliance of provisions the appellant exposed to penal provisions of section 66B of the MPA Act which prescribes simple imprisonment which may extend to three months or with fine which may extend to rupees twenty thousand, or with both.

12.5 Mandate of provisions for Free beds or concessional on beds

12.5.1 It is evident from Pg98&227/PB-1 that from April, 2004 the appellant hospital under obligation to reserve 22 free beds that is 22 beds x 365 days equals to 8030 bed/days per annum for BPL - IPD patients. However, actual execution records shows that, in first four financial years viz; FY 2004-05 to 2007-08 the management could allow free bed concession availment only for 97 bed/days, 153 bed/days, 128 bed/days and 253 bed/days respectively. That is in first four years total allotment of concessional fee bed facility was only 631 bed/days. This brought outs annual average allotment is less than 158 bed/days p.a. as against the reserved capacity of 8030 bed/days p.a., which is less than 2% p.a. of reserved bed capacity. If this annual average allotment figure 158 bed/day is

compared with total bed capacity of the appellant with which it was running its hospitals operation, then it would possibly be less than 0.01% of its total bed capacity. On a specific query from the bench about details of other years i.e. AY 2008-09 to AY 2018-19, the appellant expressed its inability to lay down figures in black-&-white. The Ld. AR however assured that, the figures for those years should also not be less than figures/trends shown earlier. Later in the course of clarification the appellant submitted additional documents and from Pg01/Annexure-B we noticed that, total number of bed/days allowed for AY 04-05 to AY 2016-17 was 4832 bed/days, which is even less than yearly 8030 bed/days reservation requirement/mandate. The audited annual reports admittedly confirm the facts that the appellant was operating with 100% occupancy of its total bed capacity (Pg567/Annexure-A), this clearly demonstrates that the appellant was exploiting its infrastructure for commercial purpose exclusively.

12.5.2 It is apt to mention here that, the State Govt. of Maharashtra ['GoM' hereinafter] had allotted the land to the appellant at a nominal/token annual lease of ₹1/- with a rider to reserve and make available 22 beds out of 30 bed capacity. Though the hospital's bed capacity shown to have increased to 217 beds by the year 2003 and further around 300 beds by the end of 2018, the reservation of 22 beds however remained stationary without its commensuration with increase in hospital's total bed capacity. With the able assistance of rival parties, applying the ratio prescribed by GoM in reserving free beds for indigent/poor patients it is computed that, the appellant society was under obligation to reserve 73.33% [22/30*100] beds out of its total bed capacity available at respective operational

years. However, we note that, appellant did neither follow the ratio nor it also ensure the allotment of absolute 22 beds x 365 days evenly throughout all the years of its operation from AY 2004-05 to AY 2017-18. As a reasons of this we see that, the appellant miserably failed to carry out mandates of GoM and apply basic tenets of philanthropic in its operations/activities. On the other hand as confirmed from annual reports the appellant was operating with full occupancy. This leaves us no iota of doubt in holding that the appellant as non-charitable entity operating solely with commercial principle & for the purpose of profit and not for charity/philanthropy in any manner.

13. *Operations/activities at par with private hospital on commercial principles*

13.1 Established for business and is a business establishment

13.1.1 We have noted that, the appellant assessee is merely a society registered under MCS Act & later under MSCS Act and does not hold any registration under applicable provisions 'BPT/MPT' Act. In cases of public charitable entity registered u/s 18 of the BPT/MPT Act, by virtue of provision of section 4 of 'The Charitable Endowment Act 1890, ['CEA' hereinafter] the ownership and administration of the property held under legal obligation for charitable purpose vests mandatorily with the treasurer appointed by GoM, thus the appointed Charity Commissioner [vide CE Order 1962/dt. 30/01/1962.] Therefore, for every organisation formed & established for charitable purpose in the state of Maharashtra, the registration under the BPT/MPT Act is an essential pre-requisite for effective vesting & administration of property held in trust for charitable purpose, consequently for registration under the provisions of the Act.

13.1.2 The appellant denies the applicability of MPT Act; therefore, in the absence of any such registration, the property is vested in the discretionary hands of appellant, thus not under legal obligation which in consequence rendered itself ineligible for registering under the provisions of the Act. *Prima-facie* on this ground of violation alone the impugned order of cancellation passed by the Ld. CIT(E) in our considered view is perfectly well within law. To support this proposition the Ld. Mr Patel sought our attention to para 69-70 of Hon'ble Apex Court's judgement in *'New Noble Education Society Vs CCIT'* 290 Taxman 206 [448 ITR 594]. *Per contra* the Ld. AR displaced the Revenue's contention stating in first place that, BPT/MPT also recognises society as public trust, then averred that no separate registration thereunder is pre-requisite for seeking registration under the Act in the light of decision rendered in *'CIT Vs Gujarat Maritime Board'* reported in [2007] 295 ITR 561(SC).

13.1.3 To answer conclusively, firstly let us look into definition of public trust as defined by section 2(13) of BPT/MPT Act, wherein the *'Public Trust, means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and* ***a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860.*** The bare reading of provisions of section 18 of the BPT/MPT Act reveals that, it shall be **mandatory for every public trust** operating in the state to obtain a registration by applying to the Dy./Asstt Charity Commission of the

designated region/sub region within which an administrative of the trust or the its property or substantial portion of its trust property is situated.

13.1.4 In the context of present case, the conjoined reading of these two applicable provisions of BPT/MPT Act reveals us that, the society which is formed either for charitable purpose and registered as society *is under obligation to obtained registration u/s 18 of the BPT/MPT Act compulsorily.* Whereas the present appellant *albeit* registered itself as society initially under MSC Act and later under MSCS Act, however is neither formed for charitable purpose within the meaning of section 9, nor did it obtain registration u/s 18 of BPT/MPT Act. If the appellant still claims that it is an entity in existence for charitable purpose, then it dejectedly failed to obtain mandatory registration under the provisions of MPT Act, and as a dire consequence rendered itself ineligible to be so under the provisions of the Act. In *'New Noble Education Society'* (supra) their Hon'ble Lordships have held that, wherever registration of trust or charities is obligatory under state or local laws, the concerned society or institution etc., seeking approval under the provisions of the Act should also require to comply with provisions of such state laws so has to enable the concerned regulatory authority to ascertain the genuineness of the society or other institution etc., and in the event of failure, the society/organisation shall render itself eligible for registration under the provisions of the Act and as a corollary claims for exemption.

13.1.5 To sum-up, in the absence of registration under the applicable provisions of MPT/BPT Act, the appellant society attracted disqualification,

therefore withdrawal on this ground of violation alone deserves to be upheld the cancellation/withdrawal of registration. On this score too, we therefore uphold the retrospective cancellation or withdrawal of registration held by the appellant, as from the date of its application for registration it was in the state of former default rendering itself ineligible for registration. The appellant assessee could hardly pull apart or knock-down these findings and negate the application of former judicial precedents in its case.

13.1.6 Insofar as the application of *'CIT Vs Gujarat Maritime Board'* (supra) is concerned, the facts and circumstance of the case dealt with by the Hon'ble Supreme Court are dissimilar to present case hence at the outset inapplicable to the present case. It shall be apt to note here that, the Gujarat Maritime board is government agency of State Govt. of Gujarat ['GoG' hereinafter] founded in 1982 to control, manage and operate minor ports of Gujarat. Therein the property/source of income was held under legal obligation by board constituted by the GoG and board was under direct obligation to apply incomes/profits exclusively for the control, manage and operating of port for the state of GoG. Therefore, the Revenue's counter contention raised during the course hearing deserves to be approved here because, as in the present case of the appellant society's neither source of income [hospitals, medical shops, nursing colleges and hostels etc.,] are held under legal obligation nor the appellant is under direct obligation to apply such income/profits derived therefrom exclusively for charitable purposes. In view of this undisputed findings, the judicial precedents pressed into service by the appellant remained futile.

13.2 State owned land and financial support without mandate

13.2.1 On a specific query from the bench, as to whom the land of the Solapur hospital actually belongs to, in reply the Ld. AR clarified that the land belongs to GoM and is leased to appellant since 1985. However, original order/documents relating to land allotment and lease are not traceable. The hearing from time to time was adjourned to enable the appellant to produce copy of original land allotment/lease agreement and resolution of the GoM (if any). In absence of original order/documents, appellant filed a self-serving primary agreement dt. 31/01/2008 entered on ₹100/- non-judicial stamp paper, wherein land admeasuring 8093 Sq. Mtrs [approx. 87080.68 sq. ft.] with building & structure standing thereon shown to have been leased to the appellant for a lease for period of 99 years dating back from 17/04/1985 on an annual lease/rent of ₹1/-p.a. by the GoM, however unsupported by other evidential documents.

13.2.2 As noted from Pg111/PB-1 the appellant society's 53.81% of equity capital is issued to & held by GoM and further it funded ₹8.81Lakhs in the formative years of the appellant society. Solidifying the fact of substantial holding of investment & funding by the GoM, the Ld. AR however submitted that as on date the appellant returned the equity capital at par to GoM and no other investment stands outstanding as on this date except lease of land. Thus, the appellant admittedly was a substantially financed by GoM. We expressed our doubt about the authenticity of the lease document shown to have entered for 99 years in the year 2008 on ₹100/- stamp and dating it back from 1985. We therefore queried as to who funded the construction and why would GoM let or

lease such ready hospital to the appellant which operates on co-operative principle for the benevolence or betterment of its members. The Ld. AR could hardly offer any satisfactory explanation against both these issues. On the subject, it is also brought to our notice by the Revenue that, there is much less evidence of payment of any lease rent, repayment of initial cash funding and interest etc., to GoM and nor there is any outstanding provision found in the audited books of accounts. The appellant could lay no document in support of its claim but it is submitted that, since more than reasonable period is expired hence it is not possible to produce such documents and owning to space constraints such must have weeded out. This however did fail to inspire the bench. In these facts and circumstances, it is apparent to us that the public property (substantially state-aided) is exploited on commercial principle exclusively for the benefit of members of the appellant society but at the cost of ex-chequer, which in our considered view led to unjust enrichment.

13.3 Substantial State Funding yet escort-free private management

13.3.1 We noted from first registered bye-laws which was in force until the appellant was converted into multi-state society in April, 2008 the board of the appellant society was represented by one nominee director of the GoM. However subsequent to its conversion into multi-state society no such nominee director found continued. On a specific query, the appellant in the open court clarified that; the new bye-laws contains no such provision accommodating any representation from GoM. It is a fact that, GoM leased a land on an annual nominal lease/rent of ₹1/-p.a. and provided more than half of total capital in the

formation of the appellant society, though the capital is repaid in instalments however the appellant as on this date continues to be substantially state-aided/funded entity within the meaning of section 41AA of the Act. In the event of non-production of any documentary evidence showcasing that GoM by its official resolution/decision permitted the appellant to convert it into multi-state co-operative society and authorised to operate without its supervision/monitoring or without its representation in the board. Without offering our comment on Revenue's proposition / request 'as it is fit case for recommending investigation into affaires to find truth as to who owns, operates the business in reality and who are the real beneficiaries behind running this hospitals, medical shops and nursing colleges etc.,' we are of the considered view that, the appellant illicitly withheld the relevant information including GoM resolution & communication etc., in order not to reveal the real intention of GoM in setting up this medical / health facilities at then small town Solapur and the such supervisory obligations casted upon the lessee appellant society.

13.3.2 In the absence of any resolution or document of GoM granting land, injecting more than ½ of total capital & initial cash/financial assistance to appellant society it is impossible for our adjudication to decide establishment of hospitals, medical shops, nursing colleges & hostels at Solapur and expansion of activities outside Solapur and outside Maharashtra were within the stated object/power (if any). In the absence of explicit authority/power of the establishment of hospitals, medical shops, nursing colleges & hostels and their expansion beyond state jurisdiction etc., by the appellant would be ultra-vires to

power of grant by GoM. In such cases the appellant society in our considered view has attracted disqualification and rendered itself ineligible for registration under the Act. For this reason, the action of the Revenue should stand tall as it finds fortified in the decision of Hon'ble High Court of Delhi in *'DIT Vs Guru Harikishan Medical Trust'* reported in [2014] 223 Taxman 253 (Del.)

13.3.3 A cursory look into the audited financial statements and the annual reports reveals us that, the number of individual members from 2610 in AY 04-05 were reduced to 2385 AY 2018-19, whereas number of doctor members from 185 found increased to 212 for the respective period. It is also worthwhile to quote here that, upon stand erected with the GoM's substantial share capital contribution, grant of free lease hold land and financial assistance, the appellant returned of share capital to GoM. Undoubtedly once the share capital is paid off then no one remains the member of the society, but no cogent reasons or evidential material placed before the bench to support of legal discontinuation or expulsion/withdrawal of GoM from representing the board/management.

13.3.4 In view hereof, we do not even see any valid reasons thereof but strong force in the contention of the Revenue that, the removal/discontinuing GoM from board is to possibly manage the hospitals, medical shops/dispensaries and nursing colleges/hostels and other para medical institutions without any supervision or regulation. This in turn facilitated the appellant to run them on commercial principles for the exclusive benefit of its members. *Au contraire* the appellant could hardly dislodge it with persuasive evidence on records.

13.4 Medical services on value for money basis at par with private hospitals

13.4.1 Perusal of comparative chart placed at Pg269 to 271/PB-1 and the charges fixed & collected for each of the medical service from the patients classified into economic, deluxe, super-deluxe etc., any prudent man will form an opinion that there is no reason to believe that the appellant is running its hospitals, medical dispensaries etc. dominantly for providing free medical relief to the poor, needy and deserving citizen/general public on a charitable principle. During the verification of statements/accounts, it revealed us that, a medical shop/dispensary established within the hospital mandates all patient to purchase of medical drugs, disposables, kits & apparatus etc., from its own medical shops which admittedly operating on Maximum Retail Price ['MRP' hereinafter] basis subject to a nominal discount of 5% thereon if claimed by informed patient. In result annual profit from medical shop/dispensary alone witnessed exponential growth from ₹31.63Lakhs in AY 2004-05 to ₹300.57Lakhs in AY 2018-19.

13.4.2 With the able assistance of rival parties, it revealed that, profit earned from sale of medical drugs, kits/equipments and disposable etc., i.e. from medical shops/dispensaries alone averagely exceeded 5% of hospitals standalone receipts. What more is needed to prove that the appellant was operating with intent to make profits in the guise of providing medical services at reasonable price/rates. In our considered view this without any smoke of doubt, sufficient to hold that the appellant was indeed providing medical service for more than good fees on commercial principle of value for money, therefore disqualifies for registration and exemption. This proposition also finds adopted in the matter of property tax

exemption in *'Sundaram Medical Foundation Vs CMWS&S Board*' [WP Nos. 20992/2018] (Mad), and fortified in the decision of Hon'ble Apex Court in *'SH Medical Centre Hospital Vs State of Kerala'* [CA No. 665/2014] (SC), which the Ld. DR heavily pressed into service.

13.4.3 To answer the appellants query negatively 'as to how on the basis of high rates charged alone, the entire operations of the appellant can be doubted as commercial & solely for profits' we requote that, tax being Revenue of the State, stricter interpretation of law is not only imminent, but a constitutional mandate therefore when doubt arises, the decision of *'CoC Vs Dilip Kumar'* reported [2018] 9 SCC 1 (SC) comes into play wherein their Hon'ble Lordships have held that, in respect of exemption, the benefit of doubt must always be extended to the State/Revenue. This also stands reiterated in *'Novopan India Ltd Vs CCE'* [1994] (73) ELT 769 (SC) and *'Liberty Oil Mills Vs CCE'* [1995] (75) ELT 13 (SC) and recently in *'CCE Vs Calcutta Springs'* 2008 (229) ELT 161 (SC).

13.4.4 With the able assistance from both Ld. Mr Shingte and Ld. Mr Patel, we also note that, similarly u/s 132 of Maharashtra Municipal Corporation Act ['MMC' hereinafter] the local body/corporation exempts the property from payment of property tax if such property is solely occupied for public charitable purpose. In the present case however, the appellant could lay no document on the subject matter. *Albeit* property tax exemption may not solitarily prove true nature of activities of the appellant society, but presumption can accordingly be drawn that assessee enjoys no property tax exemption under MMC and in result this

supports former observation, findings and adjudication on nature of operation the appellant is engaged into.

13.4.5 *Albeit* we are unaware but doubtful that objects with which hospital infrastructure given by the GoM to the appellant society must have annexed/accompanied with an obligation to provide medical relief to general public on a philanthropic principle or charitable basis. However, the appellant after taking-up the said infrastructure from GoM right from the inception is running it for the sole benefit of its members. No doubt, the appellant's engagement in providing medical services to its members at a reasonable rate may fall within the co-operative principles as surplus therefrom is shared amongst themselves following the principle of mutuality and may be deductible u/c VI-A of the Act. But the operations of the appellant society are extensively extended to general public/citizen on commercial principle at part with private hospital in terms of value for services [may be reasonable from appellant view point], thus making it a commercial activity/venture.

13.4.6 The provisions of medical service at a reasonable rate in the present case certainly do not in our considered opinion fall within the class/category of ***medical relief*** as envisaged by section 2(15) of the Act. Therefore, we have no hesitation to hold the appellant is engaged in providing medical services to general public on commercial principle in the guise of reasonable rates. In view of these findings, the appellant in our considered opinion is ineligible for registration *vis-à-vis* exemption following the ratio laid in *'New Noble Education*

Society' (supra). In a similar facts and circumstances in *'Dawn Educational Charitable Trust Vs CIT'* [2015] 60 taxmann.com 126, the Hon'ble High Court of Kerala held that, where assessee-trust was running its operations on commercial lines under guise of charitable purpose, is not entitle to claim exemption under the Act, consequently ineligible to hold registration.

13.5 Other Commercial Activities

13.5.1 In addition to running hospitals, medical shops/dispensary and paramedical institutions, the appellant was also engaged in running business of *'Credit Society'* for its employees and not to surprise no documentary evidence showcasing permission from GoM, authorisation from Registrar and authority from registered bye-laws were placed on records. Further year-wise details of deposits/funds accepted from & advanced to employees, parking of surplus deposit/funds, and profits earned therefrom and utilization thereof has not been placed on records for our verification, except making a reference in board/management discussion part of its annual reports published for its members. Needless to repeat here that, the nursing colleges/hostels could incur no losses but made profits in all years of its operation owning to higher tuition fees for college and lodging & boarding rates for hostels. We also noted from the audited financial reports that, the profit/results from activities like running of medical shops/dispensaries, nursing colleges/hostels were reported on net-basis in violation of applicable accounting principles/standards issued by the Institute of Chartered Accountants of India ['ICAI'] and to surprise there is no whisper in the annual reports either by the management/board or by the statutory auditor.

13.6 Expansion solely out of Profits & large repaid borrowings

13.6.1 After vouching of audited financial statements and success story of the appellant society from its annual reports, it shall suffice to put in numbers that, without the additional financial aid from GoM and without substantial voluntary donations, the operations of the appellant from 30 beds capacity in the formative year grown to 300 beds capacity by AY 2018-19 and from one small operative area of Solapur (then village) to two states viz; Solapur Latur & Osmanabad (now Dharashiv) three districts of Maharashtra and two district namely Gulbarga & Beedar of Karnataka State. It is not out of the box to state that from Pg-284/PB-1, the profits from operations and bank borrowings which subsequently repaid alongwith interest solely out of such profits, has solitarily contributed to former exponential growth. This *prima-facie* proves that, commercial profitability was exclusively instrumental to such large scale & size growth. This figure of exponential growth is solitarily sufficient to explain the true nature of operations undertaken in the guise of charity or reasonable pricing.

13.6.2 We are fully convinced from the figure of profits kept back for the purpose of extensive expansion as compared to earmarking of profit charity that, the appellant's operations were directed towards no or much less charity. In this context it is noteworthy to also mention here that, in the first AY 2004-05 of operation the audited balances standing to the credit of general reserves, development fund, and building fund respectively were ₹64.34Lakhs, ₹95.04Lakhs and ₹15.18Lkahs which in the AY 2018-19 have hoarded tall to ₹913.50Lakhs[14+ times up] , ₹2631.93Lakhs[27+ times up] and ₹1032.19Lakhs

[67+ times up] respectively. With the increase in the profits from operation, the appellant carried extensive expansion of hospital buildings, equipments & infrastructure which cumulative accelerated the profits earnings ratio of the appellant. On the contrary the audited figure of charity fund earmarked out of profits in the first AY 2004-05 was 'NIL' which in the AY 2018-19 heaved to ₹2.47Lakhs only. We shall make a mention here that, it is on record that, the first bye-laws of the society had provided for earmarking 10% divisible profit for the purpose of charity, though it is scanty, but we disgracefully note from the audited books that the appellant was providing/earmarking only 0.10% of left over balance profit to charity fund. There are two striking points here; (i) the appellant with due knowledge was contriving violation of provisions clause 50(f)((iv) of its first bye-laws placed at Pg188/PB-I in tandem from AY 2004-05 and (ii) failed to carry out any charitable activity out of such earmarked fund too. On a specific query from the bench as to how either the auditor or the management of the society failed to report aforestated violation in its annual report, the appellant rather spoke no words. The appellant's silence gave great strength to our findings.

13.6.3 After analysing the documents on record, we find the activities of the Appellant are in the nature of trade and commerce etc., which collects fees at par with the private hospital & runs its medical stores/dispensaries on MRP basis in the grab of rendering medical services to its member. The operations of the appellant are mainly with general public as a commerce and profits generated out of such commercial venture, trade or commerce are then partly shared, distributed to its members and balance profits are used for extensive large scale and size expansion of operation to more than two states.

13.6.4 A cursory look at the share capital clause 15 (placed at Pg200/PB-I) reveals that, each member has to subscribe minimum one share out of ten thousand shares, thus restriction on the number of members. It also provides such member may be terminated if found competing with the activities of the society. The borrowings clause 23 (placed at Pg201/PB-I) empowers the society to borrow loans & deposit from its member as much as ten times of its net worth without any permission from the Registrar. Having considered the aforestated facts in nutshell, it indubitable enough to classify the appellant principal document sounds like commercial agreement between appellant and its members which in itself sufficient ground to hold it as commercial establishment working for profit on commercial principles.

13.7 GoM sponsored Charity by reimbursement under a Scheme

13.7.1 During the course of hearing on the specific query from the bench as to whether the appellant is reimbursed against the concessional treatment (if any) provided by it, the Ld. AR candidly pointed out that, the audited financial statements shows outstanding balances receivable from GoM under the *'Rajiv Gandhi Jeevandayee Arogya Yojana' [now renamed as Mahatma Jyotiba Phule Jan Arogya Yojana]* against the medical services provided to *'Yellow & Orange'* ration cardholder. This catastrophically dismantles the claim of appellant made earlier that [cross reference para 12.2 & 12.5], out of charity fund / IPF account (although earmarked next to Nil) held by it certain concessional services are provided to yellow & orange cardholder without any reimbursement from government. With the able assistance from Revenue, we noted that, the GoM

under the aforestated scheme provided cashless quality medical care for calamitous illnesses requiring hospitalization for surgeries and therapies under identified specialty services through network of health care providers since 2012. The said scheme is operational for three classes viz; 'A-yellow ration cardholders, B-white ration cardholders & C-Children of Government Orphanages, Ashram Shala, female inmates of Government Mahila Ashram & senior citizens of Government old age homes, Journalists & their dependent family members and Construction workers and their families etc. The scheme provides coverage for meeting all expenses relating to hospitalization of beneficiary up to ₹1,50,000/- per family per policy year. For Renal Transplant this limit has been enhanced up to ₹2,50,000 per family per policy year. The benefit under the scheme is available to each and every member of the family on floater basis and can be availed by one individual or collectively by all members of the family in a policy year. This being the factual position, the figure of concessional charity claimed to have been extended in all the years is washed out by the amount already received and balance of amount due & outstanding from the GoM under aforestated schemes and other such scheme which aren't brought to our notice for the reasons best known to the appellant.

13.8 Property not held under Trust for registration/exemption under the Act

13.8.1 The provision of section 11(1) of the Act provides that income arising from property held under Trust/legal obligation is alone eligible for claim of exemption. The dissection reveals three constitutes viz; (i) there should be some income/receipt in any form (ii) such income must be from property and (iii) such

property must be held under Trust/legal obligation. A property can be called as held under Trust/legal obligation only when it is so held for benefit of unidentified public. Resultantly income generated from properties held under legal obligation only testifies as income for the purpose of exemption u/s 12 of the Act. Conversely any income arising from property held for the benefit of identified beneficiary could hardly partake the character income as envisaged u/s 11(1) of the Act. The Revenue in the present case positively canvassed that, the assessee society is an AOP formed by its member for whose benefit the properties namely hospitals, medical dispensaries/shops, nursing colleges/hostels etc., were held. In the event it is admitted facts that, the properties from which income in the form of medical fees, sale of drugs/disposables and income from colleges/hostels etc., are generated, accrued or received since not being held under any legal obligation but for the benefit of members would hardly partake the character of income as envisaged u/s 11(1)(a) of the Act. Therefore, beyond a doubt such income fails to qualify for exemption under the provisions of the Act.

13.8.2 In the instant case, the appellant claimed that one of clause under registered bye-law provided for earmarking certain percentage its divisible profit for charity. By inclusion of such clause the society was under legal obligation to spend the earmarked fund for charity, hence by such obligation the appellant is entitled to exemption. In this context we that, the section 11(1)(a) begins with the words *'income derived from property held under trust wholly for charitable or religious purposes. . . ',* The use of word 'wholly' relates to the purposes and not to the property held under obligation. The word 'wholly' cannot be treated as

equivalent to the word 'mainly'. It should rather be treated as closely akin to the term 'solely'. In other words, there is no scope for the purposes being partially public and partially private in nature. It would not be sufficient for claiming exemption/registration that one clause of its bye-laws provided for charity. This proposition finds support in *'Dwarkadas Bhimji Vs CIT'* [1948] 16 ITR 160 (Bom.), where some of the objects were not wholly for charitable, consequently their Hon'ble Lordship have held that, income is not eligible for exemptions. The Hon'ble Supreme Court in *'East India Industries (Madras) (P.) Ltd. v. CIT*' [1967] 65 ITR 611 has held that; 'Where an obligation is created for charitable and non-charitable objects and gives an unfettered discretion to utilise the whole of the income for objects which are non-charitable, the property in respect of which the trust/obligation is created cannot be deemed to be held in trust wholly for charitable purposes.' Following decision rendered in *'CIT Vs AUDA'* (Supra) their Hon'ble Lordships recently in *'PCIT Vs Servant People Society'* in 614/2023 dt. 31/01/2023 while remanding matter back to the file of Ld. AO have reiterated that, exemption u/s 11 & 12 is available only to the assessee established for charitable purpose as charitable trust and exemption is limited to income derived from the property held under trust/legal obligations and not otherwise.

14. *Provision for distribution of profits to its members*

13.1 Direct Distribution of profit

13.1.1 As stated hereinbefore the appellant was society under MSC Act right from February, 1983 till its conversion into multi-state Co-op. Society in April, 2008. Perusal of clause 49 (Pg185/PB-I) of 2002 amended **first** bye-laws

revealed that the society for AY 2004-05 to AY 2008-09 was operating with a specific enabling provision for distribution of profit by way of bonus or dividend or any other form to its members/general body. Insofar as the second bye-laws which came into effect from AY 2009-10 is concerned u/c 34 (Pg202/PB-I) the board of the appellant society carried unfettered power to recommend and distribute the profits to general body, though restricting dividend form u/c 46 of its bye-laws (Pg205/PB-I). It remains undisputed fact that, rather than providing complete prohibition on distribution of profits to member/general body, the appellant society on the contrary specifically in its registered bye-laws provided for distribution of profits to its members/general body. In our considered view, irrespective whether directly or indirectly, by way of bonus, dividend or otherwise, and whether or not profits were actually distributed, in the absence of express provision explicitly restricting distribution of profits *de-facto* disqualified the appellant society for registration *vis-à-vis* for exemption.

13.1.2 The Hon'ble Apex court in case of *'Delhi Stock Exchange Association Ltd. Vs CIT'* reported in 225 ITR 235 (SC) [equivalent: 91 Taxman 273] while dealing with the similar issue of absence of prohibition for distribution of profits have categorically vide para 7 held that;

> *What is required in terms of law is that there must be an obligation created to spend the money exclusively and essentially on charity. In the instant case, as found by the High Court, at the relevant period there was no obligation that the income from the properties derived by the assessee was to be exclusively used for charitable purposes.* ***It was***

permissible for the assessee to distribute the whole or part of such income by way of dividends amongst its shareholders. *In that view of the matter, it was to be held that the High Court was right in holding that the assessee could not claim exemption*. ***(emphasis supplied)***

13.2 In-Direct Distribution of profit via remuneration and interest

13.2.1 We have given our thoughtful consideration to mode of fixation of consulting charges payable to doctors' members/consultants which are placed at Pg01-24/PB-2. We found that, consulting doctors have been classified into 'Class-A, who exclusive attached & admit their reference patient into appellant's hospital and 'Class-B other doctors' consultant. The appellant paid/provided for consulting charges to both type/class indiscriminating without taking into account their contributory role. As against the percentage sharing, the appellant claimed that w.e.f. 15/10/2003 consulting charges are fixed per visit/per patient on determinant factor. We vouched the fixation of charges and found that, percentage of consulting charges to bed charges or total receipt in particular categories remained the same as they were. What has been changed is the expression of charges/payment in absolute terms instead. For example (Pg04/PB-2) we note that, percentage of consulting charges payable/paid in relation to bed charges collected in ICU was more than 50%, 1st & 2nd Floor was more than 40%, for casualty ward it was more than 80% and finally for general ward it was 60%. From 01/11/2003 one more category of special ward was included with consulting charges fixed at 80% of bed charges collected under that category. These charges were exclusive of attendant charges who accompany the consultant

doctors for their visits to respective patients. With the revision in bed charges, corresponding upward revisions in the aforementioned consulting charges were also effected w.e.f. 30/06/2007 (Pg-14/PB-2) wherein 'Class-A consulting doctors were paid over and above Class-B doctors. The analysis from Pg12/PB-2 & Pg14/PB-2 with that of upward revision in bed charges, except for casualty ward, an accelerated upward revision in consulting charges was approved by the management. For instance, consulting charges for ICU found revised to 70%, for special room (2nd & 3rd floor) revised to 61%, for deluxe room was fixed to more than 55%, for casualty, Semi-Pvt & Special ward it was lowered in the range of 62% to 64% from earlier 80%. This confirms that, the appellant continued its remunerative policies across all the years under consideration and the only change that has been shown to us is that expression of remunerative figures in fixed value i.e. in absolute terms/figures instead of percentile/percentage to bed charges fixed by it. Further from office order dt. 17/11/2004 placed at Pg250/PB-1 for instance it is noted that, the appellant approved the sharing of combined remuneration relating neurosurgical operations and consultancy to IPD & OPD patient as jointly proposed by Dr V Menon & D S Prabhakar. Thus, sharing of fees irrespective professional involvement or professional engagement against medical attendance still in force and undergone no change. This without any further evidence or necessary verification dislodged the appellant claim in toto.

13.2.2 The summary of remuneration/consulting charges paid to doctors placed at Pg108-131/PB-2 reveals us that, out of the total remuneration expended (excluding visiting doctors) by the appellant, a 62% of the payment alone went to

74 member doctors, whereas 406 non-member doctors share of remuneration was only 38% to total remuneration accounted/spent by the appellant. The fact that, irrespective of personal attention/attendance to OPD/IPD patients, the member doctors shared the fees in the form of remuneration out of the total receipt collected from OPD and IPD patient. The office order placed at Pg250-256/PB-1 compared with the chart placed at Pg-285-293 solidifies this fact too.

13.2.3 Further from Pg117/PB-2 it clearly apparent that, the ratio of remuneration paid to member doctors in comparison with non-member doctors were 95:5 in AY 2007-08, this ration however came to 62:38 in AY 2016-17. The Ld. AR contended that, these ratios are with reference to actual figures, which were duly verified in the scrutiny assessment and no disallowance on excessiveness of remuneration paid was proposed/made by the tax authorities. We note that, remuneration policy as devised has been continued in a manner where all the doctors are paid 50% of the receipt from the patients visiting for consultation in OPD, except consultants of minor branches where 60%-70% of the receipts are paid to them. The receipts from IPD department, the remuneration payable to member doctors vary from 20% to 30% depending on the qualification (Super Specialists Consultants @ 30%, non-surgical consultants having no personal nursing homes @ 25%, all other Doctors including surgeons and consultants having their personal nursing homes @ 20%). The 20% to 30% professional charges/ remuneration payable to doctors and consultants as mentioned above are out of the bed charges/net collection, which is worked out (as against percentage worked out on gross basis &

reported in para 13.2.1 hereinbefore), after deducting from the receipts of the IPD patients, certain payments, on account of Pathology/ Radiology/ OT charges etc. However, the receipts on account of Bed/room charges, injection charges, saline charges, oxygen charges, ECG charges, attendant charges, set charges are taken into account for arriving at the net collection figure and such shares of 20% - 30% of net collection are paid to the concerned doctors/consultants. Thus, apart from consultancy charges received in OPD, member doctors, some of whom are also on the board for various terms, have received their respective percentage/shares from IPD collection ranging from 20% to 30% etc. A plain reading of the aforesaid admitted facts leave no manner of doubt that while referring to the remuneration payable to member doctors with regard to IPD patients' receipts, the same is not confined to the doctors performing the task.

13.2.4 Furthermore, it is observed that, the borrowings clause 23 placed at Pg201/PB-I empowered the appellant to borrow loans & deposit from its member as much as ten times of its net worth without any permission from the Registrar. Thus, admittedly there is inherent provision for payments of interest to its members. In-spite several reminders, the appellant could lay no details of money/deposits borrowed and consequential payment of interest etc., to its members. In these circumstances existence of provision for payment of interest in indirect form of distribution of profit cannot be ruled out. This in our considered view also sufficient to concretise our former findings on record that, appellant entity is put use its properties and working as a platform for personal gain for its members in conformity with the registered objects.

13.3 In-Direct Distribution/Usage of Property

13.3.1 From perusal of annual reports of the appellant society and the outstanding balance appearing therein it transpired that, during initial years of its operation the appellant had let-out large spaces of its campus to two private limited companies owned or run by its members, doctor members with or without non-members viz; (i) Hriday Sanjeevan Private Limited which was rendering catheterization laboratory services [‘Cath Lab’ hereinafter] and Solapur Diagnostics Private Limited for running computerized tomography scanning services [‘CT Scan’ hereinafter] both on commercial basis. These companies were rendering services to the visiting OPD as well IPD patient of appellant hospitals referred by its members. Against the referral by member doctors, commission/fees were paid directly on per referral basis by these companies in addition to paying the appellant meagre monthly rent of 10,000/- against the spaces rented/leased to them. The overall modus-operandi suggests that, the property of the appellant society was put to personal use/benefit of the doctor members and who besides enjoying the property at paltry rent also got remunerated by handsome referral fees from both the companies. Although these factual findings remained uncontroverted with deprecative evidence on record, however appellant submitted that, this has been discontinued since many years and as of now no spaces of appellant’s campus are rented/leased to third parties for commercial operations. However it is candidly confirmed from the annual reports that, the appellant even today continues to collect meagre vehicle parking charges from all visitors to hospitals including patients to ensure disciplined usage of space & to recover cost of its maintenance/up keeping etc.

13.4 Absence of Research Activities & voluntary contribution

13.4.1 No voluntarily contribution of much less contribution shown to have received for the period AY 2004-05 to AY 2018-19. However there has been extensive expansion of the hospital from 30 bed capacity to 300 bed capacity. The appellant confirmed the fact through rebuttal / replies to the arguments raised by Ld. DR that, the appellant largely believes on self-sustenance therefore all the revenue generated from operations and profits earned therefrom are invariably redeployed for further expansion. Undoubtedly such expansions are funded out of profits and large borrowings from the financial institution which are ultimately repaid with interest out of profits/surplus earned. That is to say, the whole expansion is out of the profits generated from activities of the appellant without there being substantial donations from public or Grant-in-Aid from Government. In view of the above and taking a strength from published annual accounts we hold that appellant is merely a commerce or trade unit providing medical/health services to general public on commercial principle for making extraneous profits to support its expansion plans as narrated & discussed in the published annual reports of the appellant from AY 2004-05 to AY 2018-19.

13.4.2 Insofar as the research activities are concern, the appellant could lay no documents to showcase any research activities it has undertaken in any of the years from AY 2004-05 to AY 2018-19. The Ld. AR however contended that, the hospital has obtained 'ISO Certification' which certifies the quality of services rendered by it meets the customer expectation, however candidly stated that, at

present it is not possible to lay any evidence in support of research activities if any carried out or presently engaged into by the appellant.

13.4.3 In the absence of evidences suggesting even a single research activity carried out or initiatives in the field of medical science or life science and related domain by the appellant, we find no reasons to brush-aside the argument of the Revenue that, the word 'research centre' suffixed in the name of the assessee is merely to gather the public confidence for creating large customer/patient base and further to seek tax benefit etc., and it is nothing to do with research seriously.

13.5 No Change in the operations or policies since AY 2004-05

13.5.1 The Hon'ble Apex Court vide para 11 of its decision dt. 15/09/2021 made it clear that, the appellant would not be precluded from claiming exemption for relevant subsequent years if it wants to rectify the position. The aforestated decision came to light in the year 2021. Hence in first place (i) it is difficult to imagine that the appellant had foreseen this direction/clarification in advance and rectified its policy right from the AY 2003-04. Secondly (ii) during the pendency for aforestated matter before the Hon'ble Apex Court, the impugned cancellation proceedings were on-going, wherein the Ld. CIT(E) did vouch then existing operational, administrative, distribution and remuneration policies & activities of the appellant and after due observation the Ld. CIT(E) came to similar observations, equivalent findings & identical reasoning which ultimately resulted into cancellation/withdrawal. Therefore, the operational or remuneration policies are corrected or changed in tune with the direction of Hon'ble Apex Court so as

to entitle it for registration/exemption is completely devoid of facts and evidence therefore this pleading of the appellant in our considered view remains flimsy.

13.5.2 The appellant further contented that, upon the Hon'ble Apex Court decision in its case, so as to entitle to claim of exemption, the assessee society deleted its clause 50b of first bye-laws (Pg186/PB-I) relating to payment of dividend to its members. To support his action the Ld. AR pressed into service clause 49 (Pg185/PB-I) which reads as *'no part of the fund (other than net profits of Rugnalaya) shall be paid by way of bonus or dividend or otherwise distributed amongst members'.* On the other hand, the Ld. Mr Patel dismantled the said proposition by adverting to former clause 49 and to our positive satisfaction proved on records that, the assessee by amendment has brought restriction on the distribution of funds which are in the nature of capital, reserves or loan fund, but no restriction on the distribution out of profits/surplus.

13.5.3 In addition to above, it is also brought to our notice that, the provision of clause 50(e) (Pg187/PB-I) which provides for payment of honoraria to its members out of profit for their support and service, continued till March, 2008. This was also considered by Hon'ble Apex Court in assessee own case while upholding denial of 10(23C) registration. Since same clauses are continued under first registered bye-law for a period from AY 2004-05 to AY 2008-09, the contentions raised stands meritless. In so far as the second registered bye-laws and provision of remuneration is concerned, we have already dealt therewith concluded negatively against the claim of the appellant in formers paragraphs.

14. Our conclusion

14.1 If a hospital exists solely for philanthropic purposes, incidental profit even if is earned, the hospital is still entitled for registration and to hold it for the benefit of exemption u/s 11 & 12. As long as the dominant purpose is not philanthropic one, mere a certain percentage of divisible profit may be applied for charitable purpose, will not be a ground to hold that the main purpose of the institution is philanthropic. The benefit out of application (if any) would be merely incidental to the carrying out of the main or primary purpose and so, such benefits would not militate against the not philanthropic character of the institution. As long as the purpose of assessee is earning profits & to utilises such profit for achievement of the main purpose of expansion and benevolence of its members, the assessee in our considered view exists nothing but for profit. The divisible profit set-aside for charitable purpose or for concessional services to few patients would not enough to change the commercial character of existence.

14.2 The charitable purpose as defined u/s 2(15) of the Act enumerates *'medical relief'* as one of facet of charity but not mere providing medical/health services at reasonable price/rates. Therefore, the institution which predominantly engaged in providing medical relief at free or name-sake cost to the poor, needy and indigent patient, shall alone, may be entitled to registration and resultantly for benefit of exemption. In the absence of any such free access to medical relief made available to indigent, poor and needy patients, one cannot come to blanket conclusion that institutions *de-facto* are doing charity or engaged in philanthropic activities merely because they are engaged in medical/health service.

14.3 From wholesome observations & findings in the present case, it is clearly discernible that *albeit* the appellant is registered as society with an object of providing medical services at a reasonable rate for the benevolence of its members, but none of such objects touches the colour of 'charitable purpose' as envisaged in section 2(15) of the Act. The objects and activities of the appellant as germane at the time of grant of deemed registration u/s 12A/12AA of the Act, were also witnessed at the time assessment therefore the tax authorities denied the exemption and assessed the income in the hands of appellant as an AOP right from first assessment year 2004-05. This factual discussion makes it graphically clear that the appellant actually pursued no charitable activity but an activity of running medical services to general public strictly in commercial sense in par with the private hospital. And once this is the factual position, it becomes explicitly clear that the appellant's activity falls outside the ambit of section 2(15) of the Act.

14.4 In our considered view by seeking 12A registration, the assessee may become eligible for claiming exemption u/s 11 & 12 of the Act. The entitlement for exemption however is subjected to fulfilment of conditions wherein the assessee invariably in each assessment year/year of its claim has to prove that its objects remain toed with 'charitable purpose' as defined by section 2(15) of the Act and all its activities/operations undertaken during such year are genuinely in conformity with its registered charitable objects. That is to say, mere holding of 12A registration would not *ispo-facto* entitle the assessee to the claim of exemption but does only on proving that its operations/activities strictly confined to charitable purpose and fulfilment of other conditions laid therefore in the statute.

14.5 In the present case, admittedly the appellant did not pass the test of its eligibility for registration owning to engaging itself in rendering medical service at par with private hospital in the guise of reasonable price which was not in the nature medical relief; however *de-facto* came to registered on the direction of the Tribunal. Moreover, during the course of scrutiny assessment of all the years under consideration the appellant failed to prove its eligibility as well as entitlement for claim of exemption for the solid equi-reasons. In conspectus, the summarisation of facts brings out that; (i) the appellant assessee society exists solely for the benevolence of its members (ii) the appellant is neither a charitable organisation/entity by its registered objects nor by the activities it has undertaken in all these assessment years under consideration (ii) the appellant does not in any manner sufficiently & satisfactory demonstrated of carrying on any philanthropic work nor there was any obligation created except provision for 0.10% percentage of its divisible profit toward charitable purpose for some years which remained unspent (iii) the appellant predominantly engaged in providing medical services on commercial lines at par with private hospital operating in health/medical services on 'value for service/money' basis (iv) the appellant operates with a provision for distribution of its profits/property in various forms to its members in addition to paying more than commensurating remuneration to its members and few of those were in board for varying tenure. In view of the above appellant society incurred all the disqualification envisaged under the provisions of the Act. The *sequitur* is that the appellant is neither entitled to get registered nor entitled to continue its registration granted to it u/s 12A r.w.s 254 of the Act and so also the consequential exemption allowed to it on the direction of appellate authorities.

14.6 Thus adhering to the direction of the Hon'ble Jurisdictional High Court, in the light of aforestated conclusive factual findings, we relying on the decision of Hon'ble Supreme Court in appellant own case reported in 130 taxmann.com 366 (SC) conclude by holding that the appellant society; (i) operates with complete absence of philanthropy or charity (ii) operates on commercial principles i.e. 'value for money' and at par with private hospital and (iii) operates with a provision for distribution of profit/property to its members in various forms and (iv) continued its operation on same line as it were and there has been no or much less change effected by the appellant to rectify its position since Honb'le Apex Court decision in its own case (supra). In view of this conclusion, without multiplying the authorities/judicial precedents on the point, we uphold the impugned order of withdrawal/cancellation of registration and resultantly dismiss all remaining grounds raised in the present appeal.

14.7 Before we depart it is quite interesting to quote that, registering authority after examining key documents, objects *vis-à-vis* activities when rejects to grant 12A registration to applicant assessee, the appellate authority by binding force directs the registering authority to grant the 12A certificate on application with a leave to deny benefit of claim while assessing total income if applicant's activities are found either not charitable in nature or not in accordance with its objects or in accordance with etc. And in assessment when assessing tax authorities deny the benefit of claim to such assessee on any of the former grounds, then the appellate authority reverses & questions the denial of claim during the subsistence or survival of 12A certificate. This is not only in the instant case, but is more or less applies to all

cases where registrations are sought for running hospitals and schools. As we generally understand that there is no free lunch in the world, so is with these hospitals and schools. May it be, however there are certain exceptions to this where philanthropy is genuinely can be witnessed and they operate without craving for registration, and the exception proves the rule. However, with our mindfulness & with a certainty that, we reiterate the present case does not even remotely fall in list of such exception.

14.8 Finally, we appreciate the in-depth arguments & assistance from learned representatives of both sides Ld. CIT-DR Mr Patel and Ld. AR Mr Shingte.

15. In result, the appeal of the assessee stands DISMISSED.

In terms of rule 34 of ITAT Rules, the order is pronounced in the open court on this Thursday 07th day of March, 2024.

-S/d-
S. S. VISWANETHTRA RAVI
JUDICIAL MEMBER

-S/d-
G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 07th Day of March, 2024.
आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant. 2. प्रत्यर्थी / The Respondent. 3. The PCIT, Concerned.
4. The CIT, Concerned, Pune 5. DR, ITAT, Bench 'A', Pune 6. गार्डफ़ाइल / Guard File.

Ashwini

आदेशानुसार / By Order
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.