

आयकरअपीलीयअधिकरण, हैदराबादपीठमें
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE
SHRI MANJUNATHA G., Hon'ble ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, Hon'ble JUDICIAL MEMBER

आ.अपी.सं/ **ITA No. 445/Hyd/2023**
(निर्धारणवर्ष/Assessment Year: 2022-23)

Myadam Kishan Rao Vs. Commissioner of
Charitable Trust, Income Tax
Hyderabad (Exemptions),
[PAN: AAATM5719J] Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारितीद्वारा/Assessee by: Shri A.V. Raghu Ram, AR
राजस्वद्वारा/Revenue by: Ms. TH. Vijaya Lakshmi, CIT-DR

सुनवाईकीतारीख/Date of hearing: 10-06-2024
घोषणाकीतारीख/Pronouncement on: 28-06-2024

आदेश/ORDER

PER MANJUNATHA G., A.M. :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Exemptions), Hyderabad [Ld.CIT(E)], dated 30-06-2023 passed u/s 12AB(4) of the Income Tax Act, 1961.

2. The appeal is time barred by four days. The parties were heard on delay in filing of the appeal and after hearing both sides, the delay in filing the appeal is condoned and proceed to hear the matter on merits.

3. Assessee has raised the following grounds:

1. *The order of the Learned Commissioner of Income Tax (Exemptions), Hyderabad is not correct either in Law or on facts.*

2. *In the facts and circumstances of the case, the Learned Commissioner of Income Tax (Exemptions), has erred in passing the order for cancellation U/s. 12AB(4) based on surmises and assumption of incorrect facts.*

3. *The Learned Commissioner of Income Tax (Exemptions) is not justified in cancelling the registration of the Trust without properly appreciating the fact there are no violation of Provisions of Section 11 to 13 of Income Tax Act.*

4. *The final findings of the Learned Commissioner of Income Tax itself indicate that he himself is not sure of the provisions under which the registration is cancelled and hence the order of the Ld. Commissioner of Income tax is incorrect.*

5. *The Learned Commissioner of Income Tax failed to appreciate the fact that the alleged deviations/violations for initiating the proceedings for cancellation of registration are not in accordance with law.*

6. *The Learned Commissioner of Income Tax is not justified in cancelling the registration with effect from 16.08.2018, especially when there is no violation of Provisions of IT Act in that year.*

7. *In the absence of mentioning the DIN in the order passed under 12AB(4), the order passed is invalid and needs to be treated to have been never issued.*

8. The Learned Commissioner of Income Tax (Exemptions), order is in violation of principle of natural justice.

4. The brief facts of the case are that the appellant, M/s. Myadam Kishan Rao Charitable Trust is a charitable trust registered u/s. 12A of the Income Tax Act, 1961 (“the Act”) vide order dt. 15-08-1992. Subsequently, the assessee got re-registered u/s. 12A of the Act and obtained registration u/s. 12A(1)(ac) of the Act for the AY. 2022-23 to 2026-27 as per new regime of registration of trust and institutions. The main objects of the trust as per Annexure attached to the Deed of Trust is for the advancement and propagation of education and learning including the establishment, maintenance and support of colleges, schools etc., for giving medical aid and relief to the poor, including the establishment, maintenance and support of institutions or funds for medical aid, for the relief of the poor and also for the advancement of any other object of general public utility not involving the carrying of any activity for profit. In furtherance of its objects, the Trust in the year 1979, acquired land at East Maredpally, Hyderabad for the purpose of establishing a hospital. But owing to the paucity of funds, the said hospital project could not be taken up. Since the area in which the property is located became unsustainable for the construction of hospital, and to render services to the poor, the trustees decided to give such land for development, and the proceeds on the sale for the purpose of setting up of a hospital in premises taken on lease for a period of 99 years at Nandiwanaparthi village, Yacharam Mandal,

Ranga Reddy District. Accordingly, the Trust has obtained an order u/s. 34 of the Indian Trust Act, 1886 from City Civil Court, Secunderabad, vide order dt. 30-11-2016 for entering into a joint development agreement for development of the property and sale. The City Civil Court issued order and allowed the appellant to develop the existing land at Maredpally and utilization of sale proceeds for the construction of hospital on the leased premises at Nandiwanaparthi village. In pursuance to the given order, the appellant entered into Joint Development Agreement on 16-08-2018 with M/s. Trishala Infratech for the development of the property as per the terms and conditions of the agreement.

5. The CIT(E), Hyderabad issued show cause notice, dt. 12-01-2023 and called upon the assessee to explain as to why the registration granted u/s. 12AA of the Act shall not be cancelled as per section 12AB(4) of the Act. In the said show cause notice, the CIT(E) observed that the appellant Trust violated certain provisions of the Income of the Income tax Act, 1961 ("the Act"), by not adhering to the conditions of registration granted u/s. 12A of the Act. According to the CIT(E), the assessee has violated/deviated in respect of the following five issues:

- i. Non-intimation of change of Trustees to the Department;
- ii. Unexplained security deposit received;
- iii. Activity of construction and sale of flats and under reporting of sale consideration;

- iv. Non-intimation of transfer of property and acquisition of property;
- v. Application of income for purposes other than charitable purposes.

6. The Ld.CIT(E) observed that the Trust has failed to intimate the change in the constitution of Trust like change in appointment of trustees to the department. The Ld.CIT(E) further noted that on demise of Mydam Raghuveer on 25-06-2017, his daughter Ms. M. Shireesha has been appointed as one of the trustees. Similarly, on demise of Myadam Kishan Rao in January, 2021, his daughter Smt. Anuradha Vippala was included as one of the trustees. The changes made to the constitution of the Trust were not informed to the department. Therefore, opined that the assessee Trust has violated the provisions of section 12AB(4) of the Act. The Ld.CIT(E) further noted that as per the information available with the records, for the AY. 2017-18, the assessment has been passed u/s. 143(3) of the Act on 12-12-2019, making an addition of Rs. 1 crore u/s. 68 of the Act in respect of the alleged receipt of security deposit from M/s. Trishala Infratech in pursuant to Joint Development Agreement and said violation constitute violations referred u/s. 13 of the Act, which attracts cancellation of registration u/s. 12AB(4) and 12AB(5) of the Act of the Act. The Ld.CIT(E) further noted that the assessee had entered into a Joint Development Agreement for development of property, which is in the nature of trade and commerce, falls under proviso to section 2(15) of the Act. Further, the Trust has sold its share of flats to various parties

and the modus employed by the Trust indicates that the promoters of the Trust are involved in deriving the undue benefit from the properties of the Trust in contravention of Section 13(1)(c) of the Act. The Ld.CIT(E) had also noted that the Trust has made several changes including transfer of property by Joint Development Agreement and subsequent sale of flats, to the various buyers and acquired property by way of Will from one of the trustees and said changes have not been intimated to the department. Similarly, the Ld.CIT(E) further noted that the Trust has applied its income for purposes other than the objects of the Trust which constitute allowing the benefit of the Trust to the persons referred to u/s. 13(3) of the Act. Therefore, issued show cause notice and called upon the assessee to explain as to why registration granted u/s. 12AA of the Act shall not be cancelled by virtue of provisions of section 12AB(4) and 12AB(5) of the Act of the Act.

7. In response, the assessee through its Ld.AR submitted that the violations/deviations referred to in the show cause notice does not come under specified violations referred to in explanation to section 12AB(4) of the Act. Therefore, your proposed cancellation of registration of Trust, is incorrect. The appellant has also explained five violations/deviations referred to by the Ld.CIT(E) in his show cause notice and replied that in respect of changes in the constitution of Trust, the Trust has appointed new trustees to fill the vacancy caused due to sudden death of trustees in pursuant to the clause provided in the Trust Deed, where the trustees can fill

the casual vacancy of the trustees by any persons and such changes need not to be reported to the Income Tax Department. The appellant further stated that it has received a sum of Rs. 1 crore from Trishala Infratech in the FY. 2016-17 relevant to the AY. 2017-18 towards security deposit for Joint Development Agreement to be entered into with the above party for development of the property and this fact has been explained to the AO. But, the AO made additions towards Rs. 1 crore u/s. 68 of the Act as un-explained cash credit even though the identity, genuineness and creditworthiness of the person who paid the money has been explained. Further, the additions made by the AO has been disputed in appeal before the appellate authorities and the matter is pending for adjudication. Unless the issue is decided in appeal, it cannot be said that such violation constitutes a specified violations referred in explanation to Section 4 of section 12AB of the Act. The appellant has also replied to the show cause notice in respect of non-intimation of transfer of property and subsequent acquisition of property by way of Will and claimed that the property has been transferred in pursuant to court's order u/s. 34 of the Indian Trust Act, 1886 and the Hon'ble City Civil Court, Secunderabad vide order dt. 30-11-2016 has permitted to enter into Joint Development Agreement for development of the property and for utilization of sale proceeds for construction of a hospital. Further, the appellant received a property by Will from Shri M. Kishan Rao on his demise and because of receipt of land, the earlier lease deed executed for another land for a period of 99 years has been cancelled. The

changes made in the cancellation of Lease Deed and subsequent receipt of immovable property by way of Will does not repugnant to the provisions of section 11 of the Act and consequently the changes do not required to be intimated to the department. The assessee had also replied on the point of application of income for purpose other than the objects and explained that the appellant had established a Gosala, which comes under the object of advancement of any other object of general public utility not involving the carrying on any activity for profit. Further, the establishment of Gosala is indirectly benefitting the appellant Trust, because the appellant Trust was in the process of establishing Ayurvedic Hospital for which the cow urine and other products are necessary. Therefore, application of income for construction and maintenance of Gosala cannot be considered as diversion of funds for the purpose other than the objects of the Trust which violates provisions of section 13(1)(c) of the Act. Therefore, the assessee submitted that unless the Ld.CIT(E) satisfied that the appellant Trust has violated or there are certain specified violations referred to in explanation to section 12AB(4) of the Act, there is no power to cancel the registration u/s. 12AA of the Act.

8. The Ld.CIT(E) after considering relevant submissions of the assessee and also taken note of various facts, cancelled the registration granted to the assessee u/s. 12AA of the Act by exercising the powers vested with him u/s. 12AB(4) r.w.s. 12AB(5) of the Act w.e.f. 16-08-2018 i.e., from the date of Joint Development Agreement coupled with GPA entered into for

development of the property. The Ld.CIT(E) has discussed the issue at length in light of the deviations/violations referred to in his show cause notice and subsequent reply submitted by the assessee on various occasions and opined that non-intimation of changes of appointment to the Trust violates provisions of section 13 of the Act. The Ld.CIT(E) further noted that the assessee has entered into Joint Development Agreement for development of property and sales which is in the nature of adventure in the nature of trade and commerce which falls under proviso to section 2(15) of the Act. Further, the assessee by entering into trade and commerce, has violated provisions of section 13(1)(c) by employing a modus operandi as per which the trustees have benefitted in the manner where the property has been sold for higher consideration whereas the sale consideration has been offered by or accounted in the books of accounts of the Trust as per the registered sale deed, which is evident from the report of the Inspector. The meaning thereby that, the Trust has diverted the funds or property of the Trust for the benefit of the Trustees specified u/s. 13(1)(c) of the Act. The Ld.CIT(E) also rejected the explanation of the assessee with regard to non-intimation of transfer of property and acquisition of property and observed that the appellant Trust failed to inform the transfer of property by way of Joint Development Agreement and subsequent acquisition of property by way of Will, which resulted in violations referred to u/s. 13(1)(c) of the Act. The appellant Trust on also violated provisions of section 13(1)(c) of the Act by applying income of the Trust for purpose other than objects which is evident from financial

statements of the assessee, where the Trust fund has been utilised for constructing and maintaining of Gosala, which itself is not in accordance with main objects of the appellant Trust. Therefore, rejected the explanation of the assessee and cancelled the registration u/s. 12AB(4) of the Act w.e.f. 16-08-2018 and also directed the AO to initiate re-assessment proceedings and invoke the provisions of section 115TD of the Act. Aggrieved by the order of Ld.CIT(E), the assessee is in appeal before us.

9. The Ld.Counsel for the assessee, Shri A.V. Raghuram, Advocate submitted that the Ld.CIT(E) is erred in cancelling registration granted to the Trust u/s. 12AA of the Act by invoking the provisions of Section 12AB(4) of the Act without appreciating the fact that various deviations/violations referred to in show cause notice of the Ld.CIT(E) does not come under specified violations referred to in section 12AB(4) of the Act. The Ld.Counsel for the assessee referring to the provisions of section 12AB(4) of the Act and explanation provided therein submitted that (a) for the purpose of sub-section, specified violation shall mean and include any income derived from property held under Trust wholly or in part for charitable or religious purposes has been applied other than for the objects of the Trust and (b) the Trust or institution has income from profits and gains of business, which is not incidental to the attainment of its objects and (c) Trust or institution is applied its income for providing religious purposes which does not ensure for the benefit of the public and (d) The trust has applied any part of its income for the

benefit of any particular religious community or caste and (e) any activity being carried out which is not genuine or is not being carried out in accordance with or any of the conditions subject to which it was registered. The Ld.Counsel for the assessee referring to the order passed by the Ld.CIT(E) cancelling registration and reasons given therein submitted that none of the reasons given by the Ld.CIT(E) does fall under any of the above category to invoke the provisions of section 12AB(4) of the Act.

10. The ld. Counsel for the assessee further submitted that in so far as non-intimation of changes of trustees to the department, there is no search requirement as per the statute to inform any changes in appointment/retirement of any trustees. The requirement of taking permission from the Commissioner of Exemptions arises only in a case whet the amendments is proposed to the Trust Deed which is repugnant to the provisions of section 11, 12 and 13 of the Income Tax Act, 1961. He further submitted that the Ld.CIT(E) erred in invoking the provisions of Section 12AB(4) of the Act on the ground that in the assessment, additions were made u/s. 68 of the Act, ignoring the fact that the said assessment has been challenged before the appellate authorities and adjudication is pending. Further, the Trust has given property for joint development in pursuant to the court's order in terms of section 34 of the Indian Trust Act and the court has allowed to enter into joint development with a condition that sale proceeds of the property should be utilized for development of a hospital. The assessee is in the

process of selling the property and developing a hospital and thus it is pre-matured for the Ld.CIT(E) to allege that the appellant has not utilised the funds for the objects of the Trust. He further submitted that the allegation of the Ld.CIT(E) that the trustees have indirectly benefitted by receiving cash consideration over and above the consideration stated in the registered Sale Deeds of flats on the basis of report of Inspector, which is purely based on suspicious and surmises, without there being any evidences. Further, the developer of the property in his statement categorically admitted that the market value of the property is between Rs. 6,000/- to Rs. 8,000/- depending upon various factors, which clearly shows that the allegation of the Ld.CIT(E) that the appellant has sold the flats @ 11,0000/- per sq.ft. and received excess consideration in cash by the trustees is only a suspicion. The Ld.Counsel for the assessee had also negated the observation of the Ld.CIT(E) on the issue of application of income for the purpose other than the objects and submitted that construction of Gosala comes under advancement of any other object of general public utility and said application of income is in accordance with the objects of the Trust and thus, the same cannot be considered as specified violations. Therefore, he submitted that Ld.CIT(E) erred in cancelling the registration of the Trust u/s. 12AB(4) of the Act and, therefore, the order should be set aside.

11. The Ld. DR, Ms. TH Vijaya Lakshmi, on the other hand, supporting the order of the Ld.CIT(E) submitted that reasons given by the Ld.CIT(E) in light of five deviations/violations

referred to in the show cause notice clearly indicate that the assessee has violated the provisions of section 12AB(4) of the Act, which warrants cancellation of registration. Further, the appellant is engaged in the activity of trade and commerce by entering into Joint Development Agreement with the developer for development of property, which falls under the ambit of proviso to section 2(15) of the Act. The Trust has also violated various other provisions of conditions of registration of the Trust by not intimating changes in constitution of the Trust, non-maintenance of proper books of accounts thereby making additions u/s. 68 of the Act by the AO for the AY. 2017-18, non-intimation of transfer of property and acquisition of property and application of income for purpose other than the objective of the Trust. Ld.CIT(E) after considering the relevant facts has rightly cancelled registration granted to the appellant Trust by exercising powers vested with him u/s. 12AB(4) r.w.s. 12AB(5) of the Act and, therefore, the order should be upheld.

12. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant, M/s. Myadam Kishan Rao Charitable Trust was established in the year 1976 with the objects of imparting education, providing medical relief to the poor and the advancement of any other object of general public utility, which is evident from the objects clause provided in the Trust Deed. The appellant Trust has registered u/s. 12A of the Act from 1992 and got re-registered from the amended provisions

by the Finance Act, 2020 for the AY. 2022-23 to 2026-27 vide order dt. 25-05-2021. From the objects of the trust coupled with registration granted u/s. 12AA of the Act and subsequent re-registration u/s. 12A(1)(ac) of the Act, it is abundantly clear that the objects of the Trust are charitable in nature and the Trust is carried out its activities in accordance with its objects. Therefore, in light of above undisputed facts it is necessary to examine the reasons given by the Ld.CIT(E) in their order dt. 30-06-2023, to cancel the registration of the Trust u/s. 12AB(4) of the Act.

13. The provisions of section 12AB(4) of the Act provides for cancellation of registration of any Trust by the Pr. Commissioner or Commissioner, in case he noticed occurrence of one or more specified violation, during any previous year or a reference was received from the AO under proviso to sub-section 3 of section 143 for any previous year. In such cases, the Commissioner of Exemption shall call for documents or information from the Trust, make such enquiry as it deems necessary to satisfy himself about the correctness or otherwise or any specified violation and pass an order in writing and cancel registration of such Trust or institution after providing a reasonable opportunity of being heard for such previous year and all subsequent previous years, if he satisfied that one or more specified violations have taken place. The explanation provided to section 12AB(4) define specified violation and as per said explanation, specified violation shall mean and include (a) any income derived from property held under Trust wholly or in part for charitable or

religious purposes has been applied other than for the objects of the Trust and (b) the Trust or institution has income from profits and gains of business, which is not incidental to the attainment of its objects and the trust not maintains separate books of accounts (c) Trust or institution is applied its income for providing religious purposes which does not ensure for the benefit of the public and (d) The trust has applied any part of its income for the benefit of any particular religious community or caste and (e) any activity being carried out which is not genuine or is not being carried out in accordance with or any of the conditions subject to which it was registered. From the explanation to section 12AB(4), it is undisputedly clear that unless the CIT(E) prove with reason that one or more specified violation referred were occurred, he cannot cancel the registration of the Trust.

14. In light of above legal position, if we examine the deviations/violations referred to by the Ld.CIT(E) for cancellation of registration u/s. 12AB(4) of the Act, we find that there is no substance or merit in the reasons given by the Ld.CIT(E) for cancelling registration of the Trust u/s. 12AB(4) of the Act for the simple reason that none of the five reasons given by the Ld.CIT(E) falls under any of specified violations referred to in explanation to section 12AB(4) of the Act. The first deviation referred to by Ld.CIT(E) is non-intimation of changes of trustees to the department. Admittedly, the appellant has made two changes to the trustees of the Trust. On demise of Mydam Raghuveer on 25-06-2017, his daughter Ms. M. Shireesha has been appointed as one of the trustees.

Similarly, on demise of Myadam Kishan Rao in January, 2021, his daughter Smt. Anuradha Vippala appointed as one of the trustees. The above two changes were made as per the clauses of the Trust Deed which provides for appointment of trustees, for filling casual vacancies arise in the Trust. Once the Trust Deed provides for appointment of trustees, including filling of casual vacancies on account of death or resignation of any trustees, in our considered view, such appointment of trustees is an administrative matter of the trust as provided in the Trust Deed which need not be informed to the department. Further, as per law, the information to the department or taking a prior approval from the CIT(E) will arise only in a case where modifications or amendments is made to the Trust Deed which are repugnant to the provisions of sections 11, 12 and 13 of the Act. Since the appointment of trustees to fill casual vacancies does not repugnant to the provisions of sections 11, 12 and 13 of the Act, in our considered view, the said changes need not to be informed to the department. Therefore, in our considered view, the Ld.CIT(E) erred in observed that above issue is deviation/specified violation referred to u/s. 12AB(4) of the Act for cancellation of registration of Trust.

15. The next deviation/violation considered by the Ld.CIT(E) in support of his view on cancellation of registration u/s. 12AB(4) of the Act, is the addition towards unexplained security deposit received by the appellant u/s. 68 of the Act by the AO for the AY. 2017-18. According to the PCIT, the appellant had entered into a Joint Development Agreement on

16-08-2018 relevant to FY. 2018-19 which falls under AY.2019-20. As per the Joint Development Agreement, the appellant has received Rs. 5 crores as security deposit from the developer in the FY. 2018-19. The assessee claims to have received Rs. 1 crore from the developer in FY. 2016-17 and the same has not been accepted by the AO and the addition was made u/s. 68 of the Act. Therefore, the Ld.CIT(E) opined that the assessee Trust failed to maintain proper books of accounts and thereby violated section 13 which *inter alia* attracts cancellation of registration of the Trust u/s. 12AB(4) of the Act. We do not find any merit in the reasons given by the CIT(E) on this point for the simple reason that, the assessee claims to have received a sum of Rs. 1 crore in FY. 2016-17 by cheque from M/s. Trishala Infratech as security deposit for entering into Joint Development Agreement. The appellant has filed ledger extract which shows receipt of amounts from the developer through proper banking channel. The assessee has explained the credit with necessary evidences before the AO and argued that said sum of Rs. 1 crore was received from builder as advance for security deposit. The AO did not accept the explanation of the assessee and has made addition u/s. 68 of the Act for the AY. 2017-18. The assessee has challenged the assessment and additions made thereon before the appellate authorities, which is pending for adjudication. Unless the issue is reached finality, by adjudication from the appellate authorities, in our considered view it cannot be said that additions made by the AO towards unexplained credit is sacrosanct and further the said addition violated the provisions of section 13(1)(c) of the

Act. In our considered view, it is pre-mature for the Ld.CIT(E) to come to the conclusion that additions made in the assessment is a basis to hold that the assessee is not maintaining books of accounts properly and further the said violation comes under specified violation referred to u/s. 12AB(4) of the Act. Therefore, on this ground, the assumption of jurisdiction by the Ld.CIT(E) and cancellation of registration is illegal and devoid of merit.

16. The next point considered by the Ld.CIT(E) is activity of construction and sale of flats and refunding of sale consideration. As we have noted earlier in this order, the appellant Trust had entered into Joint Development Agreement for development of property in pursuant to a court's order in terms of section 34 of the Indian Trust Act. The City Civil Court, Secunderabad has passed an order and permitted the appellant Trust to transfer the property by way of Joint Development Agreement and subsequent sale subject to utilization of proceeds for construction of hospital as per objects of the Trust. The Ld.CIT(E) opined that the activity of entering into Joint Development Agreement and sale of flats is in the nature of trade and commerce, which is hit by the proviso to section 2(15) of the Act. The Ld.CIT(E) further noted that the trustees of the Trust got indirect benefit from the arrangement whereby they have received consideration in cash, which is tantamount to deviation or diversion of Trust fund to the persons specified u/s. 13(3) of the Act. The Ld.CIT(E) took support from the report of the Inspector to take an adverse inference against the assessee. We have gone

through the reasons given by the Ld.CIT(E) to hold that entering into Joint Development Agreement for development of property is in the nature of trade and commerce and hit by the proviso to section 2(15) of the Act and we ourselves do not subscribe to the reasons given by the Ld.CIT(E) for the simple reason that, the Trust is not engaged in any kind of business activity as alleged by the Ld.CIT(E). The development activity has been taken up by the developer. The Trust has only commercially exploited its property with the permission of the court in terms of section 34 of the Trust Act, 1882 subject to condition that the proceeds should be appropriated or applied for the objects of the Trust. The court has permitted the appellant Trust to enter into Joint Development Agreement and sale of property. In our considered view, the said activity cannot be considered as adventure in the nature of trade or commerce or business, which can be considered in light of proviso to section 2(15) of the Act. Further, the appellant Trust can be said to have involved in trade or commerce or business only if the appellant is engaged in the activity of buying and selling properties or entering into Joint Development Agreement with some other land owners for development of property on commercial lines and sells the property. In the present case, it is not a case of the Ld.CIT(E) that the appellant was engaged in the business activity of buying and selling of the property or entering into Joint Development Agreement with land owners in commercial lines and carrying on trade and commerce. The appellant Trust is only exploiting its property, which is incidental to the attainment of main objects of the Trust of construction of a

hospital that too when the Trust finds that the property in question was not suitable for its objects and which can be utilised to construct hospital in some other land owned or possessed by the Trust for the purpose of construction of hospital. Therefore, we are of the considered view that the allegation of the Ld.CIT(E) that the Trust is engaged in the activity of trade and commerce is devoid of merit and fails.

17. As regards the allegation of the Ld.CIT(E) in light of the report of the Inspector dt. 07-11-2022, in our considered view said report issued by the Inspector of Income Tax is only a self-serving document for the Ld.CIT(E) to take an adverse inference against the assessee. We have gone through the report of the Inspector and find that, he claims to have visited the marketing office of the property and one marketing person stated that the base price of the property is Rs. 11,500/- per sq. ft. Further, the final price can be fixed at Rs. 10,800/- per sq. ft. He further stated that the current value of the property as per registration authority is Rs. 6,000/- per sq. ft. Based on the above report of the Inspector, the Ld.CIT(E) concluded that the assessee might have sold the property for a consideration of Rs. 11,500/- per sq. ft., received excess consideration in cash which has been used by the trustees for their personal benefit. In our considered view, said observation of the Ld.CIT(E) is purely on suspicions and surmises basis, without there being any material evidence which suggest that the appellant Trust has sold property @ Rs. 11,500/- per sq. ft. Further, the appellant has placed all evidence and proved that the so called sales person was not

the employee of the assessee and further, the developer, who have developed the property in his statement has categorically stated that the prevailing market rate of the property in the given location is Rs. 6,000/- to Rs. 8,000/- per sq. ft. Further, the selling rate of any property depends on various factors, including the time of the sale, terms and conditions between the parties relationship with the seller and location of the property. Therefore, there cannot be any uniform selling rate for all flats in society and particularly in different time. Therefore, the allegation of the Ld.CIT(E) based on the self-serving report of Inspector of Income Tax is only a suspicion, without any evidence to the contrary that the appellant has sold property as claimed by the Ld.CIT(E). Further, there is no evidence including any agreement to sell with the department to allege that even a single flat was sold for the rate claimed by the Inspector of Income Tax. Therefore, the conclusion drawn by the Ld.CIT(E) on the basis of the inspector report to cancel the registration of the Trust u/s. 12AB(4) of the Act is illegal and devoid of merits.

18. Coming to another observation of the Ld.CIT(E) with regard to non-intimation of transfer of property and acquisition of property. The Ld.CIT(E) alleged that entering into Joint Development Agreement with developer for development of property was not intimated to the department. The Ld.CIT(E) further observed that the appellant Trust has not intimated cancellation of Lease Deed and subsequent acquisition of property by will from one of the trustees. As regards the transfer of property held by the Trust in pursuant

to Joint Development Agreement, in our considered view, the said transaction has been entered into with the court permission in terms of section 34 of the Indian Trust Act. The Hon'ble City Civil Court, Secunderabad has passed an order and permitted the appellant to transfer the property subject to a condition that sale proceeds should be applied for objects of the Trust. Once the property has been sold with the permission of court, in our considered view, there is no requirement under the law to intimate the transfer of property to the Income Tax Department or to the Ld.CIT(E). Although subsequent amendment to section 12AB which has been inserted by the Finance Act, 2021 with effect from AY. 2022-23 stipulates that the Ld.CIT(E) can impose any other conditions while granting registration u/s. 12AA of the Act, in our considered view, the Ld.CIT(E) cannot impose any conditions, which cannot be enforceable or implemented. Further, while granting registration u/s. 12AA of the Act, Ld.CIT(E) can impose a condition which can be repugnant to the provisions of section 11, 12 and 13 of the Act. In other words, the conditions which can be imposed by the Ld.CIT(E) only on objects and activities of the Trust, but not on day to day management of the Trust. In the present case, transfer of property by Joint Development Agreement and subsequent sale in pursuant to court order is an administrative matter of the trust and trustees can decide the affairs in accordance with the rules and regulations of the Trust, if the Trust rules permit the trustees to sell or purchase the property, then the same can be done subject to satisfaction of relevant laws. In the present case, the appellant has transferred the property

in pursuant to court order in terms of section 34, of the Indian Trust Act, in our considered view, the said Act of the Trust cannot be or need not to be intimated to the Income Tax Department. Therefore, on this ground, the Ld.CIT(E) cannot cancel the registration of the Trust.

19. Insofar as the findings of the Ld.CIT(E) with regard to cancellation of Lease Deed on a property taken by the Trust for 99 years and subsequent acquisition of property by way of a Will from one of the trustees and not informing the said changes to the court or the department, in our considered view, these are subject matters of administrative decisions of the trustees as per their clauses in Trust Deed. Further, the Trust had taken a lease of land for a period of 99 years from one of the trustees for establishment of a hospital. Subsequently, one of the trustees has executed a Will and bequeathed another property in the name of the Trust for establishment of hospital. On demise of the trustee, the said land has been come into the possession and enjoyment of the Trust. Therefore, the appellant Trust has cancelled the earlier Lease Deed entered into with another company for taking certain land on lease for 99 years because the said land was not long required to the appellant. Since the appellant has got land on its own by way of Will, and it can use the said land for the purpose of construction of hospital, in our considered view, cancellation of Lease Deed cannot be a strategy of imagination referred to u/s. 12AB(4) of the Act. In our considered view, if the Trust Deed provides for the trustees and entered into various agreement for better utilization of the

Trust, including buying and selling of the property, such an act should not be considered as repugnant to the provisions of sections 11, 12 and 13 of the Act unless the activity or changes carried out by the Trust, which is repugnant to the provisions of sections 11, 12 and 13 of the Act. In our considered view, the Trust need not to intimate the said act or take permission from the Ld.CIT(E) before entering into the said transactions. Therefore, in our considered view, the cancellation of registration by the Ld.CIT(E) on this ground is illegal and devoid of merit.

20. The next point that is considered by the Ld.CIT(E) for cancellation of registration u/s. 12AB(4) of the Act is application of income for purposes other than the objects of the Trust. According to the Ld.CIT(E), the appellant has constructed Gosala in Nandiwanaparthi village land which is not in accordance with the objects of the Trust. Therefore, the Ld.CIT(E) opined that the Trust has diverted the funds for the purpose other than the objects of the Trust, which tantamount to violations referred to u/s. 12AB(4) of the Act, which warrants cancellation of registration of Trust. In our considered view, the reasons given by the Ld.CIT(E) for cancellation of registration is unwarranted and devoid of merit for the simple reason that construction and maintenance of Gosala has definitely come under the advancement of any other object of general public utility. Therefore, if the assessee applied its income for the purpose of construction of Gosala, then it cannot be said that the income of the Trust is not applied for the objects of the Trust. Further, the appellant

also explained that by establishing Gosala, the appellant Trust has got benefit for its Ayurvedic Hospital. Although the appellant is in the process of establishing Ayurvedic Hospital, still the appellant can very well spend its income for construction and maintenance of Gosala, which in our considered view falls under the objects of the Trust, i.e advancement of any other object general public utility. Therefore, the observation of the Ld.CIT(E) that construction of Gosala is not in accordance with the objects of the Trust, is devoid of merit and thus rejected.

21. The powers of the Ld.CIT(E) u/s. 12AB(4) of the Act is limited inasmuch as the Ld.CIT(E) can exercise his powers in a case where any Trust violates any of the specified violations as defined in explanation to section 12AB(4) of the Act. If you go by the explanation, the specified violations shall mean and include application of income for the purpose other than objects of the Trust, engaged in business which is not incidental to the attainment of its objects or books of accounts are not maintained by such Trust in respect of the business, which is incidental to the attainment of its objects. Further, income of the Trust is applied for the purposes which does not ensure the benefit to the general public and finally carrying out any activity, which is not genuine or is not being carried out in accordance with all or any of the objectives of the Trust. In the present case, if you go by the reasons given by the Ld.CIT(E) and deviations/violations referred to in his order, we find that none of the reasons given by the Ld.CIT(E) falls under the specified violations referred to in explanation to

section 12AB(4) of the Act. Therefore, in our considered view the Ld.CIT(E) is erred in cancelling the registration of the Trust u/s. 12AB(4) r.w.s. 12AB(5) of the Act w.e.f. 16-08-2018. Thus, we set aside the order of the Ld.CIT(E) and restore the registration granted to the Trust u/s. 12A(1)(ac) of the Act for the AYS. 2022-23 to 2026-27.

22. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28th June, 2024.

Sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-
(MANJUNATHA G.)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 28-06-2024

TNMM

Copy forwarded to:

1. Myadam Kishan Rao Charitable Trust, 10-2-262/263,
West Marredpally, Nehrunagar, Secunderabad.
2. Commissioner of Income Tax (Exemptions), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD