

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER**  
**AND**  
**SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER**

**ITA No.806/IND/2026**

M/s. Shishukunj Education Society, Shishukunj International School, Gram Jhalaria bypass Road, Jhalaria, Indore	<b><u>बनाम/</u></b> Vs.	Pr. CIT (Central) Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: AABAS8128B</b>		
Assessee by	Shri Sumit Nema, Sr. Adv. with Gagan Tiwari, Arun Dwivedi, ND Dave, Ms. Priyal Jain Advocates; ARs	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of final Hearing	30.01.2025	
Date of Pronouncement	28.04.2025	

**आदेश / O R D E R**

**Per B.M. Biyani, AM:**

Feeling aggrieved by order bearing DIN: ITBA/COM/F/17/2024-25/1069282841(1) and dated 30.09.2024 passed by learned PCIT (Central), Bhopal [**"PCIT (Central)"**] under 15<sup>th</sup> Proviso to section 10(23C) of the Income-tax Act, 1961 [**"the Act"**] by which the approval of assessee granted u/s 10(23C)(vi) vide order dated 29.08.2008 and restoration of same granted vide order dated 19.03.2020 have been cancelled/revoked, the

assessee has filed this appeal. The said order passed by Ld. PCIT(Central) shall hereinafter be referred as "**impugned order**".

2. Heard the Learned Representatives of both sides at length and perused the case record.

3. The background facts leading to this appeal are as under:

(i) The assessee is a society engaged in charitable purpose of imparting education. It is registered under Madhya Pradesh Societies Registration Act, 1973 w.e.f. 10.12.2004. It was also granted approval u/s 10(23C)(vi) of the Act by the Chief Commissioner of Income-tax, Indore vide registration F.No. CCIT/IND/TECH/10(23C)(vi)/78/08-09 dated 29.08.2008 from Assessment-Year ["AY"] 2008-09 onwards and such approval was continuing year after year. However, the approval so granted was cancelled vide order dated 14.12.2018 by CIT(Exemption), Bhopal ["**CIT(E)**"] w.e.f. AY 2014-15 but on appeal by assessee, the ITAT, Indore Bench reinstated approval in *ITA No. 62/Ind/2019* order dated 07.08.2019 in pursuance of which the approval was re-stored by CIT(E) through order dated 19.03.2020. This approval/restoration of approval enabled the assessee to claim exemption u/s 10(23C)(vi) of the Act from AY 2008-09 onwards.

(ii) A search u/s 132 was conducted by Income-tax Department on 02.02.2023 upon one 'BCM Group' of Indore and also upon assessee-

society. All cases of searched entities were centralised in the assessing authorities of Central Circle, Bhopal. The case of assessee-society was also transferred from **DCIT(Exemption), Bhopal** to **DCIT(Central)-2, Bhopal** vide order dated 21.06.2023 u/s 127(2) of the Act. Thereafter, the DCIT(Central)-2, Bhopal [**“AO”**] conducted assessment/re-assessment proceedings of assessee-society u/s 147/143(3) for various assessment-years. During pendency of such assessment/re-assessment proceedings, a reference was forwarded by Range Head/AO vide letters dated 19.02.2024/16.02.2024 under 2<sup>nd</sup> proviso to section 143(3) to the Ld. PCIT(Central) informing that the assessee-society is involved in certain irregularities and has violated the terms and conditions of section 10(23C)(vi) and therefore its approval u/s 10(23C)(vi) is liable to be cancelled. Acting upon such reference, the Ld. PCIT(Central) issued Show-Cause Notice dated 31.03.2024 [**“SCN”**] to assessee mentioning therein the violations committed by assessee and also calling the assessee to explain as to why its approval u/s 10(23C)(vi) may not be cancelled. The SCN so issued is fully scanned and re-produced by Ld. PCIT(Central) in impugned order in Para 2/Pages 3 to 40. In response to SCN, the assessee filed replies from time to time raising several objections, contentions and claims. But the Ld. PCIT(Central) was not convinced with assessee's submissions who ultimately, vide impugned order

dated 30.09.2024 passed under 15<sup>th</sup> Proviso to section 10(23C), cancelled assessee's approval u/s 10(23C)(vi).

(iii) Aggrieved by impugned order, the assessee has come in present appeal before us.

4. The ground raised by assessee are as under:

**1. IMPUGNED ORDER PASSED IS WITHOUT JURISDICTION SINCE JURISDICTION EXCLUSIVELY VESTS IN CIT (EXEMPTION), BHOPAL (COMPETENT AUTHORITY) AND NOT WITH PR. CIT (CENTRAL), BHOPAL**

1.1 *The impugned order passed under fifteenth proviso to clause (23C) of section 10 of the Act by the Ld. Pr. CIT, (Central) Bhopal, dated 30/09/2024 is bad in Law and void ab-initio in as much as the learned Pr. CIT, Central, Bhopal, has not been vested with the power to discharge the function of the Income-tax authority for purposes of section 10(23C) of the Act considering the Notification No. 52 & 53 dated 22/10/2014 issued by the CBDT.*

**2. RELIANCE ON EX PARTE INTERNAL COMMUNICATION DT. 19.01.2024 ISSUED BY CBDT TO ASSUME JURISDICTION IS ILLEGAL AND PERVERSE :-**

2.1 *That the reliance placed by the Ld. Pr. CIT, Central, Bhopal on CBDT communication dated 19.01.2024 to justify the jurisdiction is illegal, perverse and contrary to the judicial decisions cited by the Appellant in response to the Show cause notice.*

2.2 *That the Ld. Pr. CIT, Central, Bhopal has failed to take cognizance that CBDT ex-parte internal communication dated 19.01.2024 has no force of law as it is an internal communication of the department with no sanctity under Section 119 or Section 120 of the Act. The registration can be cancelled only by the 'Prescribed Authority' who has been empowered to grant the registration as held in several judicial pronouncements including the judgement rendered by Jurisdictional Tribunal in case of Oriental University Indore (ITA Nos. 115 & 116/Ind/2020) and case of Devi Shakuntala Thakarak Charitable Foundation, Bhopal (ITA Nos. 117/Ind/2020).*

**3. WRONG INTERPRETATION OF ORDER PASSED UNDER SECTION 127(2) BY THE CIT(E) AND IN ASSUMING JURISDICTION**

3.1 *The Ld. Pr. CIT, Central, Bhopal has failed to take cognizance that the order issued u/s 127 of the Act dated 21/06/2023 by the CIT(E) does not transfer CIT(E) original jurisdiction related to 10(23C) to PCIT(C). That the order u/s 127 clearly says transfer of jurisdiction from DCIT(E) to DCIT Central for "Coordinated investigation & assessment of the case", thus placing reliance on such order and thereon exercising such powers by Ld. Pr. CIT(C) for cancellation of registration granted u/s 10(23C)(vi) of the Act is not in terms of the*

statutory provision is bad in law, without jurisdiction and therefore, liable to be quashed since the transfer order was only for investigation & assessment.

**4. WRONG REFERENCE BY LD. DCIT(C), BHOPAL TO PR. CIT(C) UNDER 2<sup>ND</sup> PROVISO TO SECTION 143(3) OF THE ACT**

4.1 That the Ld. AO i.e. DCIT(C) has made wrong reference to Ld. Pr. CIT, Central, Bhopal as the reference under 2<sup>nd</sup> Proviso to section 143(3) of the Act could only be made to competent authority thus any proceedings on the basis of defective reference is without jurisdiction. Thus, the very invocation of fifteenth proviso to clause (23C) of section 10 of the Act is also unlawful, perverse and deserve to dropped.

4.2 The Ld. Pr. CIT, Central, Bhopal has erred in acting on a reference made under the second proviso to the provisions of section 143(2) of the act ignoring the fact that, the proviso invoked was introduced by Finance Act 2022 w.e.f. 01.04.2022 and therefore was not applicable to assessment years prior to A.Y 2022-23.

**5. NO SPECIFIED VIOLATION EXISTS IN THE PRESENT CASE AS DEFINED IN FIFTEENTH PROVISO TO CLAUSE (23C) OF SECTION 10**

5.1 The Ld. Pr. CIT, Central, Bhopal erred in passing an order fifteenth proviso to clause (23C) of section 10 of the act, for the A.Y. 2021-22 and for prior years i.e. A.Y. 2020-21 & 2019-20 by cancelling the registration granted u/s.10(23C)(vi) of the act, ignoring the position of law that, the fifteenth proviso to clause (23C) of section 10 of the Act was introduced by Finance Act 2022 w.e.f. 01.04.2022 and therefore was not applicable for the.AY.2021-22 and for prior years.

5.2 The Ld. Pr. CIT, Central, Bhopal ought to have appreciated that the fifteenth proviso to clause (23C) of section 10 of the Act substituted vide Finance Act, 2022 does not empower him to either examine "specified violations" for the assessment years covered by registration granted u/s. 10(23C)(vi) of the Act r/w Rule 2CA for years prior to A.Y 2022-23 or cancel such registration granted u/s. 10(23C)(vi) of the Act r/w Rule 2CA of the Act for such assessment years and that the power to examine and cancel registration under fifteenth proviso to clause (23C) of section 10 of the Act 10(23C)(vi) was limited to registration granted as per amended Act w.e.f. 2022 and therefore, the impugned order passed cancelling registrations granted for earlier years u/s. 10(23C)(vi) of the Act for the assessment year 2021-22 or for earlier years is bad in law and the same requires to be quashed.

5.3 That the Ld. Pr. CIT, Central, Bhopal ought to have appreciated that there is no specified violation since reference by AO deals with violation of conditions of sec 11(1)(a), 11(1)(d), 13(1) & 13(3) and that it cannot be ground for cancellation of registration is against specific provisions of explanation 2 to fifteenth proviso to clause (23C) of section 10 of the Act defines "specified violation" which, inter-alia, covers "application of income derived from property held under trust other than the objects of the trust. Diversion of income and giving personal benefits to specified person u/s 13(1) & 13(3) cannot be said to be case of non-application for objects of the society.

5.4 The Ld. Pr. CIT, Central, Bhopal erred in ignoring the fact that, there has been no case that the activity of the society was not genuine and also it was not proved that, the activity

was not being carried on in accordance with objects of the society and therefore the circumstances contemplated under fifteenth proviso to clause (23C) of section 10 of the Act of the act were not satisfied & thus there was no case of cancellation of registration.

5.5 That the Ld. Pr. CIT, Central, Bhopal while cancelling the registration has erred in failing to appreciate that since inception appellant is carrying on the activity of providing education which is a charitable activity as per the provisions of section 2(15) of the Act, and there is no change in the aforesaid activity and hence cancellation of registration u/s. 10(23) of the Act on the ground that the activities of the trust are not in accordance with the objects of the society without pointing any such "specified violations" are wholly erroneous and unsustainable in law.

**6. RETROSPECTIVE CANCELLATION OF REGISTRATION W.E.F AY 2006-07 IS IN VIOLATION OF PROVISIONS OF THE ACT AND SETTLED LEGAL POSITION**

6.1 The Ld. Pr. CIT, Central, Bhopal erred in ignoring that, the provisions of section fifteenth proviso to clause (23C) of section 10 of the Act are applicable from A.Y. 2022-23 onwards cannot be invoked retrospectively and hence cannot be applied for the years prior to A.Y 2022-23.

**7. WITHOUT PREJUDICE, EVEN ON MERITS THE ALLEGATION LEVELED AGAINST THE APPELLANT FOR CANCELLATION OF REGISTRATION GRANTED UNDER SECTION 10(23C)(vi) IS IN ABSENCE OF EXACT EVIDENCE AND FRAMED ONLY ON THE BASIS OF CONJECTURES AND SURMISES AND PRESUMPTIONS.**

7.1 That the Ld. PCIT, Central while adjudicating the impugned SCN has not considered the detailed reply submitted by the Appellant on 23/09/2024 along with paper book through which the Appellant has refuted all the allegation leveled against the Appellant.

7.2 That the Ld. PCIT, Central has erred in considering the provisions of Section 13(3) for making impugned cancellation of registration without appreciating the fact that in case of exemption claimed u/s 10(23C)(vi) of the Act, such provision are not applicable and neither relevant.

7.3 That the Ld. PCIT has erred in reaching to the conclusion that the appellant society has paid excess rent for land and building without appreciating the fact that issue **qua** Rent paid to M/s Eduestate has already been adjudicated earlier by Hon'ble ITAT in ITA No. 62/IND/2019 and vide order dated 07/08/2019 the Hon'ble Tribunal.

7.4 The Ld. PCIT while cancelling the registration has only relied on statement recorded u/s 132(4) of the Act however no corroborative evidence has been brought on record to substantiate such allegation.

7.5 Without prejudice to above, the Ld. PCIT Central Bhopal failed to appreciate that Section 13 of the Act is not applicable and there is no violation of any of provision of said section and the assessee is entitled to benefits of section 10(23C)(vi) of the Act since any such violations even if they exist (which the appellant categorically denies) which would always be a subject matter of assessment and not a ground for cancellation of registration."

5. For a smooth discussion and proper adjudication, we categorise the issues involved in above grounds under three categories as under:

- (i) Validity of impugned order (**Ground No. 4.2, 5 to 6**)
- (ii) PCIT(Central) is not competent to pass impugned order (**Ground No. 1 to 3, 4.1**)
- (iii) Impact of alleged violations in assessment of assessee (**Ground No. 7**)

**Issue No. (i) – Validity of impugned order (Ground No. 4.2, 5 to 6):**

6. This is the first issue raised by assessee. Ld. AR for assessee explained the grievance of assessee in simpler and precise terms. He submitted that the impugned order is not valid for the reason that the Ld. PCIT(Central) is wrong in retrospectively invoking the 15<sup>th</sup> Proviso to section 10(23C) for violations (even if there be) committed before 01.04.2022.

7. At first, we refer the Para 1 of SCN issued by Ld. PCIT(Central) appearing at Page 3 of impugned order, reading as under:

*“In this case, a reference has been received from the Range Head vide letter dated 19.02.2024 and AO dated 16.02.2024 made under the second proviso to sub-section (3) of section 143 of the I.T. Act for cancellation of registration granted u/s 10(23C)(vi) of the I.T. Act to the above society.”*

Further, we re-produce the concluding paras noted by Ld. PCIT(Central) at Page 64 of impugned order, reading as under:

*"18. In view of the above-mentioned facts, it is further clear that the assessee society has derived income from profits and gains of business, which is not incidental to the attainment of its objectives as it has failed to explain the sources of cash found from the Lockers of Davey family. The activities of the assessee society is not genuine and are not being carried out in accordance with its objects to which it was registered. The assessee society has utilized its fund other than for the objects for which it was established in violation of fifteenth proviso to section 10(23C) of the I.T. Act and therefore the registration of the trust granted u/s 10(23C)(vi) and its re-approval of the I.T. Act deserves to be cancelled as per provisions of fifteenth proviso to section 10(23C) of the I.T. Act, 1961, among other aspects, being the **"specified violations" committed by the assessee within the meaning of clause (a)/(b)/(c) of Explanation 2 of this proviso.***

*19. Thus, in view of the aforesaid discussion, it is abundantly clear that the activities of the assessee society are not genuine and are not being carried out in accordance with its objects and aims of the society and it has utilized its fund other than for the objects for which it was established and that it has crafted a colourable device to evade taxes and for diverting funds and resources to the three promoter families. Thus, the undersigned has noticed occurrence of **"specified violations" committed by the assessee society within the meaning of clause (a), (b) and (c) of Explanation-2 of the relevant / fifteenth proviso to clause (23C) of section 10 of IT Act, 1961.** Hence, in view of the facts of the case, the registration of the trust, **Shishukunj Educational Society** bearing PAN: **AABAS8128B** granted u/s 10(23C)(vi) of the I.T. Act on 29.08.2008 and approval of restoration of registration granted u/s 10(23C)(vi) of the I.T. Act on 19.03.2020 are hereby cancelled by invoking provisions of fifteenth proviso to clause (23C) of section 10 of IT Act, 1961."*

8. From above paras of impugned order, two facts are undisputably clear, viz. (i) the Ld. PCIT(Central) initiated proceeding against assessee for cancellation of approval on the basis of a reference made by AO under 2<sup>nd</sup> proviso to section 143(3), and (ii) the Ld. PCIT(Central) cancelled assessee's approval on the basis of 15<sup>th</sup> Proviso to section 10(23C), by alleging violations contemplated in Explanation (a)/(b)/(c) in the list of "specified violations" prescribed in Explanation-2 to 15<sup>th</sup> Proviso to section 10(23C).

9. Ld. AR for assessee submitted that the Finance Act, 2022 has brought a substantial amendment w.e.f. 01.04.2022 in the 15<sup>th</sup> Proviso to section 10(23C) dealing with cancellation of approval granted u/s 10(23C)(vi) and one has to read the pre-amended and post-amended provisions carefully. He submitted that the pre-amended provision existing upto 31.03.2022 did not contain the concept of "specified violations" and it is only by virtue of amendment effective from 01.04.2022 that the concept of "specified violations" came into the statute. For the sake of immediate reference, we re-produce below the comparative text of these provisions:

15 <sup>th</sup> Proviso to section 10(23C) <b>upto 31.03.2022</b>	Substituted 15 <sup>th</sup> Proviso to section 10(23C) <b>from 01.04.2022</b>
<p><i>"Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government or is approved by the prescribed authority, as the case may be, or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that —</i></p> <p>(i) <i>such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not, --</i></p> <p style="padding-left: 40px;">(A) <i>applied its income in accordance with the provisions contained in clause (a) of the third proviso; or</i></p> <p style="padding-left: 40px;">(B) <i>invested or deposits its funds in</i></p>	<p><i>"Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) is approved or provisionally approved under the said clause and subsequently—</i></p> <p style="padding-left: 40px;">(a) <i>the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or</i></p> <p style="padding-left: 40px;"><b>(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or</b></p> <p style="padding-left: 40px;">(c) <i>such case has been selected in accordance with the risk management strategy, formulated by the Board from</i></p>

<p style="text-align: center;"><i>accordance with the provisions contained in clause (b) of the third proviso; or</i></p> <p>(ii) <i>the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution –</i></p> <p style="margin-left: 20px;">(A) <i>are not genuine; or</i></p> <p style="margin-left: 20px;">(B) <i>are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved; or</i></p> <p>(iii) <i>such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not complied with the requirement of any other law for the time being in force, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,</i></p> <p><i>it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer."</i></p>	<p><i>time to time, for any previous year,</i></p> <p><i>the Principal Commissioner or Commissioner, shall,—</i></p> <p>(i) <i>call for such documents or information from the fund or institution or trust or any university or other educational institution or any hospital or other medical institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence of any specified violation;</i></p> <p>(ii) <i>pass an order in writing cancelling the approval of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution, on or before the specified date, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violation has taken place;</i></p> <p>(iii) <i>pass an order in writing refusing to cancel the approval of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution, on or before the specified date, if he is not satisfied about the occurrence of one or more specified violations;</i></p> <p>(iv) <i>forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such fund or institution or trust or any university or other educational institution or any hospital or other medical institution.</i></p> <p><i>Explanation 1.—For the purposes of this proviso, "specified date" shall mean the day on which the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) expires.</i></p>
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*Explanation 2.—For the purposes of this proviso, the following shall mean "specified violation",—*

*(a) where any income of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has been applied other than for the objects for which it is established; or*

*(b) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has income from profits and gains of business, which is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or*

*(c) any activity of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution,—*

*(A) is not genuine; or*

*(B) is not being carried out in accordance with all or any of the conditions subject to which it was notified or approved; or*

*(d) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not complied with the requirement of any other law for the time being in force, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.*

**Note: The Ld. PCIT (Central) has cancelled assessee's approval on the basis of reference received from AO**

	<i>under 2<sup>nd</sup> proviso to section 143(3), by alleging specified violations contemplated in clause (a)/(b)/(c) of Explanation-2 as highlighted in bold terms]</i>
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10. Ld. AR also carried us to the 2<sup>nd</sup> proviso to section 143(3) introduced through Finance Act, 2022 w.e.f. 01.04.2022 which empowers the AO to make a reference to PCIT/CIT for cancellation of approval in the situations of “specified violation”, reading as under:

*“Provided further that where the Assessing Officer is satisfied that any fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), of clause (23C) of section 10, or any trust or institution referred to in section 11, has committed any **specified violation as defined in Explanation 2 to the fifteenth proviso to clause (23C) of section 10 or the Explanation to sub-section (4) of section 12AB**, as the case may be, he shall—*

*(a) send a reference to the Principal Commissioner or Commissioner to withdraw the approval or registration, as the case may be; and*

*(b) no order making an assessment of the total income or loss of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall be made by him without giving effect to the order passed by the Principal Commissioner or Commissioner under clause (ii) or clause (iii) of the fifteenth proviso to clause (23C) of section 10 or clause (ii) or clause (iii) of sub-section (4) of section 12AB:”*

***[Emphasis supplied]***

11. Thus, referring to above amendments/developments in the Act, Ld. AR made a straightforward submission that the concept of “specified violations” in 15<sup>th</sup> Proviso to section 10(23C); the 2<sup>nd</sup> proviso to section 143(3) empowering the AO to make a reference to PCIT(Central) in the case of “specified violations”; Clause (b) of 15<sup>th</sup> Proviso to Section 10(23C)

empowering the PCIT(Central) to take cognizance of reference made by AO; and sub-clause (ii) of Clause (b) of 15<sup>th</sup> Proviso to Section 10(23C) empowering the PCIT(Central) to pass order cancelling the registration of a trust/society; all these provisions have come into statute from 01.04.2022 through Finance Act, 2022. He submitted that the Ld. PCIT(Central) has applied these newer provisions retrospectively for the alleged violations committed before 01.04.2022. Ld. AR submitted that this approach of authorities is clearly wrong and illegal and therefore the impugned order passed by Ld. PCIT(Central) is invalid, liable to be quashed.

12. In support of this claim of assessee, Ld. AR relied upon following decisions wherein the cancellation order passed by PCIT(Central) has been quashed categorically holding that the **identical amendments** inserted in section 12AB(4) w.e.f. 01.04.2022 by Finance Act, 2022 would not apply retrospectively:

- (i) ITAT, Bangalore in Amala Jyothi Vidya Kendra Trust Vs. PCIT (Central) (2024) 162 taxmann.com 41 (Bangalore – Trib), order dated 16.04.2024
- (ii) ITAT, Jaipur in Centre for Development Communication Trust Vs. CIT, Exemption (2024) 168 taxmann.com 90 (Jaipur – Trib.), order dated 03.06.2024

(iii) ITA Delhi in ITA No. 1803/Del/2024 – Lakhmi Chand Charitable Society, New Delhi Vs. Principal Commissioner of Income-tax, New Delhi, (2024) 166 taxmann.com 324 (Delhi – Trib.), order dated 22.08.2024.

13. Ld. AR submitted that the facts of the present case and legal precedents noted above would be sufficient enough to quash the impugned order but still, for the sake of completeness, he would also like to brief this Bench about the violations alleged by Ld. PCIT(Central) and the impact of those violations upon assessee as per the legal position prevailing before 01.04.2022 i.e. at the relevant time of occurrence of those violations. For this purpose, Ld. AR *firstly* drew us to the relevant portion of impugned order to show the type of violations noted by Ld. PCIT(Central) in the SCN issued to assessee [the SCN is scanned and re-produced by Ld. PCIT(Central) in impugned order at Pages 3 to 40] and the decision taken by Ld. PCIT(Central) in impugned order *qua* those violations. We extract below the crux of Ld. AR's submission with reference to the relevant pages of impugned order:

**Page 43 to 44 of impugned order:**

Para 8(iv)(a)/(b) – The members of assessee-society are appointed by the members of Mehta, Dubey or Sethia families. Such members do not have any participation / say in the decision making and do not even attend the meetings of the society. Their experience in academics

and activities are doubtful. They are nothing but the dummy members, the actual owners/managers are Shri Rajesh Mehta, Shri Dharendra Dubey and Shri Prem Sethia and their family members. The assessee-society has been formed for receiving exemption u/s 10(23C)(vi) even though significant amount of benefits have been derived by family members of actual promoters. The society is set up in such a manner to divert the benefits to promoters of school. From the evidences found and statements recorded, it becomes ambiguous that unjustified salary have been given to the family members of Shri Rajesh Mehta, Shri Dharendra Davey and Shri Prem Sethia. During post-search investigation, it was noticed that during FY 2020-21 and 2021-22, total salary paid to the family members of Shri Rajesh Mehta, Shri Dharendra Davey and Shri Prem Sethia was Rs. 2,04,00,000/- whereas in the next year i.e. in FY 2022-23, it increased by 53.82% to the tune of Rs. 3,13,81,280/-. None of the employees of the school are being given amount (and hike) of salaries like it is being paid to the family members of the promoters even though they are regular employees and managing the affairs of the school on a regular basis unlike the family members of promoters who were found to be either not involved in any kind of substantive activities or looking after certain areas of work on a part time as per their wish and convenience. Members of promoters family are getting profit/remuneration in the form of highly

unjustified salary. Though the legal ownership of the school is shown in the hands of assessee-society, yet it is perfect example of colourable device and the sham arrangement of ownership over the school.

**[Ultimately, Ld. PCIT(Central) has adopted this violation in Para 16(ii)(a)/(b) - Pages 61-62 of impugned order]**

**Page 44 to 45 of impugned order:**

Para 8(iv)(c) – The land and building on which the Jhalaria Campus of Shishukunj International School is being run, are owned by M/s Eduestate and this entity is receiving huge rent from assessee-society. M/s Eduestate is a partnership firm of the governing family having 40% share of Davey family, 30% share of Mehta family and 30% share of Sethia family. From AY 2017-18, the assessee-society has given more than Rs. 40 crores as rent to the firm. The assessee-society has paid such significant amount of rent to the firm but had not attempted to own infrastructure of itself whereas the school is paying Rs. 33,00,000/- salary for keeping a director (finance) i.e. Shri Prem Sethia. Thus, there is a diversion of assessee's funds for payment of rent.

**[Ultimately, Ld. PCIT(Central) has adopted this violation in Para 16(ii)(c) - Pages 62-63 of impugned order]**

**Page 45 of impugned order:**

Para 8(iv)(d) – The assessee-society has made payments of security guards kept at the residence of members of promoter families. Petrol expenses of these persons are also borne by assessee-society.

**[Ultimately, Ld. PCIT(Central) has adopted this violation in Para 16(ii)(d)/(e) - Page 63 of impugned order]**

**Page 45 to 46 of impugned order:**

Para 8(iv)(e) – During search seizure operations, a cash of Rs. 1,60,000/- was found in an envelope (Page 3 of LPS-2) kept in locker No. 006. Mukesh Sharma A/c is found to be mentioned on envelope and Shri Mukesh Sharma is an accountant in assessee-society. Therefore, the PCIT(Central) inferred that the envelope belonged to assessee-society and the cash seized is nothing but the amount generated either through diversion of funds of assessee-society or through unaccounted receipts relating to the school run by assessee-society.

**[Ultimately, Ld. PCIT(Central) has adopted this violation in Para 16(ii)(f) - Page 63 of impugned order]**

14. Then, Ld. AR submitted that since inception the assessee has been carrying the activities of providing education genuinely and according to the objects of trust and the above violations committed prior to 01.04.2022 (even if there be) would be considered for assessment purpose only and cannot

attract cancellation of assessee's approval u/s 10(23C)(vi). He submitted that there are numerous legal precedents available to hold identical proposition in the matter of section 12A/12AA. He quoted following para of one such decision ***Lilavati Kirtilal Mehta Medical Trust Vs. Commissioner of Income-tax (Central)-I, Mum (2019) 108 taxmann.com 272 (Mumbai - Trib) order dated 12.06.2019*** which holds the very same proposition though for the purpose of section 12A/12AA but it is equally applicable to section 10(23C)(vi):

*"11. In the present case, the case sought to be made out by the Commissioner is that the violation carried out by the assessee would lead to denial of exemption [u/s. 11](#) & [13](#) of the Act and, therefore, the pre-requisite of [section 12AA\(3\)](#) of the Act is satisfied. In para 9 of the impugned order, the Commissioner records that the violation of [section 11](#) & [13](#) of the Act would result in forfeiture of exemption not only for the year in which such transactions occur but also for the years when such arrangement continues to be in force. In our considered opinion, such an approach of the Commissioner is quiet misdirected and is inconsistent with the legal position on the subject contemplated [u/s. 12AA\(3\)](#) of the Act so as to cancel registration already granted. We may add here that we are not shutting out the case of the Revenue to examine whether or not there has been a violation of [section 13](#) of the Act, but we are only trying to say that the same is not relevant for the purpose of cancellation of registration [u/s. 12AA\(3\)](#) of the Act. Of course, such matters can be dealt with in the course of assessment proceedings and, in our view, the same ought to be dealt with, if the situation so warrants. Presently, we are confining ourselves with examining the efficacy or otherwise of the action of the Commissioner in invoking [section 12AA\(3\)](#) of the Act and we find that the reasons advanced by the Commissioner are not germane. On this point, the learned representative for the assessee has relied on the following decisions to say that [section 12AA\(3\)](#) cannot be invoked by Commissioner for cancellation of registration merely for violation of provisions of [section 11](#) and [13](#) of the Act by the assessee :-*

- [CIT vs. Apeejay Education Society](#) (2015) 59 taxmann.com 102 (Punj. & Har.)
- *Cancer Aid & Research Foundation vs. DIT (Exemption)* (2014) 66 SOT 86 / 49 taxmann.com 537 (Mumb - Trib)

- [CIT \(Exemptions\) vs. The Cancer Aid & Research Foundation Income Tax Appeal No. 505 of 2015](#)
- *Prabodhan Shikshan Prasarak Sanstha vs. Dy. CIT (2014) 44 taxmann.com 33 / (2015) 152 ITD 473 (Pune – Trib)*
- [Tamil Nadu Cricket Association vs. DIT \(Exemption\) \(2014\) 360 ITR 633 / 221 Taxman 275 / \(2013\) 40 taxmann.com 250 \(Mad\).](#)

15. Ld. AR continued his submission to contend that the Ld. PCIT(Central) has gained a wrong understanding that the violations of section 13(3) [on account of payments to or for the benefits of interested persons], even if there be, attracted cancellation of approval u/s 10(23C)(vi). He submitted that the violation of section 13(3) is nowhere mentioned in the list of “specified violations” prescribed under Explanation-2 to 15<sup>th</sup> proviso to section 10(23C). He, however, drew attention of Bench to the 21<sup>st</sup> Proviso to section 10(23C) where it has been prescribed thus:

*“Provided also that where the income or part of income or property of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall, after taking into account the provisions of sub-sections (2), (4) and (6) of the said section, be deemed to be the income of such fund or institution or trust or university or other educational institution or hospital or other medical institution of the previous year in which it is so applied:*

Ld. AR submitted that the 21<sup>st</sup> Proviso to section 10(23C) noted above is also very much clear on the point that any contravention of section 13(3) in the form of giving benefit to interested person shall be relevant for computation of total income and shall not attract cancellation of approval. While arguing so, Ld. AR also took support from following case-laws, although decided in

the context of section 12A/12AA but equally applicable to section 10(23C)(vi), to contend that the violation of section 13(3) prior to 01.04.2022 could be considered only for the purpose of assessment/ computation of total income of trust/society but not for cancellation of approval u/s 10(23C)(vi):

- (i) ITAT, Ahmedabad in Jito Bhavnagar Chapter Foundation Vs. CIT (Exemption) (2024) 167 taxmann.com 646 (Ahmedabad Trib.)
- (ii) ITAT, Ahmedabad in Anjuman E Nusratul Muslimin Tankaria Vs. CIT (2024) 162 taxmann.com 42 (Ahmedabad Trib.)

16. With above submissions, Ld. AR contended that the impugned order passed by Ld. PCIT(Central) cancelling the approval held by assessee is invalid and must be quashed.

17. *Per contra*, Ld. DR for revenue heavily relied upon impugned order of PCIT(Central). He submitted that the PCIT(Central) has passed a vehement order after taking into account various violations made by assessee. He submitted that the Ld. PCIT(Central) cancelled assessee's approval vide order dated 30.09.2024 by applying the provision of 15<sup>th</sup> Proviso to section 10(23C) existing as on that date and there is no error in applying the provisions of 15<sup>th</sup> proviso as substituted by Finance Act, 2022. He supported the impugned order of Ld. PCIT(Central) and prayed to preserve the same.

18. We have considered rival submissions of both sides and carefully perused the impugned order passed by Ld. PCIT(Central). We have also perused the facts of present case in the light of legal precedents cited before us. Admittedly, in present case, a search u/s 132 was conducted upon assessee on 02.02.2023. The revenue authorities are claiming to have found certain irregularities/violations done by assessee during the search proceedings. Thereafter, during pendency of assessment/re-assessment proceedings based on search action, a reference dated 19.02.2024/16.02.2024 was made by Range Head/AO to the Ld. PCIT (Central) under 2<sup>nd</sup> proviso to section 143(3) informing about assessee's involvement in certain financial irregularities and violations attracting cancellation of approval u/s 10(23C)(vi). Ld. PCIT(Central), acting upon such reference, issued SCN dated 31.03.2024 to assessee for cancellation of approval u/s 10(23C)(vi) which ultimately resulted in culmination of cancellation of assessee's approval u/s 10(23C)(vi) with retrospective effect in terms of 15<sup>th</sup> Proviso to section 10(23C) on the footing that the assessee committed violations contemplated in Explanation (a), (b) (c) in the list of "specified violations" defined in Explanation-2 to 15<sup>th</sup> Proviso to section 10(23C). In this backdrop of facts, the assessee's precise grievance is such that the Ld. PCIT(Central) has wrongly invoked the provision of 15<sup>th</sup> Proviso to section 10(23C) ignoring the legal position that the whole concept of "specified violations" by way of Explanation-2 to the said 15<sup>th</sup> Proviso; the provision for

making reference by AO to PCIT(Central) for cancellation of registration in case of "specified violations" under 2<sup>nd</sup> Proviso to section 143(3); and the power of PCIT(Central) to pass order cancelling registration in case of "specified violations" under sub-clause (ii) of clause (b) to 15<sup>th</sup> Proviso to section 10(23C) have come into the statute through Finance Act, 2022 w.e.f. 01.04.2022 and they are applicable prospectively and not retrospectively.

19. We find that the assessee raised this very claim before Ld. PCIT(Central) also but the Ld. PCIT(Central) rejected assessee's claim by passing following order in Paras 13-14 of impugned order:

***"SECOND PROVISO TO SECTION 143(3) OF THE ACT***

13. *The assessee in its reply dated 23.09.2024 at point 9 has objected to the reference made by the Assessing Officer under 2<sup>nd</sup> proviso to section 143(3) of the I.T. Act by the DCIT(Central)-2 for cancellation of registration u/s 10(23C)(vi) of the Income-tax Act, 1961 on the following two grounds:*

*(a) — ~~The AO has made wrong reference to the Principal Commissioner of Income Tax (Central), Bhopal. The assessee has referred to the detailed discussion made in preceding paras of its letter to claim that only CIT(Exemption), Bhopal holds the jurisdiction relating to cancellation of registration u/s 10(23C)(vi) of the Income Tax Act, 1961 granted to the assessee. (This portion is not relevant to Ground No. 4.2, 5 to 6 – It is relevant to Ground No. 1, 2, 3, 4.1 to be dealt in later part of this order. Hence stricken through)~~*

*(b) Further, it has been claimed that at the time of initiation of cancellation of registration proceedings, the prevalent law on the statute was the one as amended by the 15<sup>th</sup> proviso inserted w.e.f. 01/04/2022. The Society has further claimed that the amendment is prospective in application but retrospective in effect in as much as it will govern the cancellation proceedings starting from the cut-off date of 01/04/2022. However, according to the assessee, it will not cover the violation done before 01/04/2022. Reliance has been placed on case of M/s Islamic Academy of Education, Nithyananda Nagar, Mangalore v. The PCIT (Central), Bengaluru (ITA No. 610/Bang/2023 order dated 28/02/2024)*

passed by Hon'ble ITAT Bangalore. It has been further stated that the entire SCN mention violation (if any not admitted) before 01/04/2022 and hence such violation cannot be taken into consideration.

**14.** However, the assessee's reply is not correct / tenable for the reasons as discussed below:

(i) ~~Objection of assessee relating to jurisdiction has been discussed in detail including at Para 7 to 10 above. The same may be referred.~~

~~In view of detailed discussion in these paras and above, it is submitted that reference under 2<sup>nd</sup> proviso to section 143(3) of the I.T. Act to the Principal Commissioner of Income Tax (Central), Bhopal for cancellation of registration u/s 10(23C)(vi) of the Income Tax Act, 1961 has been correctly made by the AO. **(This portion is not relevant to Ground No. 4.2, 5 & 6 - It is relevant to Ground No. 1, 2, 3, 4.1 to be dealt in later part of this order. Hence stricken through)**~~

(ii) Claim of the assessee at point (b) above is not tenable in view of the 15<sup>th</sup> proviso to section 10(23C) of the Income Tax Act, 1961 which is reproduced hereunder for the sake of clarity and proper understanding of the facts of the case:-

"Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) is approved or provisionally approved under the said clause and subsequently—

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

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

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

the Principal Commissioner or Commissioner, shall,—

(i) call for such documents or information from the fund or institution or trust or any university or other educational institution or any hospital or other medical institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence of any specified violation;

(ii) pass an order in writing cancelling the approval of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution, on or before the specified date, after affording a reasonable opportunity of

*being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violation has taken place;*

*(iii) pass an order in writing refusing to cancel the approval of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution, on or before the specified date, if he is not satisfied about the occurrence of one or more specified violations;*

*(iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such fund or institution or trust or any university or other educational institution or any hospital or other medical institution.*

*Explanation 1.—For the purposes of this proviso, "specified date" shall mean the day on which the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) expires.*

*Explanation 2.—For the purposes of this proviso, the following shall mean "**specified violation**",—*

*(a) where any income of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has been applied other than for the objects for which it is established; or*

*(b) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has income from profits and gains of business, which is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or*

*(c) any activity of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution,—*

*(A) is not genuine; or*

*(B) is not being carried out in accordance with all or any of the conditions subject to which it was notified or approved; or*

*(d) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not complied with the requirement of any other law for the time being in force, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.*

*(e) the application referred to in the first proviso to this clause is not complete or it contains false or incorrect information.*

(iii) **Here, it is important to mention that a search under section 132 of the Income Tax Act, 1961 was conducted in the case of the Society on 02.02.2023 wherein occurrence of specific violations in various assessment years was noticed.** Further, investigation were also carried out during the course of post search proceedings in the case of the Society which confirmed the findings of the search action. As the assessment proceedings were under progress, a reference under the second proviso to section 143(3) of the Income Tax Act, 1961 was made to the Pr. Commissioner of Income Tax (Central), Bhopal.

(iv) Here, it will be important to refer clause (a) and clause (b) of the 15<sup>th</sup> proviso which clearly states that for initiating a proceeding for cancellation of registration already granted to the assessee u/s 10(23C)(vi) of the Income Tax Act, 1961 is that the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations **during any previous year**; or the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 **for any previous year**. Here, the words **"for any previous year"** has significant importance as use of these words differentiates the proceedings for cancelation of registration already granted u/s 10(23C)(vi) of the Income Tax Act, 1961 with any other proceeding under the provisions of the Income Tax Act, 1961 which relate to any particular assessment year.

Here, in the case of the assessee occurrence of specific violations have been noticed during the course of search for various assessment years which have been discussed in detail preceding pages. As, the pre-condition for initiation of proceedings for cancelation of registration already granted to the assessee u/s 10(23C)(vi) of the Income Tax Act, 1961 is occurrence of specific violations for any previous year, the claim of the assessee that 15<sup>th</sup> proviso inserted w.e.f. 01.04.2022 can be applied only with regard to the proceedings related to AY 2023-24 and onwards is not acceptable. Further, it is not the case that the 15<sup>th</sup> proviso to section 10(23C) have been brought in Law from 01.04.2022. Rather, the 15<sup>th</sup> Proviso to section 10(23C) of the Income Tax Act, 1961 were in force prior to 01.04.2022 and only certain amendments were made to it w.e.f. 01.04.2022.

Thus, the claim of the assessee Society that 15<sup>th</sup> proviso to section 10(23C) of the Income Tax Act, 1961 cannot be invoked during the course of pending assessment proceedings for AY 2022-23 has no merit and deserves to be rejected."

20. However, this very issue has already been decided in favour of assessee by various benches of ITAT in the decisions quoted by Ld. AR as

narrated in earlier para. We re-produce the relevant portion of those decisions quoted by Ld. AR for an immediate reference:

- (i) **ITAT, Bangalore in Amala Jyothi Vidya Kendra Trust Vs. PCIT (Central) (2024) 162 taxmann.com 41 (Bangalore - Trib), order dated 16.04.2024:**

*"4. Next grounds for our consideration in ground Nos.2, 3, 5 & 12 are with regard to cancelling registration granted [u/s 12AA/12AB](#) of the Act by invoking the provisions of [section 12AB\(4\)\(ii\)](#) of the Act with retrospective effect though this section was introduced by [Finance Act, 2022](#) w.e.f. 1.4.2022.*

*4.1 The Id. A.R. submitted that there has been various amendments to the provisions dealing with cancellation of registration granted U/s.12AA of the Act. The Pr. Commissioner of Income Tax (Central) has cancelled registration U/s.12AA of the Act invoking the provisions of [section 12AB\(4\)\(ii\)](#) of the Act alleging violations contemplated in Explanation (a) & Explanation (e) below the provisions of section 12AB(4) of the act. This provision of the Act which is extracted hereunder and invoked by the Pr. Commissioner of Income Tax (Central) for cancellation of registration granted U/s.12AA of the Act was introduced by [Finance Act](#) 2022 w.e.f 01.04.2022.*

*4.2 He submitted that prior to introduction of this provision, the following provision was in existence which was introduced by [Finance Act](#) 2021 w.e.f 01.04.2021.*

*"12AB(4) Where a registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard."*

*4.3 He submitted that the assessment involved in appeal is A.Y.2018-19. The law relating to cancellation of registration has under gone changes in as much as the said provisions were different for the A.Y.2018-19 and for A.Y.2022-23. It is submitted that the Pr. Commissioner of Income Tax (Central) invoked the provisions which were applicable from A.Y.2022-23 for a default alleged to have been occurred in A.Y.2018-19. He submitted that prima-facie invoking the provisions which are applicable for the A.Y.2022-23 and cancel registration for*

the A.Y.2018-19 is bad in law. Cancellation of registration is penal in nature. The consequences are that, the exemptions enjoyed by the assessee are withdrawn. The capital expenditure which otherwise is not an allowable expenditure would be considered as application in the event of an assessee trust enjoying the benefits of the registration. Under the circumstances, the law that should apply is with reference to the year of default. He submitted that the Pr. Commissioner of Income Tax (Central) should have acted as per the law prevailing for the A.Y.2018-19. The alleged infringement by the assessee occurred during the A.Y.2018-19 and therefore the penalization should also be with reference to the corresponding provisions as they existed for the A.Y.2018-19.

4.4 The Id. A.R. relied on the ratio laid down by the Hon'ble Supreme Court in the case of Commissioner of Income Tax V. Omkar Saran & Sons (1992) 62 Taxman 440. The Hon'ble Supreme Court has held that, the law applicable for penalizing should be the law for the year of committing the offence. This decision is in the context of penalty leviable under the provisions of section 271(1)(c) of the Act. However, the principle is applicable with reference to the other provisions also which are penal in nature. Cancellation of registration deprives the assessee of the various benefits which otherwise accrue and hence the provisions are to be considered as in the nature of punishment.

4.5 The Id. A.R. submitted that, the order passed by the Pr. Commissioner of Income Tax, invoking provisions of section M/s. Amala Jyothi Vidya Kendra Trust, Bangalore M/s. Adarsh Vidya Kendra Trust, Bangalore 12AB(4)(ii) of the Act dated 29.12.2023 is bad in law and deserves to be annulled.

5. On the other hand, the Id. D.R. submitted that the Id. PCIT cancelled the registration granted to the assessee u/s 12AA/12AB of the Act vide order dated 29.12.2023. As such, provisions of section 12AB(4) of the Act as stood on this date has been applied and there is no error in applying the provisions of section 12AB as substituted by Finance Act, 2022 w.e.f. 1.4.2022. He supported the order of Id. PCIT (Central).

6. We have heard the rival submissions and perused the materials available on record. The main contention of the Id. A.R. is that the Id. PCIT cancelled the registration granted to the assessee w.e.f. the previous year i.e. 2017-18 relevant to assessment year 2018-19 by applying the provisions as stood on 29.12.2023, which cannot be applied for the violations of the provisions of section 12AA or 12AB of the Act. According to the Id. A.R., the Id. PCIT has cancelled the registration granted to the assessee since the Id. PCIT was satisfied that one or more specified violations have taken place. The specified violations are mentioned in explanation to section 12AB(4) of the Act as follows:

Explanation: For the purposes of this sub-section, the following shall mean "specified violation",--

- a) Where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or
- b) The trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or
- c) The trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public; or
- d) The trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or *M/s. Amala Jyothi Vidya Kendra Trust, Bangalore M/s. Adarsh Vidya Kendra Trust, Bangalore*
- e) Any activity being carried out by the trust or institution—
  - (i) is not genuine, or
  - (ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or
- f) The trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

6.1 The contention of the Id. A.R. is that, these provisions have been inserted by [Finance Act, 2022](#) w.e.f. 1.4.2022 and if there is a violation in previous year 2017-18 relevant to assessment year 2018- 19, these provisions cannot be applied to the assessee's case. For clarity, we will go through the relevant provisions applicable to previous year 2017-18 relevant to assessment year 2018-19 as follows:

*"12AA(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the finance (No.2) Act, 1996 (33 of 1996)] and subsequently it is noticed that, the activities of the trust or the institution are being carried out in a manner that the provisions of [section 11](#) and [12](#) do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of [section 13](#), then the Pr. Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institutions.*

*Provided, that the registration shall not be cancelled under this subsection if the trust or institution proves that, there was reasonable cause for the activity to be carried out in the said manner."*

6.2 This section has been amended by [Finance Act, 2022](#) w.e.f. 1.4.2022 as follows:

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

- a) The Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or M/s. Amala Jyothi Vidya Kendra Trust, Bangalore M/s. Adarsh Vidya Kendra Trust, Bangalore
- b) The Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of [section 143](#) for any previous year; or
- c) Such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year;

The Principal Commissioner or Commissioner shall—

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

Explanation: For the purposes of this sub-section, the following shall mean "specified violation",--

- a) Where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or
- b) The trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

- c) *The trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public; or*
- d) *The trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or*
- e) *Any activity being carried out by the trust or institution--*
  - (i) is not genuine, or*
  - (ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or*
- f) *The trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.*

6.3 As per [section 12AB\(4\)](#) of the Act as applicable to assessment year 2017-18, the Id. PCIT if he is satisfied that activities of the Trust or institution are not genuine or not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording reasonable opportunity of being heard. As per [section 12AB\(5\)](#) of the Act, when trust or institution complied wholly or in part of the income of such trust or institution in violation of [section 13\(1\)](#) of the Act or if they complied with any other law, for the time being in force by the trust or institution as are material for the purpose of achieving its objectives as mentioned in [section 12AB\(1\)\(b\)\(ii\)\(B\)](#) of the Act. However, in the present case, the Id. PCIT invoked the provisions of [section 12AB\(4\)\(a\)\(ii\)](#) of the Act as stood in the assessment year 2022-23. The objection of the Id. A.R. is that for the cancellation of registration for the assessment year 2021-22, he could not invoke the provisions of [section 12AB\(4\)\(ii\)](#) of the Act which is introduced by [Finance Act, 2022](#) w.e.f. 1.4.2022 and applicable for the assessment year 2022-23 onwards.

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

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

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

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

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

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

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

'It will be observed that we are here concerned with two datum lines: (1) the 1st of April, 1940, when the Act came into force, and (2) the 1st of April, 1939, which is the date mentioned in the amended proviso. The first question to be answered is whether these dates are to apply to the accounting year or the year of assessment. They must be held to apply to the assessment year, because in income-tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied. The first datum line therefore, affected only the assessment year of 1940-41, because the amendment did not come into force till the 1st of April, 1940. That means that the old law applied to every assessment year up to and including the assessment year 1939-40.'

*This decision is authority for the proposition that though the subject of the charge is the income of the previous year, M/s. Amala Jyothi Vidya Kendra Trust, Bangalore M/s. Adarsh Vidya Kendra Trust, Bangalore the law to be applied is that in force in the assessment year, unless otherwise stated or implied. The facts of [the said decision](#) are different and distinguishable and the High Court was clearly in error in applying that decision to the facts of the present case." (emphasis supplied)*

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

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

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

*"20. On the second question as to whether the cancellation will operate from a retrospective date, it was held that the amendment to section 12AA(3) is prospective and not retrospective in character. The courts reasoned that even when Parliament had plenary powers to enact retrospective legislation in matters of taxation, the amended section is not seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively, the cancellation cannot operate from a past date.*

*21 On the third question of the effective date of operation of the cancellation order, it was held that the cancellation will take effect only from the date of the order/notice of cancellation of registration. Since the act of cancellation of registration has serious civil consequences and the amended provision is held to have only a prospective effect the effect of cancellation, in' the event the pending tax appeal is decided in favour of the Revenue, will operate only from the date of the cancellation order, that is December 30, 2010. In other words, the exemption cannot be denied to the petitioner for and up to the assessment year 2010-11 on the sole ground of cancellation of the certificate of registration."*

*6.9 In this case, the Id. PCIT has cancelled the registration under the new provisions of the Act i.e. 12AB(4)(ii) of the Act, which specifically provides that cancellation can be done for such previous year and all subsequent previous years, which makes it clear that the cancellation cannot be retrospective, therefore, in view of the above discussion, we are of the opinion that cancellation of registration with retrospective effect is invalid in these cases. Since the Id. PCIT invoked the provisions of [section 12AB\(4\)\(ii\)](#) of the Act, which has been introduced by the [Finance Act, 2022](#) w.e.f. 1.4.2022 so as to cancel the registration with retrospective effect from assessment year 2018-19, which is bad in law.*

*6.10 It is noted that coordinate bench of this Tribunal in both assessee's case for AY 2021-22 has taken similar view and as quashed the retrospective applicability of the new amended provision [u/s 12AB\(4\)\(ii\)](#) of the Act. We also note that same view has been taken by Coordinate bench of Mumbai in the case of Heart Foundation of India in ITA No.1524/Mum/2023 vide order dated M/s. Amala Jyothi Vidya Kendra Trust, Bangalore M/s. Adarsh Vidya Kendra Trust, Bangalore 27.7.2023, wherein held that registration granted [u/s 12A](#) of the Act dated 21.7.1989 cannot be cancelled by Id. PCIT (Central) vide order dated 6.3.2023 w.e.f. assessment year 2016-17, by invoking the provisions of [section 12AB\(4\)\(ii\)](#) of the Act. Accordingly, we allow the primary ground nos.2, 3, 5 & 12 and order of Id. PCIT passed [u/s 12AB\(4\)\(ii\)](#) of the Act is quashed.*

*7. In view of our findings in ground Nos.2, 3, 5 & 12, the grounds of appeal in Ground Nos.4,6,7,8,9,10,11,13 & 14 have become infructuous as the order of Id. PCIT itself has been quashed."*

*[emphasis supplied]*

- (ii) ITAT, Jaipur in Centre for Development Communication Trust Vs. CIT, Exemption (2024) 168 taxmann.com 90 (Jaipur – Trib.), order dated 03.06.2024:

"12.3 Thus, on the second question as to whether the cancellation will operate from a retrospective date or prospective date. This issue is decided in the case of Auro Lab. (supra) holding that in the absence of specific mention of the amended provisions to operate retrospectively, the cancellation cannot operate from a past date and in this case from A. Y. 2017-18. Now the only limited question remained to be decided as to whether the payment made to specified persons warrants the cancellation of registration of the assessee trust or not. The Finance Act, 2021 and Taxation and Other Law (Relaxation and Amendment of Certain Provision) Act, 2020, one of key changes was that every trust or instigation registered under section 12AA of the Act required to re-register itself before the specified dates provided u/s 12A(1)(ac) of the Act and sunset clause has been inserted under section 12AA(5) w.e.f. 01.04.2021 and new section 12AB has been inserted. Thereafter vide Finance Act, 2022 new section for taxing the benefits provided to related persons treated as "specified income" and will be subjected to be taxed at the rate of 30% without any deduction under the newly inserted section 115BBI and will also be liable for penalty u/s. 271AAE. Further, the provision of making reference by Assessing Officer to the Principal Commissioner or Commissioner to withdraw the registration of trust or institution referred u/s 11 of the Act, if any specified violation has been done by these trusts or institutions, were inserted recently. The said power has been inserted by substituting the 2nd proviso to section 143(3) of the Act w.e.f. 01.04.2022. Earlier, there was no power under the law to make any reference to PCIT or CIT for withdrawal of registration for the trusts or institution referred u/s 11 of the Act. As it is clear from the facts recorded that the Id. CIT(E), Jaipur has initiated the impugned proceedings of cancellation of registration based on the reference received from Id. DCIT(E), Jaipur dated 06.02.2020 as evident from the Impugned Order itself i.e passed u/s 12AB(4)(b)(i) of the Act. As per the amended provision of section 12AB(4) of the Act, reference has to be after granting of the registration w/s 12AB(1)(a) as evident from the bare reading of the provision itself which states subsequently, if there is reference by Ld. AO, then only the Ld. PCIT/CIT can proceed further. Admittedly in the present case, there is no such reference after granting registration on 23.09.2021. Thus, when the provision for making the reference was inserted in law w.e.f. 01.04.2022 and when at the time of impugned reference, there was even no provision for making such reference under the 2nd proviso to section 143(3) of the Act for the trusts and institution referred under section 11 of the Act. Therefore, the reference itself is without the authority of any statutory provisions and there was no fresh reference by the Id. AO. Further the bench noted that the impugned reference upon which the addition was made and that order is pending for adjudication before Id. CIT(A) and there is no final finding on that aspect of the matter. The bench further

noted that there was no intimation to the assessee that the Id. CIT(E) intend to proceeded with retrospective effect. Even nowhere in any of the communication to the assessee was allowed to defend their case and the importance of show cause notice has been emphasized by the Apex Court in case of Uma Nath Pandey v. State of UP [2009] 12 SCC 40 that "Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given the purpose should be adequate so as to enable him to make his representation. In the absence of a notice the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential a party should be put on notice of the case before any adverse order is passed against him. "As we note at the Id. CIT(E), Jaipur has issued first show cause notice in which it has been show cause registration u/s 12AA/12AB should be withdrawn due to violation of section 2(15) of the Act (para 5 on page no. 94 of PB) and due to trust money being allegedly mis utilized by specified person as mentioned u/s 13(3) of the Act (Para 6 on page no. 96 of PB). However, in the impugned order, Ld. CIT(E), Jaipur has invoked clauses (0), (b) and (e) of specified violation as defined under explanation to section 12AB(4) of the Act (which applies prospectively). Therefore, we note that the action of the Id. CIT(E) cancelling the registration of the trust w.e.f. A. Y. 2017-18 is beyond the scope of the show cause notice as the conditions for cancellation of registration on account of specified violation, which were not specified earlier in the law, have been inserted under section 12AB(4) of the Act w.e.f. 01.04.2022 and would accordingly apply prospectively being penal provision and having very harsh consequences. Thus, the action of the id. CIT(E) in the Impugned Order cancelling the registration of the Assessee retrospectively w.e.f. AY 2017-18 without any basis and without authority of the law as in AY 2017-18, there were no such conditions of specified violations in the law, therefore, Assessee cannot be penalized by reason of the amendment to the law effected subsequently. We derive support to reach to this conclusion from the decision of the Hon'ble **Rajasthan High Court in the case of Indian Medical Trust v. Pr. CIT [2019] 108 taxmann.com 93/265 Taxman 473/414 ITR 296 (Rajasthan)** where it has been held that:

"Indisputably, the order dated 16th Jan, 2018, made by the Commissioner of Income Tax thereby canceling the registration granted under section 12A and withdrawing the approval given under section 10 (230) (v) & 10 (23A) (via) of the Act of 1961, to the petitioner Trust with retrospective effect from the date of 01st April, 2006, was arbitrary in the face of the provisions of the Act of 1961; and therefore, cannot be deemed to be in consonance with any possible interpretation to be valid or legal. This court is of the opinion that the provisions of section 12AA (3) of the Act of 1961, empowers the Commissioner of Income Tax to initiate steps for cancellation of the registration of a Trust, but, the legislation had no intention of giving the said provision, a retrospective effect. For in such a situation, the same would have been clearly specified in the said provision. Interpretation of the said provision has to be harmonious rather than being prejudicial to the institutions as it

would instigate and create a fear of the Income Tax Department. I find support in my opinion from the following cases with reference to the issue of cancellation or withdrawal of registration with retrospective effect:

The fact that the law of Section 12AB(4) is prospective in nature is evident from CBDT circular no. 11/2022 dated 03rd June 2022. The said circular while explaining the amendments, clarifies that; Finance Act, 2022 has inserted sub-section (4) in section 12AB of the Income-tax Act, 1961 (the Act) allowing the Principal Commissioner or Commissioner of Income-tax to examine if there is any "specified violation" by the trust or institution registered or provisionally registered under the relevant clauses of sub-section (1) of section 12AB or subsection (1) of section 12AA. Subsequent to examination by the Principal Commissioner or Commissioner of Income-tax, an order is required to be passed for either cancellation of the registration or refusal to cancel the registration. Similar provisions have also been introduced in clause (23C) of section 10 of the Act by substituting the fifteenth proviso of the said clause with respect to fund or institution trust or institution or any university or other educational institution or any hospital or other medical institution referred under sub-clauses (iv), (v), (vi), (via) of this clause and which have been approved or provisionally approved under the second proviso to the said clause. These amendments are effective from 1st April, 2022. In addition to the specified violations referred above, the power of cancellation has also been granted under subrule (5) of rule 17A and sub-rule (5) of rule 2C of the Income-tax Rules, 1962 (the Rules) to the Principal Commissioner or Commissioner authorised by the Board. This Circular only relates to cancellation of registration/approval or provisional registration/approval in the case of "specified violation".

The relevant extracts of memorandum explaining the budget proposal are reproduced hereinunder:

(1) Sub-section (4) of section 12AB of the Act is proposed to be substituted with a new sub-section (4) to provide that where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) of section 12AB or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,

\*\*\*\*\*

(II) The term "specified violation" is proposed to be defined by inserting an Explanation to sub-section (4) of section 12AB of the Act to mean the following violation

(a) \*\*\*\*\*

(\*\*\*\*\*)

*These amendments will take effect from 1st April, 2022."*

***12.4 In view of the above, provision of law, binding precedent of the jurisdictional high court and the CBDT circular the law of specified violation has been inserted w.e.f. 01.04.2022 and hence would not apply retrospectively based on the specified violations (which was defined by Finance Act 2022) based on the transactions occurred in AY 2009-10 or AY 2017-18 or earlier. Therefore, taking into consideration all the above facts, case laws, judicial precedents and the circular of CBDT, we hold that cancellation of registration u/s 12AA(3)/12AB(4) by the Id. CIT(E) is bad in law, hence, we set aside the order of the Id.CIT(E) and restore the registration already granted to the assessee. Accordingly, the appeal of the assessee is allowed.***

*In the result, the appeal of the assessee is allowed."*

*[emphasis supplied]*

- (iii) **ITA Delhi in ITA No. 1803/Del/2024 – Lakhmi Chand Charitable Society, New Delhi Vs. Principal Commissioner of Income-tax, New Delhi, (2024) 166 taxmann.com 324 (Delhi – Trib.), order dated 22.08.2024:**

*"20. So far as the provision of Section 12AB(4) of the Act as exercised by the PCIT is concerned, the Ld. A.R relied upon a judgment passed by the Bangalore Bench in the case of Islamic Academy of Education v. Pr. CIT (Central) in ITA No. 610/Bang/2023/ [2024] 160 taxmann.com 217 (Bangalore - Trib.) for Assessment Year 2021-22, a copy whereof has also been annexed to the paper book filed before us by the appellant. While dealing with this particular aspect of the matter the Bench has been pleased to observe as follows:*

*"8.1.9 registration Before the amendment by the Finance Act, 2022, Section 12AB(4) provided for cancellation of registration in case of any violation under Section 13. The amended Section 12AB(4) does not consider a violation of Section 13(1)(c) and Section 13(1)(d) as specified violations. Consequently, the registration cannot be cancelled on the ground that the assessee has violated Section 13(1)(c) or Section 13(1)(d).*

*8.1.10 The Finance Act 2023 has inserted clause (g) in Explanation to Section 12AB(4) to provide that giving incomplete, false, or inaccurate information in a registration application under Section 12A(7)(ac) will be*

deemed as a "specified violation" that can lead to the cancellation of registration.

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

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

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

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

8.3 As seen from the above, since the assessee has secured the registration u/s 12A of the Act dated 4.6.1992, which was effective till the date of 23.9.2021 and this registration granted u/s 12A cannot be cancelled u/s 12AB(4)(ii) of the Act for the previous year 2020-21 covering the assessment year 2021-22. On the other hand, he could cancel the registration from assessment year 2022-23 onwards u/s 12AB(4) (ii) of the Act. In our opinion, if there is any violation in the previous assessment year 2020-21 relating to the assessment year 2021-22, this cannot be reason to cancel the registration granted for the assessment year 2022-23 to 2026-27 as the assumption of jurisdiction u/s 12AB(4)(if) of the Act is itself wrong on the reasons discussed herein above. The specific violation committed by the assessee in any of these assessment years is to be considered independently and not the violation committed in assessment year 2021-22 for cancelling the registration granted u/s 12AB of the Act for the assessment year 2022-23 to 2026-27. As such, we make it clear that the Id. PCIT at liberty to pass the fresh order of cancellation independently u/s 12AB(4)(ii) of the Act for these assessment years i.e. 2022-23 to 2026-27, if so advised. Accordingly, we allow this ground taken by the assessee. Ordered accordingly."

21. We find inspiration from the essence of the ratio laid down in the above judgment and observe that in view of the provision of Section 12AA(5) of the Act as the provision of Section 12AA cannot be applied on order after 01.04.2021 the show cause notices issued by the PCIT to the appellant dated 05.07.2023 and 16.08.2023 are, thus, found to be erroneous and therefore liable to be quashed. Once the show cause is found to be non-est in the eyes of law, the entire proceeding is naturally found to be on a wrong foundation of law and thus, liable to be set aside. Similarly, invoking the provision of Section 12AB(4) of the Act by the PCIT to cancel registration for specified violation is also not permissible at the same has not seen the light of day prior to

*01.04.2022; the same is therefore, not applicable to Assessment Years 2015-16 to 2021-22 as wrongly has been applied in the case in hand.*

*22. Thus, having regard to these particular facts and circumstances of the case the issuance of show cause notices proposing cancellation of registration alleging specified violation occurred prior to 01.04.2022 Le. for Assessment Year 2015-16 to 2021-22 and the final order passed by the Ld. PCIT cancelling registration of the appellant society for Assessment Year 2015-16 to 2021-22 by wrongly invoking the provision of Section 12A r.w.s. 12AA and 12AB(4) of the Act is found to be erroneous, bad in law, whimsical, in non-application of mind and thus, unsustainable.*

*23. Before parting we would like to note that the further direction given by the Ld. PCIT to this effect that even if the appellant society is found that specified violation is not in existence then also the consequential cancellation order would continue to operate independently by and under the impugned order dated 31.03.2024 is nothing but colourable exercise of power, not only arbitrary or erroneous but establishes the biasness on the part of the authorities below; by hook or crook the authority was bent upon to cancel the registration of the appellant trust which is evident from such observation and/or decision made by the Ld. PCIT. In fact, on that score alone the order passed by the Ld. PCIT is also found to be bad in law and liable to be quashed. With the aforesaid observations we thus, quash the impugned order passed by the Ld. PCIT.*

*24. The assessee's appeal is, therefore, allowed."*

21. Thus, the Bangalore, Jaipur and Delhi Bench of ITAT have clearly held that the amendments in section 12AB(4) through Finance Act, 2022 are prospectively applicable from 01.04.2022 and they do not have retrospective application for the violations committed, if any, before 01.04.2022 and accordingly, the Benches of ITAT have decided this issue in favour of assessee, quashed the orders passed by PCIT and restored the registration of assessee u/s 12A/12AA. In present case, the search u/s 132 was conducted upon assessee on 02.02.2023 and the violations, if any, were during the period prior to 01.04.2022. Therefore, the assessee's case is fully covered by those decisions and following them, the impugned order passed by Ld.

PCIT(Central) is liable to be quashed. We may, however, make it clear that the decisions quoted above are though *qua* the cancellation of registration u/s 12A/12AA but they are equally applicable to the cancellation of approval u/s 10(23C)(vi) since the crux of the issue (i.e. whether the amendment brought in statute through Finance Act, 2022 w.e.f. 01.04.2022 has prospective or retrospective application) is same. Ld. DR for revenue has not brought any decision holding against assessee. In that view of matter, we are not agreeing to the view taken by Ld. PCIT(Central) in Paras 13-14 of impugned order (re-produced above) against assessee. In final conclusion, we respectfully carry the view taken by ITAT, Benches and accordingly quash the impugned order passed by Ld. PCIT and restore the approval held by assessee.

**Issue No. (ii) – PCIT(Central) is not competent to pass impugned order (Ground No. 1 to 3, 4.1):**

22. The second issue raised by assessee is such that the Ld. PCIT(Central) was not having any authority to issue SCN dated 31.03.2024 and thereby pass impugned order dated 30.09.2024, therefore also the impugned order is bad in law.

23. Apropos to this issue, Ld. AR submitted that the approval u/s 10(23C)(vi) was granted to assessee by CIT(E) who was exercising jurisdiction over the persons claiming exemption u/s 10(23C) of the Act and located in

the State of Madhya Pradesh like assessee. Therefore, it was CIT(E) who was a competent authority to cancel approval of assessee and Ld. PCIT(Central) had no authority at all in the matter of cancellation of approval. Ld. AR submitted that it is true that the assessee's case was transferred from **DCIT(Exemption), Bhopal** to **DCIT(Central)-2, Bhopal** [DCIT(Central)-2, Bhopal is falling within the charge of Ld. PCIT(Central)] vide order u/s 127(2) but such transfer was for a limited purpose of co-ordinated assessments with all entities of 'BCGM Group' due to search proceedings and not for cancellation of approval held by assessee u/s 10(23C)(vi). Therefore, the Ld. PCIT(Central) has illegally acquired/extended his jurisdiction to pass the impugned order under 15<sup>th</sup> Proviso to section 10(23C) for cancellation of approval held by assessee.

24. Ld. AR submitted that this claim of assessee is already accepted by various decisions of ITAT Benches. He quoted a few decisions as under:

- (i) ITAT, Indore in ITA No. 117/Ind/2020 – Devi Shakuntala Thkaral Charitable Foundation, Bhopal Vs. Pr. CIT(Central), Bhopal, order dated 29.07.2022
- (ii) ITAT, Indore in ITA No. 115 & 116/Ind/2020 – Oriental University, Indore Vs. Pr. CIT(Central), Bhopal, order dated 29.07.2022

- (iii) ITAT, Jaipur in ITA No. 688/JP/2019 - M/s Wholesale Cloth Merchant Association, New Cloth Market, Kota Vs. PCIT(Central), Jaipur, order dated 06.01.2021
- (iv) ITAT, Jodhpur in ITA No. 04/JODH/2020 – Pacific Academy of Higher Education and Research Society, Udaipur Vs. The Principal Commissioner of Income-tax, order dated 25.01.2023
- (v) ITAT, Delhi in ITA No. 1308/DEL/2023 – Aggarwal Vidya Pracharni Sabha Vs. Principal Commissioner of Income-tax, order dated 08.01.2024
- (vi) ITA Delhi in ITA No. 1803/Del/2024 – Lakhmi Chand Charitable Society, New Delhi Vs. Principal Commissioner of Income-tax, New Delhi, (2024) 166 taxmann.com 324 (Delhi – Trib.), order dated 22.08.2024.

25. Ld. AR particularly relied upon first two orders which are given by ITAT, Indore itself, namely (i) **ITA No. 117/Ind/2020 – Devi Shakuntala Thkaral Charitable Foundation, Bhopal Vs. Pr. CIT(Central), Bhopal** and (ii) **ITA No. 115 & 116/Ind/2020 – Oriental University, Indore Vs. Pr. CIT(Central), Bhopal**. Both of these orders are dated 29.07.2022 and have settled identical controversy in the matter of cancellation of registration u/s 12A/12AA in favour of assesseees. We re-produce below the relevant portion

of ITAT's order in *Devi Shakuntala Thkaral Charitable Foundation, Bhopal (supra)* for an immediate reference:

"8. The grievance of assessee in the Additional Grounds is such that the show-cause notice dated 13.11.2019 and the order dated 23.12.2019 passed by the Ld. PCIT(Central) are bad in law, illegal, invalid and without jurisdiction.

9. Ld. AR submitted that the aforesaid notice dated 13.11.2019 was issued and the order dated 25.12.2019 was passed by the Ld. PCIT(Central), who was not a competent authority in the matters. Ld. AR submitted that it was Commissioner of Income-tax (Exemption), Bhopal who was a competent authority to exercise jurisdiction over the persons claiming exemption u/s 11 or 12 of the Act and located in the State of Madhya Pradesh. To show this, the Ld. AR carried us to the following Notification dated 22.10.2014 issued by the CBDT in terms of section 120(1)/(2):

#### NOTIFICATION

**S.O. 2754 (E) [NO. 52/2014/F.NO. 187/38/2014 (ITA.I)] DATED 22-10-2014 AS AMENDED BY NOTIFICATION NO. 89/2019 [S.O. 3999(E) (F.NO. 187/9/2019-ITA-I)] DATED 5-11-2019:**

In exercise of the powers conferred by sub-section (1) and (2) of section 120 of the Income-Tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India, Central Board of Direct Taxes number S.O. 880(E), dated the 14th September, 2001, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (ii), dated the 14th September, 2001, except as respects things done or omitted to be done before such supersession, the Central Board of Direct Taxes hereby –

(a) directs that the Commissioners of Income-tax specified in column (2) of the Schedule annexed hereto having their headquarters at the places specified in the corresponding entries in column (3) of the said Schedule shall exercise the powers and perform all the functions in respect of such cases or classes of cases as specified in column (5), in such territorial areas specified in the corresponding entries in column (4) of the said Schedule;

(b) authorises the Commissioners of Income-tax referred to in this notification to issue orders in writing for the exercise of the powers and performance of the functions by the Additional Commissioners of Income-tax or Joint Commissioners of Income-tax and Tax Recovery Officers, who are subordinate to them, in respect of cases or classes of cases specified in column (5) in such territorial areas specified in the corresponding entries in column (4) of the said Schedule in accordance with the orders issued by the respective Commissioners of Income-tax;

(c) authorises the Additional Commissioners of Income-tax or Joint Commissioners of Income-tax referred to in clause (b) above, to issue orders in writing for the exercise of the powers and performance of the functions by the Assessing Officers, who are subordinate to the said Additional Commissioners of Income-tax or Joint Commissioners of Income-tax in respect of cases or classes of cases, in respect of which such Additional Commissioners of Income-tax or Joint Commissioners of Income-tax are authorised by the Commissioners of Income-tax under clause (b) above.

**SCHEDULE**

(Relevant portion reproduced)

S.NO.	Designation	Headquarters	Territorial Area	Cases or classes of cases
(1)	(2)	(3)	(4)	(5)
3.	Commissioner of Income-tax (Exemption), Bhopal	Bhopal	States of Madhya Pradesh and Chhattisgarh	All cases of persons in the territorial area specified in column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Income-tax Act, 1961 and assessed or assessable by an Income-tax authority at serial numbers 35 to 45 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014.

10. Analyzing the impact of Para No. (a) and the Schedule of this Notification, Ld. AR submitted that the CBDT has notified that the

Commissioner of Income-tax (Exemption), Bhopal shall exercise the **powers and perform all the functions** in the cases of persons located in the State of Madhya Pradesh & Chhattisgarh and claiming exemption u/s 11 or 12 of the act. Ld. AR submitted that the present assessee is located at Indore which falls within the State of Madhya Pradesh and the assessee is also claiming exemption u/s 11 or 12 on the basis of approval / registration granted to it u/s 12AA and, therefore, the jurisdiction to exercise **powers and perform all functions** in the case of assessee vested only and only in the Commissioner of Income-tax (Exemption), Bhopal. Ld. AR submitted that the Ld. PCIT(Central) did not have any authority to perform powers and functions in the case of assessee.

11. Ld. AR further submitted that it was so in the present case that due to a search conducted on the Orient Group, the case of assessee was also centralized in the office of Ld. PCIT(Central) for the limited purpose of co-ordinated assessment, which again may or may not be legal but irrespective of that, the exclusive authority for granting registration or cancellation of registration in the matter of section 12AA of the act vested in the Commissioner of Income-tax (Exemption), Bhopal only. Going further, Ld. AR referred to Para No. (b) of the Notification and upon reading the same, submitted that the CBDT has further notified that the Commissioner of Income-tax (Exemption), Bhopal can delegate or assign authority only and only to the Additional CIT or Joint CIT or Tax Recovery Officers who are subordinate to him. Ld. AR submitted that the Ld. PCIT(Central) does not fall within any of these authorities and therefore the delegation or assignment to Ld. PCIT(Central) is also not possible.

12. Ld. AR heavily relied upon the decision of **Hon'ble ITAT, Jaipur Bench, in the case of M/s Wholesale Cloth Merchant Association, New Cloth Market, Kota Vs. PCIT(Central), Jaipur, ITA No. 688/JP/2019 dated 06.01.2021**, the relevant paras are reproduced below:

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

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

--

(a) territorial area;

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

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

12. We found from perusal of the record that a search and Seizure operation has been carried out in the case of SPS (Bajaj Group) Kota on 30.06.2016. In consequent thereof a survey u/s 133A has also been carried out on the assessee in 19th July 2016. Thereafter the Id. ADIT(Inv.) Kota has sent a proposal u/s 127 to the Pr. DIT(Inv.) Raj. Jaipur on 19.08.2016 to transfer the case for limited purpose i.e for the Assessment proceedings vide letter dated 19.08.2016, which is placed at page No. 292 and 293 of the paper book and the reason for centralize in the case of assessee was given for Co-Ordinate Assessment with the cases of SPS Bajaj Group. The Pr. DIT has sent the same to the Pr. CIT(Central) vide letter dated 29.09.2016, which have already been placed at page No. 295 and 296 of the paper book. Thereafter the Pr. CIT(C) has written letter to transfer the case from ITO(E) Kota to ACIT, Central Kota. Thereafter the CIT(E) has transferred the case from ITO(E) Kota to ACIT, Central Kota vide letter dated 05/06.12.2016, which is placed at page No. 299 of the paper book. In all these there is no any copy or notice or information have been sent to the assessee.

13. We also observe that, thereafter the Id. DCIT(CC) Kota, has sent a proposal to the Pr. CIT(C), Jaipur to cancel the 12A registration of the assessee vide letter dated 31.12.2018. On the basis of proposal from DCIT(CC) Kota, the Id. Pr. CIT has issued the show cause notice to the assessee u/s 12AA(3)/(4) dated 22.02.2019. In response, the assessee appeared and filed details and submissions before the Pr. CIT(Jaipur) on 18.03.2019 and the Id. Pr. CIT(C) has passed the impugned order on 22.03.2019 u/s 12AA(3) and 12AA(4) of the Act.

14. We found that the above facts and proceedings of power of transfer U/s 127 was only for a limited purpose of Co-ordinate Assessment. Neither any search & Seizure action nor any notice u/s 153A or 153C of the Act or assessment u/s 153A or 153C of the Act in the case of assessee were initiated and there was only a survey u/s [133A of the Act](#) in the case of assessee. The assessment has been completed u/s 148/143(3) of the act vide order dated 19.12.2018. As the assessment has been completed, the purpose of transfer u/s 127A has also been completed. Although no notices regarding the transfer of the cases u/s 127 have been sent to the assessee for the purpose of Co-ordinate assessment and the purpose of transfer was only Co-ordinate Assessment as clearly mentioned in the transfer letter 19.08.2016. The assessment was completed u/s 148 r.w.s 143(3) 19.12.2018 and the proposal was sent to the Pr. CIT(C) which has been received on 31.12.2018 in the office of Pr. CIT(C) on 23.01.2019 after a lapse of more than one month.

15. Even otherwise, in the said notification, there is no mention where CIT(E) can transfer to other CIT or Pr. CIT. The said notification of CBDT has authorized the CIT(E) to issue order in writing for the exercise of the powers and functions by the Addl. CIT or JCT or TRO who are "subordinate" to them and has authorised the Addl. CIT to issue order in writing for the exercise of the powers by the Assessing Officer who are the subordinate to them. In [section 124](#) of the Act, the jurisdiction of Assessing Officer has been given and not 'Jurisdiction of Commissioner'.

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

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

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

*(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;*

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

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

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

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

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

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

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

*(b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional 33 ITA 688/JP/2019\_ M/s Wholesale Cloth Merchant Association Vs Pr.CIT Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.*

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

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

18. We also observe that as per Sec. 120(6) of the Act, the CBDT by its Notification No. 52/2014 and 53/2014 dated 22.10.2014 has given power to CIT(Exemption) Jaipur for the State of Rajasthan for all cases of persons in the territorial area specified in column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Act and assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014. Thus, firstly as per above notification and provisions of Sec. 120 and 127 the Id. CIT (Exmp.) cannot transfer or hand over or given his work or power or duties to the other same rank of CIT at all to cancel the Registration u/s 12AA. However, in case, if it is necessary to do so then there has to be proper proceedings in writing. As there has to be some order in writing from higher authorities i.e. from Chief Commissioner of Income Tax (Exmp.) Delhi or CBDT in writing and an opportunity of being heard is to be given to the assessee before transferring the case whereas all these are absent in the present case and nothing has been demonstrated by the department.

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

20. In assessee's case, the case u/s 127 was transferred to the Central Circle for limited purpose of Co-Ordinate assessment admittedly which do not mean that the Section 12A proceeding has been transferred to the Pr. CIT(Central) automatically, when both the proceedings are separately or independent and also has to be done or conducted by the different rank Authorities. More particularly when for the purpose of Exemption cases or 12A registration a Separate Commissioner of Income Tax has been Authorized for whole of Rajasthan by the CBDT by its Notification dated 22.10.2014. In support of the above contention, the Id AR has relied on the decision in the case of Dilip Tanaji Kashid vs. M.I. Karmakar PR. CIT& ANR. (2018) 304 CTR 0436 (Bom) wherein it has been held:

*Transfer of jurisdiction--Power of competent officers--Centralization of case--Dissenting note--Assessee was issued notice enshrining proposal for transfer of his case from Kolhapur to Mumbai, so as to centralise cases relating to D.Y. Patil Group -- Assessee objected that such notice did not referred to any agreement being reached by officers of equal rank at Mumbai and Kolhapur -- These objections were however overruled and assessee's case was transferred -- High*

*Court quashed purported transfer u/s 127 -- Held, "Centralisation Committee" which took decision for transfer of jurisdiction, is not authority envisaged u/s 127(2) -- Counter-affidavit filed on behalf of Revenue does not disclose that there was any agreement 36 ITA 688/JP/2019\_ M/s Wholesale Cloth Merchant Association Vs Pr. CIT between authorities of equal rank, as a pre-condition for invoking powers u/s 127--"Absence of dissenting note" from officer of equal rank who has to agree to proposed transfer would not constitute agreement, envisaged u/s 123(2)(a) -- Assessee's petition allowed.*

21. *It was also been brought to our notice that the AR had inspected the records of the case but there was no agreement between both the CIT's regarding initiation of proceedings U/s [12A of the Act](#). The entire communication on record is with regard to limited purpose of Co-Ordinate assessments only. Even the Instruction No. F.No. 286/88/2008IT(Inv-II) dated 17.09.2008 has relied upon by the Revenue also relates to "search assessment" and was not with regard to proceedings U/s 12A or other proceedings. Even no agreement for initiation proceedings u/s 12AA of the Act has been found out on record. Even, the proposal for centralization was not sent within the statutory time of 30 days from the date of search as admittedly the search was conducted on 30.06.2016 and the proposal was sent on 19.08.2016 i.e. after 30 days of the search.*

*In this respect, the Id AR has relied upon the decision in the case of Rentworks India (P) Ltd. vs. Pr. CIT & ANR. (2017) 100 CCH 0258 Mum HC wherein it has been held that:*

*Income tax authorities -- Power to transfer cases -- Jurisdiction--CIT, issued notice to assessee taking recourse to subsection 2 of Section 127 -- Assessee was put to notice that there was proposal to transfer case of assessee to DCIT, for proper co-ordinated investigation -- Impugned order was made by Principal CIT under sub-[section 2 of section 127](#) by which case of assessee was transferred to DCIT -- Held, in Noorul Islam Educational Trust it was held that as Income-tax/ assessment file of assessee had been transferred from one AO in Tamil Nadu to another AO in Kerala and two AO were not subordinate to same Director General or Chief Commissioner or Commissioner of Income Tax u/s 127(2) (a) agreement between Director General, Chief Commissioner or Commissioner, as case might be, of two jurisdictions was necessary-- Counter affidavit filed on behalf of Revenue did not disclose that there was any such agreement -- In fact, it had been consistently and repeatedly stated in said counter affidavit that there was no disagreement between two Commissioners--Existence of agreement between two jurisdictional Commissioners was condition precedent for passing order of transfer -- Clause (b) of sub-section (2) of [section 127](#) provides for consequences when there was no such agreement -- When jurisdiction to pass order of transfer under clause (a) of sub-section (2)*

of [Section 127](#) could be exercised only when there was such agreement, fact that such agreement exists ought to had been stated in show cause notice as same was jurisdictional fact -- It was on basis of written document that finding was recorded that there was agreement between Jurisdictional Commissioners of Ranchi and Delhi -- Even going by case made out by revenue, no such agreement was spelt out.

8. The Apex Court has categorically held that the absence of disagreement will not be tantamount to an agreement as visualized under [section 127\(2\)\(a\)](#) which contemplates positive state of mind of the two jurisdictional Principal Commissioners of Income Tax. The agreement contemplated by clause (a) of sub-section (2) of [section 127](#) may not be a drawn up agreement. What is necessary is that there has to be an agreement which will involve positive state of mind of the two jurisdictional Principal Commissioners. Both of them must consent to the transfer after application of mind.

9. In the present case, it is not even the case made out in the show cause notice that the agreement as contemplated by the first part of clause (a) of sub-section (2) of [section 127](#) exists. The existence of such agreement between two jurisdictional Commissioners is a condition precedent for passing the order of transfer. Except for the request which came from the investigation office, Chennai of transferring the case, there is no reference whatsoever to any such agreement. Clause (b) of sub-section (2) of [section 127](#) provides for consequences when there is no such agreement. When the jurisdiction to pass an order of transfer under clause (a) of sub-section (2) of [Section 127](#) can be exercised only when there is such an agreement, the fact that such an agreement exists ought to have been stated in the show cause notice as the same is a jurisdictional fact. Apart from the failure to mention the same in the show cause notice, the only stand of the revenue is that there is an agreement by implication. This stand is completely contrary to paragraph 5 of the decision of the Apex Court in the case of Noorul Islam Educational Trust (supra). The decision in the case of Ramswaroop (supra) will also bind this Court for the reasons stated above.

10. Coming to the decision in the case of Jharkhand Mukti Morcha, relevant facts are in paragraph 12. In the said case, specific reliance was placed on a document dated 27th November 2016. It is on the basis of the written document that a finding was recorded that there was an agreement between the Jurisdictional Commissioners of Ranchi and Delhi. In the present case, even going by the case made out by the respondent, no such agreement is spelt out. In absence of any such agreement, the first respondent had no jurisdiction to pass the order of transfer.

11. As the impugned order cannot be sustained on above ground, it is not necessary to into other challenges.

12. Accordingly, for the reasons quoted above, we pass following order: Impugned order dated 25th May 2017 (Exhibit-H to the petition) is hereby quashed and set aside. Rule is made absolute on above terms with no order as to costs.

The Hon'ble Supreme Court in the case of *Ajantha Industries & Ors. vs. Central Board of Direct Taxes & Ors.* (1976) 102 ITR 0281 has been held that:

"The CBDT sent a notice to the appellants under [s. 127](#) proposing to transfer their case files "for facility of investigation" from the respective at Nellore to the ITO, B Ward, Special Circle II, Hyderabad. By this notice they were also asked to submit in writing if they had any objection to the proposed transfer within 15 days of receipt of the notice. The appellants made their representation objecting to the transfer and on 26th July, 1973, the Central Board passed the impugned order transferring the cases from Nellore to Hyderabad. The short question that arises for consideration is whether failure to record the reasons in the order which was communicated to the appellants is violative of the principles of natural justice for which the order should be held to be invalid.

Held:

The requirement of recording reasons under [s. 127\(1\)](#) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee. When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in Court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated. Non-communication of the reasons in the order passed under [s. 127\(1\)](#) is a serious infirmity in the order for which the same is invalid. -- *Kashiram Aggarwalla vs. Union of India* (1965) 56 ITR 14 (SC) : TC69R.660 and [S. Narayanappa vs. CIT](#) (1972) 86 ITR 741 (All) : TC51R.651 distinguished; [Sunanda Rani Jain vs. Union of India](#) 1975 CTR (Del) 135 : (1975) 99 ITR 391 (Del) : TC69R.693 overruled; Judgment and order dt. 12th Sept., 1974, of the Andhra Pradesh High Court in Writ Appeal No. 626 of 1974 set aside.

The Hon'ble Supreme Court in the case of [Noorul Islam Educational Trust vs. CIT AND Ors](#) (2016) 388 ITR 0489 (SC) held that Special Leave Petition--Transfer of case--Validity--High Court of Madras, Madurai Bench, upheld order of C.I.T.1, Madurai, Tamil Nadu,

*transferring file of assessee from Tamil Nadu to Kerala--Held, as Income-tax/assessment file of assessee has been transferred from one Assessing Officer in Tamil Nadu to another Assessing Officer in Kerala and two Assessing Officers are not subordinate to same Director General or Chief Commissioner or Commissioner of Income Tax, u/s 127(2) (a) an agreement between Director General, Chief Commissioner or 40 ITA 688/JP/2019\_ M/s Wholesale Cloth Merchant Association Vs Pr. CIT Commissioner, as the case may be, of two jurisdictions is necessary-- Absence of disagreement cannot tantamount to agreement as visualized under [Section 127\(2\)\(a\)](#) which contemplates a positive state of mind of two jurisdictional Commissioners of Income Tax which is conspicuously absent -- Transfer of Income-tax/assessment file of assessee from Assessing Officer, Tamil Nadu to Assessing Officer, Kerala is not justified -- High Court order set aside -- Special appeal allowed.*

*Although, the Id DR has relied upon the decision of Hon'ble Rajasthan High Court in the case of Lalit Hans Vs PCIT DP Special Appeal (Writ) 249/2015 but the facts of the above case are entirely different. Hence, the said judgment is of no help to the Revenue on the facts of the present case. Thus, keeping in view our above discussions, we are of the view that the Id. PCIT had no jurisdiction to pass order U/s 12AA(3) & 12AA(4) of the Act and the same is not sustainable in the eyes of law and accordingly stands quashed."*

13. *Ld. AR submitted that the both on the facts and in law, the case of assessee is squarely covered by this decision of Hon'ble Jaipur Bench of ITAT.*

14. *With these submissions, Ld. AR strongly contended that the Ld. PCIT(Circle) had no authority to cancel the registration u/s 12AA of the assessee. Hence the order dated 23.12.2019 passed by Ld. PCIT(Circle) is bad, illegal, without jurisdiction and must be quashed.*

15. *Ld. DR appearing on behalf of revenue could not controvert these submissions of the assessee. However, Ld. DR made some submissions which we would like to address. Ld. DR submitted that the Income-Tax Department is having different authorities and the cases are transferred from one authority to another authority because of necessity or in the special circumstances like search u/s 132. According to Ld. DR, the case of present assessee was also centralized in the office of Ld. PCIT(Central) due to search-proceeding. Therefore, the Ld. PCIT(Central) was holding charge over the assessee and the impugned order passed by him must be upheld. Ld. DR also submitted that the assessee could have raised this grievance much earlier before the lower authorities but the same was not done and therefore no benefit should be given to the assessee on this issue at this stage.*

16. *We have considered submission of both sides and also perused the material produced before us. On a careful consideration, we*

observe that the assessee is a person claiming exemption u/s 11 or 12 and also located in the State of Madhya Pradesh. Therefore, as notified by the CBDT, the Commissioner of Income-tax (Exemption), Bhopal was having jurisdiction over the assessee and not the Ld. PCIT(Central). During the course of hearing, the Ld. DR could not demonstrate under which provision or authority, the Ld. PCIT had authority to pass the impugned order dated 23.12.2019. We have also perused the decision of Hon'ble Jaipur Bench of ITAT in M/s Wholesale Cloth Merchant Association, New Cloth Market (Supra) and observe that the Hon'ble Co-ordinate Bench has dealt this issue at length and came to the conclusion, in similar circumstances, that the Ld. PCIT did not have authority to pass order. During hearing, the Ld. DR could not distinguish the applicability of the decision of M/s Wholesale Cloth Merchant Association, New Cloth Market (Supra) on facts or in law. We also do not find any merit in the submission of Ld. DR that the assessee should not be given any benefit in the matter of this grievance at this stage just because the issue has been raised for the first time. We observe that the grievance of assessee is assailing the very jurisdiction of Ld. PCIT. We observe that under the legal system of country, only a designated authority can take a legal action or conduct proceedings. If the legal actions are permitted to any officer, even if the concerned officer does not have legal authority, it would be fatal and destroy the whole set up. Needless to mention that the actions undertaken by officers not vested with necessary legal authority are void-ab-initio and such actions can be challenged at any stage. Therefore there is nothing wrong in the claim of assessee even if the same is raised before us for the first time. Respectfully following the decision of Hon'ble Co-ordinate Bench, the applicability of which could not be disputed or distinguished by Ld. AR on facts or in law, we are persuaded to hold that the Ld. PCIT(Central) was not having authority to pass the impugned order dated 23.12.2019. Therefore, the said order is liable to be quashed. We, accordingly, quash the said order and direct the revenue authorities to restore the registration u/s 12AA granted to the assessee.

17. As we have quashed the order passed by Ld. PCIT(Central) itself, other grounds raised in the appeal do not require any adjudication at this stage.

18. In the result, these appeals of assessee are allowed."

[Emphasis supplied]

26. Ld. AR, however, pointed out that the Ld. PCIT(Central) has rejected assessee's claim by passing following order:

Para 9 to 12 of impugned order:

**JURISDICTION OF PCIT(C), BHOPAL IN THE MATTER**

9. The assessee mainly in its reply dated 23.09.2024 at point 8 has again challenged (earlier objection filed on 15.04.2024) the jurisdiction of the Pr. Commissioner of Income-tax (Central), Bhopal with regard to the proposed action of cancellation of registration u/s 10(23C)(vi) of the Income-tax Act, 1961 saying mainly that the notification No. 52/2014 and 53/2014 dated 22.10.2014 issued by the CBDT has delegated the powers of granting and cancellation of registration u/s 10(23C)(vi) of the Act to the CIT(Exemption), Bhopal, for matters pertaining to the state of Madhya Pradesh & Chattisgarh. The assessee also submitted that in terms of section 127 of the I.T. Act, the powers of transfer of cases has been given from one Assessing Officer to another Assessing Officer and not from one Commissioner to another Commissioner. The assessee has also objected reliance on letter dated 19.01.2024 issued by the CBDT while disposing objection vide this office letter dated 17.09.2024 by saying that "whether the said ex-parte internal communication dated 19.01.2024 is valid or not".

10. However, the assessee's reply is not correct / tenable for the reasons as discussed below:

- (i) Above submission made by assessee ignoring the fact that objection raised by the assessee vide its letter dated 15.04.2024 has already been disposed of vide this office letter dated 17.09.2024 (copy pasted below) having DIN & Letter No. **ITBA/COM/F/17/2024-25/1068749249(1) in view of Notification No. 70/2014 dated 13.11.2014** issued by the CBDT and after due consideration of objection raised by the assessee on 15.04.2024.

**M/s Shishukunj Education Society**  
**ITA No. 806/Ind/2024**

Government of India  
Ministry of Finance  
Income Tax Department  
PCIT(Central), Bhopal

To Shisukunj Education Society India	
PAN: AABAS8128B Date :17.09.2024	DIN & Letter No: ITBA/Com/F/17/2 024- 25/1068749249(1)

Sir/Madam/ M/s.

Subject. Online service of Orders - Letter

Sub:- Objections raised against Show Cause Notice dated 31.03.2024 for cancellation of registration under section 12AB(4) of the I.T. Act 1961-

reg. -

Vide your communication dated 15.04.2024 received in this office through ITBA on 15.04.2024, you have raised certain objections against Show Cause Notice dated 31.03.2024 issued in your case for cancellation of registration under section 10(23C)(vi) of the I.T. Act.

2. In the above regard, it is stated that the Notification No. 70/2014 dated 13.11.2014 issued by the CBDT (copy enclosed) clearly provides for the jurisdiction of Principal Commissioner of Income-tax (Central), Bhopal in the matter

Further, without prejudice to the aforesaid, the CBDT vide its letter issued through F.No. 173/6/2024-ITA-1 dated 19.01.2024 (copy enclosed) has once again clarified the matter comprehensively. As desired the copy of relevant order u/s 127 dated 21.06.2023 is also enclosed

3. Accordingly, in view of the Notification No. 70/2014 dated 13.11.2014, objections raised by you have been considered and disposed of.

4. Considering the above, you are hereby given a final opportunity of being heard to present your case in person or through an authorized representative on 19.09.2024 at 2:30PM (or preferably file submission through online mode before the said time/date) before the undersigned Pr. Commissioner of Income Tax (Central), Bhopal to explain as to why the approval /registration of the society granted u/s 10(23C)(vi) of the I.T. Act dated 29.08.2008 and further approval o restoration of registration u/s 10(23C)(vi) granted on 19.03.2020 not be cancelled, there being "specified violations" committed as detailed in show cause notice dated 31.03.2024. In case, no reply is received by stipulated date/time, it will be presumed that you have nothing to say in the matter and a decision will be taken on the basis of records available in this office.

Enclosed: As above

ANUJ ARORA





Bhopal exercises jurisdiction in respect of all the persons / cases claiming exemption for all relevant purposes under the Act which have been assigned to the Assessing Officers subordinate to Principal Commissioner of Income-tax (Central), Bhopal under section 127 of the said Act.

- (iii) The case of the assessee society was centralized with the ACIT / DCIT(Central)-2, Indore under PCIT(Central), Bhopal vide order u/s 127 of the I.T. Act dated 21.06.2023 (in consequence of search conducted in its various premises on 02.02.2023) passed by the CIT(Exemption), Bhopal.

**Without prejudice to the above**, even though it is implicit and not a requirement placed by the said Notification 70/2014, it may be mentioned in passing that in the said order u/s 127 it is clearly mentioned that the transfer of the case is for proper and coordinated investigation, assessment of the case and for all other purposes.

- (iv) Further, the objection raised by the assessee vide its letter dated 15.04.2024 was disposed of vide this office letter dated 17.09.2024 in view of the Notification No. 70/2014 dated 13.11.2024 issued by the CBDT.
- (v) Useful reference may also be made to the letter issued by the Central Board of Direct Taxes dated 19.01.2024. The matter has been clarified once again through above referred letter of CBDT. In para 2.2 of the above referred letter, CBDT has clearly stated that **Notification No. 70/2014 dated 13.11.2014** makes it very clear that the CIT(Exemption) does not exercise any jurisdiction in respect of persons which have been assigned to the Assessing Officers subordinate to the Principal Commissioner of Income Tax (Central) by invoking the provisions of section 127 of the Income Tax Act, 1961.

11. The assessee Society has claimed that the letter issued by the Central Board of Direct Taxes dated 19.01.2024 is in the nature of an internal communication

and hence cannot override the provisions of law or decisions of Tribunals.

12. The claim of the assessee is not correct:

(a) The said letter dated 19.01.2024 has been only issued as a direction to the field authorities for defending the appeals filed by the department wherein the issue under consideration is that whether cancellation of an order under section 10(23C)(vi) of the Income Tax Act, 1961 is to be done by the CIT (Exemption) or by the concerned PCIT(Central) having a subordinate Assessing Officer to whom the case of the assessee has been assigned under the provisions of section 127 of the Income Tax Act, 1961.

(b) In view of the above facts as well as **Notification No. 70/2014 dated 13.11.2014**, it is absolutely clear that the Principal Commissioner of Income Tax (Central), Bhopal holds jurisdiction over the case for any proceedings under the provisions of Income Tax Act, 1961 including the cancellation of registration granted to the assessee Society u/s 10(23C)(vi) of the Income Tax Act, 1961.

(c) It is indeed notable that objection raised by the assessee, vide its letter dated 18.04.2024, was disposed of vide this office letter dated 17.09.2024. Such addressing / disposal of objection was mainly based on the Notification No. 70/2014 dated 13.11.2024 issued by the CBDT.

The reliance on the letter dated 19.01.2024 issued by the CBDT was only secondary. This is also clear from perusal of the relevant portion of this office letter dated 17.09.2024, which is quoted below:

*"2. In the above regard, it is stated that the Notification No. 70/2014 dated 13.11.2014 issued by the CBDT (copy enclosed) clearly provides for the jurisdiction of Principal Commissioner of Income-tax (Central), Bhopal in the matter.*

*Further, without prejudice to the aforesaid, the CBDT vide its letter issued through F.No. 173/6/2024-ITA-1 dated 19.01.2024 (copy enclosed) has once again clarified the matter comprehensively.”*

**Thus, the reliance on the letter dated 19.01.2024 issued by the CBDT is only secondary. The primary reliance of the Department / PCIT is on the Notification No. 70/2014 dated 13.11.2014.**

**(d)** Without prejudice to the above, the issue raised by the assessee ignores the fact that the letter dated 19.01.2024 issued by the CBDT is based on plain reading of Notification No. 70/2014 dated 13.11.2024.

**(e)** In view of above discussion, it is clear that once an order u/s 127 of the Act is passed transferring the jurisdiction of the person for all purposes, the power of cancellation of registration is to be exercised by the concerned PCIT(Central) having a subordinate Assessing Officer to whom the case of the assessee has been assigned under the provisions of section 127 of the Income Tax Act, 1961 and perform the functions as stipulated in the Act in respect of all the proceedings which may be commenced after the date of such order u/s 127 in respect of any year.

Accordingly, the objection of the assessee challenging the jurisdiction of Principal Commissioner of Income Tax (Central), Bhopal for the purposes of cancellation of registration u/s 10(23C)(vi) of the Income Tax Act, 1961 deserves to be rejected.

**Para 13 to 14 of impugned order – Relevant portion only:**

**13.** *The assessee in its reply dated 23.09.2024 at point 9 has objected to the reference made under 2<sup>nd</sup> proviso to section 143(3) of the I.T. Act by the DCIT(Central)-2, Indore for cancellation of registration u/s 10(23C)(vi) of the Income-tax Act, 1961 on the following two grounds:*

(a) The AO has made wrong reference to the Principal Commissioner of Income-tax (Central), Bhopal. The assessee has referred to the detailed discussion made in preceding paras of its letter to claim that only CIT(Exemption), Bhopal holds the jurisdiction relating to cancellation of registration u/s 10(23C)(vi) of the Income-tax Act, 1961 granted to the assessee.

**(b) XXX (not relevant to this issue)**

14. However, the assessee's reply is not correct / tenable for the reasons as discussed below:

(i) Objection of the assessee relating to jurisdiction has been discussed in detail including at Para 7-10 above. The same may be referred.

In view of detailed discussion in these paras and above, the reference under 2<sup>nd</sup> proviso to section 143(3) of the I.T. Act to the Principal Commissioner of Income-tax (Central), Bhopal for cancellation of registration u/s 10(23C)(vi) of the Income-tax Act, 1961 has been correctly made by the AO.

**(ii) XXX (not relevant to this issue)**

27. Ld. AR submitted that in passing above order against assessee, Ld. PCIT(Central) has taken into account a **Letter F.No. 173/6/2024-ITA-I dated 19.01.2024** issued by CBDT (Central Board of Direct Taxes) and the **Notification No. 70/2014 dated 13.11.2014** also issued by CBDT. He submitted that in Clause No. 1(b) of Notification No. 70/2014 dated

13.11.2014, the CBDT has directed that the Principal Commissioner/ Commissioner of Income-tax (Central) as specified in Column (4) of the SCHEDULE-1, shall exercise powers and perform functions as stipulated in the Income-tax Act, 1961 in respect of cases/classes of cases/persons/ classes of persons, assigned to the Assessing Officers subordinate to them, under section 127 of the Act. Thereafter, at S.No. 3 in Column (4) of the SCHEDULE-I to the said Notification, the CBDT has specified Principal Commissioner/Commissioner of Income-tax (Central), Bhopal. Therefore, when the department has transferred assessee's case from **DCIT(Exemption), Bhopal** to **DCIT(Central)-2, Bhopal** through order dated 21.06.2023 u/s 127(2), the DCIT(Central)-2, Bhopal became Assessing Officer of assessee. Since the DCIT(Central)-2, Bhopal, Assessing Officer of assessee, is sub-ordinate to PCIT(Central), Bhopal, the CBDT's understanding in Para No. 2.3 and 3 of the **Letter dated 19.01.2024** is such that the PCIT(Central) would have jurisdiction for cancellation of approval/registration of assessee. Ld. AR submitted that the PCIT(Central) has adopted this understanding expressed by CBDT in aforesaid Letter. The **Letter dated 19.01.2024** on which the Ld. PCIT(Central) has placed reliance, is re-produced below for an immediate reference:

F.No.173/6/2024-ITA-1  
Government of India / भारत सरकार  
Ministry of Finance / वित्त मंत्रालय  
Department of Revenue / राजस्व विभाग  
Central Board of Direct Taxes / केंद्रीय प्रत्यक्ष कर बोर्ड  
\*\*\*\*\*

Date: 19.03.2024

To,

All Principal Chief Commissioner of Income-tax (CCA)  
All Chief Commissioner of Income-tax (Central)  
All Director General of Income-tax (Investigation)

**Sub:- Matter pertaining to cancellation of registration u/s 12AA / 10(23C) of the Income-tax Act, 1961 in Trust cases by Pr.CIT other than CIT(Exemption) Regarding.**

Madam/Sir,

In this connection, I am directed to state that various ITATs have decided issue of cancellation/ revocation of registration by the Pr.CIT(C) granted u/s 12A/ 12AA of the Act by invoking provisions of section 12AA(3) and 12AA(4) of the Act, against the Department holding that only CIT(E) has jurisdiction to withdraw registration.

2. In this regard, I am directed to say that as per the Notification No.52/2014, S.O. 2754(E) dated 22.10.2014, Commissioner of Income-tax (Exemption), exercise jurisdiction over all cases of persons in the territorial area assigned to him claiming exemption under section 11, section 12 of the income-tax, 1961 and assessed or assessable by an income-tax authority specified in the Notification No. 50/2014, S.O. 2752(E) dated 22<sup>nd</sup> October, 2014.

2.1 The income-tax authorities specified in the Notification No.50/2014, S.O 2752(E) dated 22<sup>nd</sup> October, 2014 are Principal Commissioners of Income-tax.

2.2 Further, the Board has issued Notification No.70/2014, S.O. 2915(E) dated 13.11.2014 in exercise of power conferred by sub-section (1) and (2) of section 120 of the Income-tax Act, 1961. Vide para (b) of this notification, it has been ordered, *inter alia*, that:-

*"In exercise of the powers conferred by sub-sections (1) and (2) of section 120 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India, Central Board of Direct Taxes number S.O. 322(E), dated the 23<sup>rd</sup> August, 2001 published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (3) dated the 23<sup>rd</sup> August, 2001, except as respects things done or omitted to be done before such supersession, the Central Board of Direct Taxes hereby,-*

(a) directs that the Director General of Income-tax or the Chief Commissioner of Income-tax specified in column (2) of the Schedule -I or II annexed to this notification, as the case may be (hereinafter referred to as the "said Schedules") or the Principal Commissioner/Commissioner of Income-tax specified in column (4) of the said Schedules or Joint Commissioners of Income-tax or Assessing Officers, shall continue to exercise powers and perform the functions as stipulated in the said Act, in respect of such persons or classes of persons or such incomes or classes of incomes or such cases or classes of cases in which the said Income-tax authorities have been exercising powers and performing the functions on the basis of jurisdiction assigned by any order passed under the said Act on the date of publication of this notification, till such jurisdiction is revoked;

(b) directs that the Director General of Income-tax or the Chief Commissioner of Income-tax specified in the column (2) of the said Schedules or the Principal Commissioner / Commissioner of Income-tax specified in column (4) of the said Schedules or Joint Commissioners of Income-tax subordinate to them, shall exercise powers and perform the functions as stipulated in the said Act in respect of such cases or classes of cases or such persons or classes of persons, assigned to Assessing Officers subordinate to them, under section 127 of the said Act, from the date of publication of this notification;

(c) .....


2.3 A conjoint reading of the above mentioned Notifications and provisions of the Act makes it clear that the CIT (Exemption) does not exercise any jurisdiction in respect of persons claiming exemption under section 11, section 12 of the Act which have been assigned to the Assessing Officers subordinate to Principal Commissioner of Income-tax (Central), under section 127 of the Act.

3. Therefore, by virtue of provisions of clause (b) of the notification no. 79/2014, S.O. 2915(E) dated 13.11.2014, the PCIT(C) has been empowered to perform / exercise powers and functions stipulated in the Act in respect of such cases or classes of cases or such persons or classes of persons, which were assigned to AO subordinate to him, under section 127 of the Act.

4. I am further directed to say that,

- (i) a copy of this letter and notification referred above may be forwarded to all DRs (ITAT),
- (ii) all Pr.CsIT may be instructed to file miscellaneous application before Hon'ble ITAT where appeal u/s 260A of the Act has not yet been filed,
- (iii) additional ground of appeal may also be taken before the Hon'ble High Court where appeal u/s 260A has been filed.

Yours faithfully,

  
(Ashwani Kumar)  
DCIT(OSD)(ITA)-I, CBDT

28. Ld. AR, however, contended that the **Letter dated 19.01.2024** explaining CBDT's understanding is a recent letter after the decisions of various benches of ITAT including ITAT, Indore in **ITA No. 117/Ind/2020 - Devi Shakuntala Thkaral Charitable Foundation, Bhopal Vs. Pr. CIT(Central), Bhopal and ITA No. 115 & 116/Ind/2020 - Oriental**  
Page 66 of 73

**University, Indore Vs. Pr. CIT(Central), Bhopal.** He submitted that he has made his best effort to find legal precedents, if any, available wherein the aforesaid Letter dated 19.01.2024 issued by CBDT had been considered and he has come across only one order of ITAT, Delhi "E" Bench in **ITA No. 1803/Del/2024 - Lakhmi Chand Charitable Society, New Delhi Vs. Principal Commissioner of Income-tax, New Delhi (2024) 166 taxmann.com 324 (Delhi - Trib.), order dated 22.08.2024.** Ld. AR submitted that the ITAT, Delhi has relied upon several judicial precedents and held that in terms of Notification No. 52/2014 and 53/2014 dated 22.10.2014, the CIT(E), Delhi was the appropriate authority and not the PCIT(Central). The relevant paras of ITAT's order are re-produced below:

*"18. Having regard to the judgment as relied upon by the Ld. A.R we are of the considered opinion that the reference made in terms of 2nd proviso of [Section 143\(3\)](#) of the Act to the PCIT to whom the AO was subordinate is not permissible rather it is the CIT(E) Delhi, having territorial jurisdiction specified in Column 4 of the Notification Nos. 52/2014 and 53/2014 both dated 22.10.2014 from whom exemption inter/alia under [Section 12A](#) of the Act is being claimed is the appropriate authority. In fact by and under the said notification the CIT(Exemption) has been constituted separately for the purposes mentioned therein. In that view of the matter the order passed by the PCIT cancelling registration of the appellant society on the reference made by the Assessing Officer is found to be flawed and without jurisdiction."*

29. Ld. AR pointed that in the case before Delhi Bench of ITAT, the aforesaid Letter dated 19.01.2024 was referred by Departmental Representative (Para 7/Pages 6-7 of ITAT's Order under the headings 'Gr. 2' and 'Gr. 2.1'). The ITAT has, however, followed legal precedents to hold that the PCIT(Central) did not have any jurisdiction. Having narrated thus, Ld.

AR submitted that he would support the order of ITAT, Delhi (and all other legal precedents cited earlier) to claim that the PCIT(Central) did not have jurisdiction for cancellation of approval. He made following contentions for such claim:

- (i) That the Letter dated 19.01.2024 was an internal communication issued by CBDT giving interpretation that the PCIT(Central) would have jurisdiction. But various legal precedents have elaborately hold that the PCIT(Central) was not having jurisdiction and it was CIT(E) who would hold jurisdiction in the matter of cancellation of approval of a trust/society by virtue of Notification No. 52/2014 dated 22.10.2014; the said Notification No. 52/2014 is re-produced and relied in the order of ITAT, Indore in ***Devi Shakuntala Thkaral Charitable Foundation (supra)***.
- (ii) That the Notification No. 70/2014 (based on which the Letter dated 19.01.2014 has been issued by CBDT) giving power to PCIT(Central) is general whereas the Notification No. 52/2014 dated 22.10.2014 giving power to CIT(E) is specific. According to Ld. AR, the specific Notification shall prevail over the general Notification.
- (iii) That the transfer of case to DCIT(Central) was for limited purpose of co-ordinated assessment of all entities of BCGM Group including

assessee due to conduct of search and not for performing other functions like cancellation of approval.

30. With these submissions, Ld. AR prayed the Bench to take a favourable view in the light of legal decisions quoted and to hold that the PCIT(Central) was not a competent authority to pass impugned order. Ld. AR, however, conceded that even if the Bench want to keep this issue open undecided, particularly because of the reason that the department has already filed appeal to Hon'ble High Court of Madhya Pradesh in ***ITA No. 19 of 2023*** against the order of ITAT, Indore in ***Devi Shakuntala Thkaral Charitable Foundation, Bhopal (supra)*** and the departmental appeal stands admitted and pending before Hon'ble High Court. He agrees to this alternative proposal only if this Bench decides the **first issue** (i.e. **Ground No. 4.2, 5 to 6**) in favour of assessee.

31. Ld. DR for revenue only relied upon impugned order of Ld. PCIT(Central).

32. We have considered rival submissions of both sides and perused the impugned order passed by Ld. PCIT(Central) on this issue and the legal precedents to which our attention has been drawn. We find that the judicial view is consistently in favour of assessee i.e. the PCIT(Central) had no jurisdiction to deal with cancellation of approval/registration. However, the revenue is relying upon CBDT's letter dated 19.01.2024 to contest that the

PCIT(Central) was having jurisdiction. In Para 4 of the letter, the CBDT has also directed the authorities to file M/As before ITAT, Benches or contest before High Court. Further, as informed by Ld. AR and also asserted by Ld. DR, the very same issue decided by co-ordinate bench of ITAT, Indore in ***Devi Shakuntala Thkaral Charitable Foundation (supra)*** is also pending before Hon'ble High Court of Madhya Pradesh in department appeal. That apart, we have already quashed the impugned order passed by Ld. PCIT(Central) while adjudicating the **first issue** (i.e. **Ground No. 4.2, 5 to 6**) in foregoing para. Therefore, in this situation, we accept the alternative proposal made by Ld. AR to keep this issue open undecided. We, however, direct the AO to take up this issue after decision of Hon'ble High Court in conformity with the decision of Hon'ble High Court, if warranted.

**Issue No. (iii) – Impact of alleged violations in assessment of assessee (Ground No. 7):**

33. In Ground No. 7, the assessee precisely claims that (i) the Ld. PCIT(Central), while adjudicating the impugned SCN, has not considered the detailed reply dated 23.09.2024 filed by assessee through which the assessee refuted all allegations levelled against assessee; (ii) that the violation of section 13(3) of the Act is not applicable/not relevant for cancellation of approval u/s 10(23C)(vi); and (iii) that there is no violation of section 13(3) in fact.

34. During hearing, Ld. AR for assessee pointed out following facts qua this ground:

- (i) In so far as the payment of rent to interested persons is concerned, Ld. AR submitted that the same issue has already been adjudicated earlier by ITAT in assessee's own appeal **ITA No. 62/Ind/2019 order dated 07.08.2019**, copy of ITAT's order is filed at Pages 160-187 of Paper-Book-1. In that case, the assessee's approval u/s 10(23C)(vi) was cancelled by then CIT(Exemption) on the allegation of excessive payment of rent but on appeal, the ITAT vide Para 8 of its order, dissolved the allegation and also directed the CIT(Exemption) to decide the issue afresh in accordance with law. Thereafter, the CIT(Exemption), Bhopal passed order dated 19.03.2020, copy of CIT(Exemption)'s order is filed at Pages 188-191 of Paper-Book-1. In Para No. II thereof, the CIT(Exemption) restored assessee's approval in following words:

*"II..... Respectfully following the directions of Hon'ble ITAT, Indore and considering the application of the applicant and documents submitted by the applicant and the material available on record, **the approval under section 10(23C)(vi) of the Income-tax Act, 1961 dated 28.03.2008 is restored**, subject to the conditions mentioned in paragraph (V)."*

Further, during the intervening period, the AO passed assessment-order of assessee u/s 143(3) for AY 2016-17, copy filed at Pages 192-208 of Paper-Book-1. In Para 7.5 of order, the AO quantified the excessive rent at Rs. 1,90,50,000/- and made addition by reducing

from total revenue expenses claimed by assessee. But in first-appeal, the CIT(A) vide para 5 of his order dated 19.05.2023 (copy of order is filed at Pages 209-221 of Paper-Book-1) deleted the addition and thereafter the department has not filed any further appeal against the order of first appeal passed by CIT(A). Same is the case of AY 2017-18 of assessee, copies of relevant orders are filed at Pages 222-261 of Paper-Book-1. Therefore, according to Ld. AR, the issue of excessive payment of rent to interested person, taken up by Ld. PCIT(Central) as basis for cancellation of approval is not tenable.

- (ii) So far as the salary payment to interested persons is concerned, Ld. AR submitted a chart giving year-wise details of salaries paid to family members of promoters. Ld. AR contended that the assessee-society had been subjected to scrutiny-assessments for AY 2016-17 and 2017-18 and the assessment-orders passed by AO u/s 143(3) are filed in Paper-Book. Ld. AR submitted that the assessing authority, while carrying out scrutiny assessments, did not raise any objection qua the payment of salaries which shows that the payments have been accepted as genuine. Therefore, according to Ld. AR, the issue of excessive payment of salary to interested persons, taken up by Ld. PCIT(Central) as basis for cancellation of approval is also not tenable.

35. However, Ld. AR instantly agreed that the issues raised in this ground would be considerable for the purpose of assessment and not required for adjudication of present appeal. We agree to such submission and having regard to same, we refrain from making any adjudication in present appeal.

**36. Resultantly, this appeal of assessee is partly allowed as mentioned above.**

Order pronounced by putting up on notice board / in open court  
as per Rule 34 of ITAT Rules, 1963 on 28/04/2025

Sd/-  
(UDAYAN DAS GUPTA)  
JUDICIAL MEMBER

Sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक/ Dated : 28/04/2025

Patel/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order  
Sr. Private Secretary  
Income Tax Appellate Tribunal