

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 631/DEL/2024
Assessment Year: 2021-22
AND
Stay Application No.329Del/2024
(In ITA No. 631/DEL/2024)
Assessment Year: 2021-22

Hemkunt Foundations, Plot No.809, Second Floor, RD 42, Sector 42, Gurugram, Haryana PIN: 122 002 PAN No. AAATH8443C	Vs.	Principal Commissioner Income Tax, Central-1, New Delhi
(Appellant)		(Respondent)

Assessee by:	S/Shri Salil Kapoor, Sumit Lalchandani, Shivam Yadav, Ms. Ananya Kapoor, Tarun Chanana, Utkarsa Kumar Gupta, Advocates
Department by:	Shri Sunil Agarwal, Special Counsel and Shivansh Pandya, Jr. Standing Counsel,
Date of Hearing:	24.03.2025
Date of pronouncement:	20.06.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The appeal by appellant/assessee is against order dated 28.12.2023 of Learned Principal Commissioner of Income Tax, Central-1, New Delhi (hereinafter referred as "Ld. PCIT") under Sections 12A read with sections 12AA and 12AB(4) of the Income Tax Act, 1961 (hereinafter referred as "the

Act”) through which registration granted to the assessee under Section 12AB of the Act from financial year 2021-22 onwards was cancelled.

2. Brief facts of case are that Hemkunt Foundations is a Public Charitable Trust created by settler Anil Kumar vide trust deed dated 18.02.2010 with the trustees Sh. Irinder Ahluwalia, Natasha Ahluwalia and Kiran Ahluwalia at B-14, Sarita Vihar, New Delhi. The trust was registered u/s 12A of I.T. Act on 08.04.2011 vide registration No. DIT(E)/12A/2011-12/H-827/15 granted by Director of Income Tax (Exemption), Delhi. It was also registered u/s 80G of I.T. Act on 08.04.2011 vide registration No. DIT(E)/12A/2011-12/H-827/33 granted by Director of Income Tax (Exemption), Delhi.

3. A survey under Section 133A of Act was conducted by Investigation Wing of Income Tax Department at Delhi on 10.09.2021 at the following two premises of the assessee:

(i) Plot No. 809, 2nd Floor, Rd-42C, Sector-42, Gurugram (Office premise)

(ii) 1325-basement, Sector-43, Gurugram Haryana (Office-cum-Godown premise)

4. Evidences collected during the survey were shared by the Investigation Wing with the Assessing Officer (AO) i.e., DCIT, Central Circle-2, New Delhi as well as Ld. PCIT. From the evidences collected during survey, it is noticed that there have been one or more specified violations during various years. Moreover a reference has also been received from the Assessing Officer vide

letter dated 20.12.2022. Thereafter, based on independent application of mind to the evidences, a show cause notice regarding cancellation of registration u/s 12AB (4) r.w.s. 12A and 12AA of the Act was issued on 02.06.2023 with relied on materials/documents and Annexures A to E. The said notice was duly served upon the assessee through the declared e-mail, requiring the assessee to furnish the relevant details along with supporting documentary evidences, with this office on 15.06.2023. Another show cause notice was issued to the assessee on 25.08.2023. The said notice was also duly served upon the assessee. A final show cause notice was issued to the assessee on 16.11.2023 providing final opportunity to the assessee to submit its reply by 30.11.2023 as well as once again enclosing copy of Annexures A to E.

5. In response to above notices, the assessee submitted its Ist reply on 15.06.2023. However, it was observed that the reply was unsigned and this fact was pointed out to the assessee vide notice dated 25.08.2023. Accordingly, the assessee submitted reply on 30.11.2023 in dak counter vide receipt No. 2579. Issues raised vide show-cause notices dated 02.06.2023, 25.08.2023 and 16.11.2023 as well as reply filed by the assessee were duly considered and are discussed by Ld. PCIT, Delhi, vide order dated 28.12.2023 cancelling registration of assessee under Section 12AB from financial year 2021-22 onwards.

6. Being aggrieved, appellant/assessee preferred present appeal with following grounds:

“1. That on the facts and circumstances of the case and in law, the impugned order dated 28.12.2023 passed by, Principal Commissioner of Income Tax, (Central) -1, Delhi ("PCIT Central") holding that the activities of the trust are not genuine, is a perverse and erroneous order, liable to be quashed.

2. On facts and circumstances of the case and in law, the order passed by Ld. PCIT Central Circle, Delhi under section 12AB(4) of the Income-tax Act. 1961 ("the Act") cancelling the registration of the assessee-trust is without jurisdiction as the jurisdiction to pass such an order is vested only with CIT(Exemption), Delhi.

3. Without prejudice to the above, the order passed by learned PCIT Central, Delhi on the basis of reference made by Ld. AO under the second proviso to the provisions of section 143(2) of the act is void ab initio and bad in law, as no satisfaction note has been prepared by the Ld. AO before making a reference under aforesaid proviso to PCIT Central, Delhi.

4. Without prejudice to the above, the learned PCIT Central, Delhi has erred in acting on a reference made by AO 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 for the A. Y 2021-22.

5. Without prejudice to the above, the facts and circumstances of the case the PCIT Central Circle, Delhi has erred in applying the conditions section specified in 12AB (4) along with explanation to sub section (4) with reference to FY 2020-21 whereas the aforesaid sub section (4) has been introduced by Finance Act 2022 and is applicable for FY 2022-23 onwards.

6. That in view of facts and circumstances of the case and in law the PCIT Central, Delhi has failed to prove that the activities of the trust are not genuine or that the activities of the trust are not in consonance with its objects, which is the foremost consideration for cancellation of registration granted u/s 12A of the Act.

7. The in-view facts and circumstances of the case and in law, the PCIT Central, Delhi has erred in holding that the assessee has received foreign donations in violation of FCRA Act although no such order has been passed against the assessee by the competent authority under FCRA.

8. That in view facts and circumstances of the case, the assessee has not violated any FCRA norms as there has been no foreign inward remittance into assessee's bank account during the year under consideration.

9. That in view of facts and circumstances of the case and in law, the PCIT Central, Delhi has erred in alleging that assessee has misappropriated the trust funds without any cogent evidence and merely on the basis of suspicion and conjectures.

10. That in view of facts and circumstances of the case and in law the PCIT Central, Delhi has erred in holding that humanitarian aid provided by assessee to marginal farmers in order to save their lives would not fall with the scope of charitable activities.

11. That in view of facts and circumstances of the case and in law the PCIT Central, Delhi has erred in holding that the funds of the trust have been applied for the benefit of the trustees in violation of section 13(2) of the Act.

12. That in view of facts and circumstances of the case and in law the PCIT Central, Delhi has erred in concluding that the trust has made cash payment of Rs. 4.30 Crore against the purchase of land, whereas the aforesaid payment has been made by the trustee out of his own sources.

13. That in view of facts and circumstances of the case and in law the PCIT Central, Delhi has erred in cancelling the registration u/s 12AB for receipt of anonymous donations whereas there is no such prohibition on acceptance of anonymous donations under the Act.

14. That in view of facts and circumstances of the case and in law the PCIT Central, Delhi has incorrectly held that the assessee has not maintained proper stock records, without considering the facts. submitted on record.

15. That the explanations given, evidence produced and material placed and made available on record have not been properly considered and

judicially interpreted and the same does not justify the cancellation of registration u/s 12AB”.

7. Learned Authorized Representative for appellant/assessee submitted that orders of registration dated 08.04.2011 under Section 12AA of the Act read with sections 12A and under Section 80G(5)(vi) of the Act were issued by the Director of Income Tax(E), Delhi, copies of orders at pages 462 & 463 of paper books. After amendment, assessee again applied for registration which was granted vide orders dated 24.09.2021 by Ld. PCIT at page no.493 of the paper books. Ld. PCIT (E), Delhi vide order dated 09.11.2021 under Section 127 of the Act transferred the jurisdiction of the assessee from Ward (Exemption)-I (2) to Central Circle-2, New Delhi, for better co-ordination, effective investigation and meaningful assessment. Ld. PCIT vide order dated 28.12.2023 cancelled registration of the assessee under Section 12AB of the Act illegally. A Co-ordinate Bench of the ITAT, Delhi in ITA No.1308/Del/2023 decided on 08.01.2024 set aside the order of Ld. PCIT being without jurisdiction. Reliance was placed on order of ITAT, Jaipur Bench in case of M/s. Wholesales Cloths Merchants Association Vs. PCIT in ITA No.688/JP/2019.

8. Learned Authorized Representative for appellant/assessee submitted that Ld. PCIT, Central Delhi erred in acting on reference by Ld. AO under 2nd proviso to 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 for assessment year 2021-22. Ld. PCIT had no power under Section

127 of the Act's order for assessment and could not have given powers to Ld. PCIT to invoke specified violation introduced w.e.f. 01.04.2022 for assessment years 2019-20, 2020-21 and 2021-22. Reliance was placed on order dated 22.08.2024 in ITA No.1803/Del/2024 titled as "Lakhmi Chand Charitable Society Vs. PCIT of ITAT, Delhi.

9. Learned Authorized Representative for the Department of Revenue submitted that assessee's arguments regarding lack of jurisdiction with Ld. PCIT are flawed for following reasons:

"A(i) ITAT Order in Aggarwal Vidya Pracharni Sabha Vs PCIT attached at S. No 1 in Assessee's PB/Page 16 is directly contrary to and in violation of binding dicta from Hon'ble jurisdictional High Court in [CIT Vs Sahara India Financial Corp Ltd (2007) 294 ITR 363 (Del). [Paras 17,12, 13, 14] Hon'ble Jurisdictional High Court in CIT Vs Sahara India Financial Corp. Ltd. (2007) 294 ITR 363 (Del) relies upon the statutory definition of the word "case" provided in Explanation below S. 127(4). Hon'ble High Court holds that once the case is transferred u/s 127, all proceedings in respect of "Case" whether pending on the date of transfer or to be commenced in future are transferred "lock, stock and barrel" from the transferor officer to transferee officer. Transferor officers lose jurisdiction from the date of order u/s 127. Hon'ble jurisdictional High Court judgement in CIT Vs Sahara India Financial Corp Ltd (2007) 294 ITR 363 (Del) has been upheld by Hon'ble Supreme Court in PCIT Vs ABC Papers Ltd (2022) 9 SCC 1, with a minor modification not relevant for our present purpose. [Para 36, 42]. Hon'ble Supreme Court held that transfer u/s 127 cannot change the jurisdiction of ITAT and High Court, but can change the jurisdiction of Statutory Income Tax Authorities ie AO, CIT/PCIT, CIT(A). In other words, if Appeal has already been filed before ITAT or High Court u/s. 260A, that appeal will be handled by the transferor AO/CIT and not by transferee AO/CIT.

A(ii) In present case, assessment proceedings pending before Transferor AO/CIT have been transferred to Transferee AO/PCIT-C 1. Therefore, on a conjoint reading of jurisdictional High Court judgement in CIT Vs

Sahara India Financial Corp Ltd (2007) 294 ITR 363 (Del) read with Hon'ble Supreme Court in PCIT Vs ABC Papers Ltd (2022) 9 SCC 1, the Order dated 9-11-2021 passed u/s 127 by CIT (E), Delhi transferring the case of Assessee to ACIT-CC2, Delhi; CIT (E) is legally valid and cannot be questioned.

A (iii) Once the case is transferred from Transferor AO to Transferee AO, the administrative jurisdiction over the Transferee AO is to be exercised by the Higher Authorities being administratively superior to the Transferee AO. That flows from the mandate of S. 118 and Notification issued by CBDT u/s 118. Consequently, the jurisdiction of PCIT will be exercised by PCIT exercising administrative jurisdiction over Transferee AO and not by the PCIT/CIT exercising administrative jurisdiction over Transferor AO. **Notification issued by CBDT u/s 118; attached as S. No 1 /Revenue's Judgement PB 2.**

B. It is well-settled that if an issue has already been decided by jurisdictional High Court/Supreme Court, in that situation as per doctrine of Precedents ["**Stare Decisis**"], Hon'ble ITAT is obliged to follow jurisdictional High Court/Supreme Court, not the view of ITAT, which has been rendered without noticing binding HC/SC judgements. In this case, the matter is covered in favour of Revenue by jurisdictional High Court judgement in CIT Vs Sahara India Financial Corp Ltd (2007) 294 ITR 363 (Del) and Hon'ble Supreme Court in PCIT Vs ABC Papers Ltd (2022) 9 SCC 1, this Hon'ble Tribunal is bound by High Court/Supreme Court Judgements. If some authority was required even for this well-settled position in law, that has been unequivocally provided by Hon'ble Madhya Pradesh High Court judgement in **CIT Vs GM Mittal Stainless Steel Ltd.** (2004) 271 ITR 219 (MP) [Para 6]. Therefore, it is prayed that this Hon'ble Bench ought to follow Jurisdictional High Court/Supreme Court cited supra, more so, with utmost respect, when ITAT judgement in Aggarwal Vidya Pracharni Sabha Vs PCIT attached at S. No 1 in Assessee's PB/Page 16; has been rendered **per incurium**.

C. Even on facts, Ld. ITAT decision in Aggarwal Vidya Pracharni Sabha Vs PCIT is **distinguishable** and therefore not applicable, as mentioned below:

C(i) In Aggarwal Vidya Pracharni Sabha, in Order u/s 127, the Transferor PCIT states that assessment proceedings are transferred from Transferor AO to Transferee AO. Further, the Transferor PCIT does not identify the PCIT exercising administrative control over Transferee AO. Still further, Transferor PCIT does not state that Order u/s 127 has been passed after

concurrence with superior authorities exercising administrative control over Transferee AO.

C(ii) In contra-distinction to the above facts of relied upon case, the Impugned Order dated 9-11-2021 [at Page 486-487 of Assessee's Appeal PB Vol I], does not suffer from the said shortcomings, assuming there be any. The Impugned Order categorically identifies the designation of PCIT exercising administrative control over Transferee AO. Further Impugned Order categorically states that Order u/s 127 has been passed after approval of Ld CCIT (C), Delhi vide Letter F.NO CCIT(C)/Del/CD-395/2021-2 dated 28-10-2021, i.e. the superior authorities exercising administrative control over Transferee AO.

C(iii) Therefore, assessee's contention that positive concurrence of authorities exercising administrative control over Transferee AO, has not been obtained, is plainly baseless, rather mischievous designed to mislead. Therefore, the ratio of Supreme Court in NOORUL ISLAM EDUCATIONAL TRUST [2016] 388 ITR 489 (SC), relied upon by assessee, is not applicable.

D. (i) Another very important reason which distinguishes relied upon case from Impugned Order. In the relied upon case, order u/s 127 was passed transferring the case from Chandigarh to Faridabad ie transfer from one city to another.

D (ii) In contra-distinction, in Impugned Order the transfer is from one Delhi AO to another AO based in Delhi ie the Impugned Order deals with intra-city transfer.

D (iii) Intra-city transfers are governed by s. 127(3), where even the opportunity of being heard to assessee is not required to be given before effecting the transfer u/s 127. This position has been confirmed by a Constitution Bench of Supreme Court in **Kashiram Aggarwala Vs UOI ((1965) 56 ITR 14 (SC))**. [**Attached @ S. No 3 in Revenue's Judgement PB II**]

D (iv) It is well-settled that non-mentioning of correct section number, or quoting wrong section number in an Order does not invalidate the Order, provided that the power is traceable to some provision in law. The Impugned Order mentions s. 127 (2), while the correct applicable section is 127(3). This type of error does not vitiate/invalidate the action as held by Hon'ble Supreme Court in several judgements including Isha Beevi Vs TRO (1975) 101 ITR 449 (SC) and Hazari Mal Kuthiala Vs ITO (1961) 41 ITR 12 (SC).

It is well-settled that Orders u/s 120, 124 or u/s 127 are administrative in nature. They do not affect the substantive rights of the assessee. That position has been upheld by Hon'ble Jurisdictional High Court in several judgements including in **CIT Vs S. S. Ahluwalia (2014) 46 taxmann.com 169 (Del) [Para 37]** and **Abhishek Jain Vs ITO (2018) 405 ITR 1 (Del)**.

F. (i) There is no fundamental right conferred upon assessee to be assessed either by a particular AO or at a particular place.

(ii) Orders u/s 127 are passed in the interest of exigencies of Revenue Collection.

(iii) That position has been upheld by **Hon'ble Supreme Court Constitution Bench in Pannalal Binraj Vs UOI (1957) 31 ITR 565 [5 JJ] [Para 29,31]** and followed by **Jurisdictional High Court in ATS Infrastructure Ltd Vs CIT (2009) 318 ITR 299 (Del) [Para 9, 10, 11]** attached as **S. No 4 and 7/Revenue's Judgement PB 2]**

10. Learned Authorised Representative for the for Revenue submitted that Assessee has contended that PCIT-C 1 has no jurisdiction to cancel registration of assessee- trust wef AY 2022-23, as "specified violation" u/s 12 AB (4) was introduced from FY 2022-23/AY 2023-24 and not from FY 2021-22/AY 2022-23 which is not tenable for the following reasons;

(i) Ld PCIT-C 1 has categorically stated that power u/s 12AB (4) has been invoked for AY 2022-23[FY 2021-22] and power u/s 12AA has been invoked for AY 2021-22[FY 2020-21].

(ii) Section 12 AB has been enacted by Finance Act 2022 wef 1-4-2022 i.e. w.e.f. AY 2022-23.

(iii) It is well-settled that the law as prevailing on first day of April of any AY applies to assessments for that AY.

(iv) Hon'ble Supreme Court Constitution Bench in **Karimtharuvi Tea Estate Ltd Vs State of Kerala (1966) 60 ITR 262 (SC) [Para 10,16, 17]** has upheld the above stated well-settled position in law.

(v) There is no dispute that section 12 AB has come into force wef 1-4-2022 ie First day of AY 2022-23. The said conclusion flows from Memorandum explaining the provisions of Finance Bill 2022 and Finance Act 2022. Therefore, there is no error in Impugned Order to invoke S. 12 AB for AY 2022-23 [FY 2021-22].

(vi) For AY 2021-22 [FY 2020-21], s. 12 AA has been invoked. Revenue has demonstrated during the course of hearings that Hon'ble Supreme Court in CIT Vs Batanagar Education & Research Trust (2021) 9 SCC 439 and in PCIT Vs Singhad Technical Education Society (2025) 472 ITR 18 (SC) has upheld the cancellation of registration u/s 12AA for AYs prior to AY 2022-23. Therefore, there is no error in Impugned Order for cancelling registration of assessee-trust for AY 2021-22, on that score Impugned Order deserves to be upheld.

11. From examination of record in the light of aforesaid rival contentions, it is crystal clear that appellant/assessee is a charitable trust was registered under Section 12A and 80G of the Act vide order dated 08.04.2011 by the Director of Income Tax (E). After amendment, assessee applied for registration which was granted vide order dated 28.04.2021 by the Ld. PCIT. A search and seizure operation was conducted on 10.09.2021. Evidence was collected during survey. Specified violation during various years was noticed. Ld. AO issued show cause notice regarding cancellation of registration. Another show cause notice dated 25.08.2023 along with copies of Annexure A to E was issued. Assessee submitted reply dated 30.11.2023. Ld. PCIT on the basis of documents, show cause notice and reply, passed order dated 28.12.2023 cancelling registration of assessee under Section 12AB from financial year 2021-22 onwards. The conclusion and summary is as under:

“Conclusion:-

83. To summarize various findings based on satisfaction drawn and mentioned in the paras above and for ease of understanding the decisions taken qua cancellation of registration either u/s 12A/12AA or 12AB, the para wise decision are again mentioned below:

I. As discussed in paras 6 to 15 above, it is established that the trust received donations in gross violation of FCRA norms. Complying with the objects of the trust is a precondition for claiming the exemption under the Income Tax Act, 1961. The trust has not complied with the requirements of FCRA, and hence it constitutes specified violation as defined in sub-clause (f) of Explanation to section 12AB(4) of I.T. Act. In view of these facts, it is held that the activities of the trust are not genuine and not being carried out in accordance with the objects of the trust. Hence, the registration granted to the assessee u/s 12A/12AA from F.Y 2020-21 and u/s 12AB from FY 2021-22 onwards is cancelled.

II. As discussed in paras 16 to 22 above, payments made to the above six parties show that income of the trust has been applied for purposes other than for the objects of the trust. Complying with the objects of the trust is a precondition for claiming the exemption under the Income Tax Act, 1961. These payments show that activities being carried out by the trust are not genuine and are not carried out in accordance with the conditions subject to which it was registered. Accordingly, it constitutes "specified violation" as per Explanation 2 to section 12AB(4) of I.T. Act. In view of these facts, it is held that the activities of the trust are not genuine and not being carried out in accordance with the objects of the trust. Hence, the registration granted to the assessee u/s 12AB from FY 2021-22 onwards is cancelled.

IIIA. As discussed in paras 23 to 26 above, from perusal of evidence impounded during survey in the form of emails reproduced above, it is established that the assessee was mobilizing funds from outside India, in gross violation of FCRA norms, to support farmers' protests. Complying with the objects of the trust is a precondition for claiming the exemption under the Income Tax Act, 1961. Such an action shows that income of the trust is being applied for purposes other than for objects of the trust. The activities being carried out by the trust are not genuine and are not carried out in accordance with the conditions subject to which it was registered. Accordingly, it constitutes "specified violation" as per Explanation 2 to section 12AB(4) of I.T. Act. In view of these facts, it is held that the activities of the trust are not genuine and not being carried out in

accordance with the objects of the trust. Hence, the registration granted to the assessee u/s 12A/12AA from FY 2020-21 and u/s 12AB from FY 2021-22 onwards is cancelled.

IIIB. As discussed in paras 27 to 37 above, from perusal of evidence impounded during survey in the form of emails reproduced above, it is established that the assessee mobilized funds to support farmers' protests. Complying with the objects of the trust is a precondition for claiming the exemption under the Income Tax Act, 1961. Such an action shows that income of the trust is being applied for purposes other than for objects of the trust. The activities being carried out by the trust are not genuine and are not carried out in accordance with the conditions subject to which it was registered. Accordingly, it constitutes "specified violation" as per Explanation 2 to section 12AB(4) of I.T. Act. In view of these facts, it is held that the activities of the trust are not genuine and not being carried out in accordance with the objects of the trust. Hence, the registration granted to the assessee u/s 12A/12AA from F.Y 2019-20 and u/s 12AB from FY 2021-22 onwards is cancelled.

IV. As discussed in paras 38 to 47 above, from perusal of above evidences impounded during survey, it is established that funds of the trust were being utilized for the benefit of its trustees in gross violation of provisions of section 13(2) of the L.T. Act, on account of which deduction u/s 11 and 12 of the Act is liable to be denied to the assessee. Utilization of funds of the trust for benefit of its trustees is against the objects of the trust. Complying with the objects of the trust is a precondition for claiming the exemption under the Income Tax Act, 1961. Such an action shows that income of the trust is being applied for purposes other than for objects of the trust. Thus, the activities being carried out by the trust are not genuine and are not carried out in accordance with the conditions subject to which it was registered. Accordingly, it constitutes "specified violation" as per Explanation to section 12AB(4) of I.T. Act. In view of these facts, it is held that the activities of the trust are not genuine and not being carried out in accordance with the objects of the trust. Hence, the registration granted to the assessee u/s 12A/12AA from F.Y 2020-21 and u/s 12AB from FY 2021-22 onwards is cancelled.

V. As discussed in paras 48 to 72 above, from perusal of above evidences impounded during survey as well as statements on oath recorded, it is established that the trust received cash donations of Rs. 4.30 crores in cash which were not recorded in its books of account and thereafter utilized for making cash payments to sellers over and above the registered

price of land. Complying with the objects of the trust is a precondition for claiming the exemption under the Income Tax Act, 1961. Such an action shows that income of the trust is not being entirely recorded in its books of account and cash payments are being made outside books in gross violation of sections 11, 12 and 13 of I.T. Act. Thus, the activities being carried out by the trust are not genuine and are not carried out in accordance with the conditions subject to which it was registered. Accordingly, it constitutes "specified violation" as per Explanation to section 12AB(4) of L.T. Act. In view of these facts, it is held that the activities of the trust are not genuine and not being carried out in accordance with the objects of the trust. Hence, the registration granted to the assessee u/s 12AB from FY 2021-22 onwards is cancelled.

VI. As discussed in paras 73 to 78 above, the assessee has received anonymous donations of Rs. 61,79,445/-during F.Y. 2019-20 to 2021-22 which is liable to be added back as anonymous donations u/s 115BBC of the Act. Complying with the objects of the trust is a precondition for claiming the exemption under the Income Tax Act, 1961. These anonymous donations show that activities being carried out by the trust are not genuine and are not carried out in accordance with the conditions subject to which it was registered. Accordingly, it constitutes "specified violation" as per Explanation to section 12AB(4) of I.T. Act. In view of these facts, it is held that the activities of the trust are not genuine and not being carried out in accordance with the objects of the trust. Hence, the registration granted to the assessee u/s 12A/12AA from F.Y 2019-20 to 2020-21 and u/s 12AB from FY 2021-22 onwards is cancelled.

VII. As discussed in paras 79 to 82 above, the assessee has failed to maintain any stock register as well as proper books of account. Complying with the objects of the trust is a precondition for claiming the exemption under the Income Tax Act, 1961. The non maintenance of stock register as well as substantial difference in stock found during survey show that activities being carried out by the trust are not genuine and are not carried out in accordance with the conditions subject to which it was registered. Accordingly, it constitutes "specified violation" as per Explanation to section 12AB(4) of I.T. Act. In view of these facts, it is held that the activities of the trust are not genuine and not being carried out in accordance with the objects of the trust. Hence, the registration granted to the assessee u/s 12AB from FY 2021-22 onwards is cancelled.”

12. Ground of appeal nos.2 & 3 are regarding lack of jurisdiction exercised by Ld. PCIT, Central Circle, Delhi as the jurisdiction vested with only CIT(E). The order dated 09.11.2021 under Section 127 of the Act was for better co-ordination, effective investigation and meaningful assessment. Ld. PCIT, Central Circle, New Delhi had no jurisdiction to deal with the issue of registration and cancellation under the Act. Ld. PCIT on the basis of reference made by Ld. AO under 2nd proviso to section 143(2) of the Act passed impugned order which is void ab initio.

13. A Co-ordinate Bench of the ITAT in ITA No,1308/Del/2023 titled as “Aggarwal Vidya Pracharni Sabha Vs. PCIT” held as under:

“16.1 However, what is relevant here is that in any case the ‘reference’ by jurisdictional AO was to be made not to the PCIT or Commissioner, to whom this 27 ITA No. 1308/Del/2023 AO was subordinate but one authorized by board for the purpose of Section 12AB. The one who could grant or cancel the registration as per amended provisions which is not PCIT, Gurgaon, but, would be CIT(E), Chandigarh. Thus assumption of jurisdiction for cancellation of registration u/s 12AB(4) of the Act by virtue of aforesaid transfer of jurisdiction order u/s 127 of the Act is not conceivable.

17. At the same as we observed above that the assessment by said assessing officer was completed in September, 2021, thus, there was no occasion for concerned AO to invoke ‘reference’ powers under second proviso to sub-section (3) of section 143 of the Act. It appears that when confronted with the situation that the second proviso of section 143(3) having come into effect from 01.04.2022 is not applicable to the assessment initiated consequent to search and seizure operations u/s 132 of the Act carried out on 19.02.2020, the ld. PCIT, Gurgaon improved his case by claiming that he had exercised his powers by virtue of clause (a) of sub-section (4) of section 12AB, which entitles a Principal Commissioner or Commissioner to take cognizance on the basis of a

‘specified violation’ coming into his notice during any previous year. At the cost of repetition, we observe that reference in section 12AB is not to PCIT or Commissioner to whom the said Assessing Officer would be subordinate, but, the CIT(E) who has been given special power for grant and cancellation of the registration as original jurisdiction.

17.1 Furthermore, here in this case, the exercise of power u/s 12AB(4) of the Act seems to also not have been done in accordance with law. As what comes up further is that, if at all, PCIT, Gurgaon was acting under clause (a) to Section 12AB(4), then, before issuing the notice dated 08.09.2022, itself the Id. PCIT, Gurgaon should have first formed his opinion that the assessee had committed one or more of a ‘specified violation’. However, as we go through the relevant part of the impugned order we find that the Id.PCIT has not mentioned as to which amongst the various specified violations mentioned in Explanation attached to subsection (4) of section 12AB were attracted so as to show cause the assessee under sub-section (4) of section 12AB of the Act and ask for information by notice dated notice dated 08.09.2022.

17.2 Rather, in the opening paragraph at page 34 of the impugned order, the Id. PCIT mentions, “it was noticed that the assessee trust has committed one or more specified violation. Thereafter, information was called for from the assessee trust by this letter dated 08.09.2022.” We are of the view that when Ld. PCIT was assuming jurisdiction under clause (a) to Section 12AB(4), then while calling for the documents or information under clause (i) of sub-section (4) of Section 12AB, the assessee should be notified as to for which of the ‘specified violation’ the Ld. PCIT is calling for the information or documents. The same is not coming from the impugned order that before issue of notice on 08/09/2022, calling for the documents or information under clause (i) of sub-section (4) of Section 12AB, Ld. PCIT, Gurgaon had actually ‘noticed’ one or more of such ‘specified violation.’

17.3 In this context further if the final show cause notice dated 14.03.2023 available at pages 7 to 37 of the paper book is considered, it shows in para 4.10 a reference is made to what sort of information was called by letter dated 08.09.2022:-

“4.10 In the light of above facts of the case, it appears that the assessee trust has made specified violation in terms of explanation to Section 12AB(4) of the Income Tax Act, 1961. As such, following information from the assessee trust was called for under Section 12AB of the Act vide this office letter dated 08.09.2022 to

examine the activities of the Aggarwal Vidya Pracharni Sabha with a view to ascertain whether the same are covered under the clause of explanation to the provisions of Section 12AB(4) of the Act and other provisions of the Act. Details of information called for the relevant period i.e. AY 2014-15 to 2020-21 is as under:

Copy of registration u/s 12AA/12AB(1) of the Act. Coy of memorandum of association containing the objects for which the Aggarwal Vidya Pracharni Sabha was set up along with copy of registration with the relevant authorities. Details of capital expenditure and revenue expenditure incurred for various A.Ys. as mentioned above. Copies of Form 10 and Form 10B in respect of funds accumulated u/s 11(1)(a), 11(2) of the Act and year wise utilization of the same. Specify the activities of which the accumulated funds have been utilized. Copy of account of the Aggarwal Vidya Pracharni Sabha with M/s Tirupati Realbuild Pvt. Ltd. And M/s Radhey 30 ITA No. 1308/Del/2023 Krishna Infratech Pvt. Ltd. For the above AYs explaining the nature and purpose of transactions undertaken with the said entities including advance given for the purpose of construction along with supporting evidences in order to substantiate the genuineness of the same. □ Relationship of the Aggarwal Vidya Pracharni Sabha and its members with the directors of M/s Tirupati Realbuild Pvt. Ltd. And M/s Radhey Krishna Infratech Pvt. Ltd.” 17.4 Then in para 4.1.2 sub-clause (d), the ld. PCIT mentions of the earlier letter dated 08.09.2022 that: “d) Further, vide this office letter dated 08.09.2022, the assessee was requested to furnish details of capital and revenue expenditure incurred for various assessment years. In response, the assessee only submitted copy of Form 10B which is not supported with the details of capital expenditure and copy of accounts and documentary evidence. Further, no activity was specified for which accumulated funds were utilized.”

18. Thus it appears that by this notice dated 14.03.2023, only the assessee for the first time was asked to show cause about the ‘specified violation’ of the nature reproduced below:- "(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;"

19. Thus, if it was the case of the PCIT (Central), Gurgaon that he was exercising the powers u/s 12AB(4)(a) on his own cognizance of the ‘specified violation’, then, at first instance as he was not competent

authority u/s 12AB(1) to 31 ITA No. 1308/Del/2023 pass an order of registration of the Trust, then, he had no powers u/s 12AB(4) to call for to show cause an order of cancellation. In any case, the manner of exercise of jurisdiction without first making conclusive notice of the alleged 'specified violation' is not sustainable.

20. We have also taken into consideration the order of the Jaipur Bench of the in the case M/s Wholesale Cloth Merchant Association vs. Pr. CIT (Central), Jaipur in ITA No.688/JP/2019 where this issue of jurisdiction u/s 127 of the Act has been considered and the findings support out aforesaid view on the facts before us. It will be appropriate to reproduce the relevant paras No.14 and 15:- "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 32 ITA No. 1308/Del/2023 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'."

14. In view of above material facts, respectfully following the judicial precedents, we are of the considered view that the order passed by the Ld. PCIT, Central Circle is without jurisdiction in to the context of territorial

jurisdiction and subject matter as well as not in accordance with law, liable to be quashed. Accordingly, ground of appeal nos. 2 and 3 of appeal are allowed.

15. Moreover, in conclusion, Ld. PCIT has repeatedly referred to “specified violations” which was introduced vide Finance Bill 2022 w.e.f. 01.04.2022 could not have been used for assessment years 2019-20, 2020-21 and 2021-22. Reference to judgment in the case of Lakhmi Chand Charitable Society Vs. Ld. PCIT in ITA No.1803/Del/2024 is important. Therefore, it is held that Ld. PCIT erred in applying “specified violation” clause in section 12AB along with explanation with reference to financial year 2020-21 onwards whereas aforesaid sub section (4) of the Act was introduced by Finance Act, 2022 was applicable for financial year 2022-23. Accordingly, ground of appeal nos. 4 and 5 are allowed.

16. In light above findings on ground of appeal nos. 2 to 5, the adjudication of ground nos. 6 to 15 is academic in nature and left open.

17. Since the appeal of appellant/assessee is allowed, the Stay Application No.329/Del/2024 filed by appellant/assessee becomes infructuous.

18. In the result, the appeal filed by assessee is allowed and the Stay Application No.329/Del/2024 is dismissed as infructuous.

Order pronounced in the open court on 20/06/2025.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 20/06/2025
Mohan Lal

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi