

आयकर अपीलिय न्यायाधिकरण में, हैदराबाद 'ए' बेंच, हैदराबाद  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A ' Bench, Hyderabad**

श्री विजय पाल राव, माननीय उपाध्यक्ष एवं श्री मंजूनाथ जी, माननीय लेखा सदस्य  
**SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT**  
**AND**  
**SHRI MANJUNATHA G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.870/Hyd/2025  
(निर्धारण वर्ष/ Assessment Year: 2022-23)

CMR Engineering Educational Society, Hyderabad. PAN : AAAAC7790A <b>(अपीलार्थी/ Appellant)</b>	Vs.	The Deputy Commissioner of Income Tax, Central Circle 2(1), Hyderabad. <b>(प्रत्यर्थी/ Respondent)</b>
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C. Maheswar Reddy, C.A. & Shri K.C. Devdas, C.A.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Ms. U. Mini Chandran – CIT-DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	25.08.2025
घोषणा की तारीख/ Date of Pronouncement	:	10.10.2025

**ORDER**

**PER BENCH:**

This appeal filed by the appellant society is directed against the order of the learned Principal Commissioner of Income Tax- (Central), Hyderabad, dated 21.03.2025 pertains to A.Y. 2022-23 u/s 12AB(4)(ii) of the Income Tax Act, 1961 (for short "the Act").

2. The appellant/assessee has raised the following grounds in the instant appeal :

1. *"The order passed by the Learned Pr. Commissioner of Income Tax (Central), Hyderabad, is incorrect both on facts and law.*
2. *The Ld. PCIT(Central) fails to understand that the society is running the educational institutions on independent basis and the trustees /management of the society are not related in the affairs of society in running the educational institutions.*
3. *The Ld. PCIT (Central) erred in considering the fact that the hostel receipts belong to the society, when the same is already assessed in the hands of the individual trustees. Such action of the Ld. PCIT (Central) is contradictory and not valid.*
4. *The Ld. PCIT (Central) failed to consider that the Assessing Officer (AO) had completed assessment by treating the receipts as "Protective" in the hands of individual trustee. It is inappropriate for the Ld. PCIT(Central) to initiate the cancellation proceedings against the society merely on suspicion.*
5. *The Ld. PCIT (Central) failed to consider that the Assessing Officer (AO) had already made a "protective addition" of the alleged excess fee in the hands of individual trustees. Protective assessments are only applicable where the ownership of income is uncertain. Therefore, it was inappropriate for the PCIT (Central) to Initiate cancellation proceedings against the society based merely on suspicion, especially when ownership was still in question.*
6. *The Ld. PCIT (Central) has erred in understanding the basic fact that the receipts were not recorded in books of the Appellant Society considering the nature of objects of society. The amount is related to the individual trustees who are running the hostels and duly disclosed the receipts in their returns of income and paid the taxes. Assessing of income of individual trustees in the hands of the society is bad in law.*
7. *The Ld. PCIT (Central) has erred in cancelling the registration of the society considering the fact that the said excess collections form part of the hostel receipts & the same are already offered to tax in the hands of the individual trustees in their individual capacity.*

8. *The Ld. PCIT (Central) has no jurisdiction to cancel the registration of the Appellant Society considering the hostel receipts as diversion of funds and excess fee collections.*
9. *In the light of the facts and circumstances of the case of the Appellant, the Ld. PCIT (Central) has no jurisdiction to cancel the registration of the Appellant Society since the subject matter based on which such order was passed regarding diversion of funds and excess fee collections, do not form part of the society as the same does not belong to the society.*
10. *The Ld. PCIT (Central) erred in law and on facts in holding that, activities of the Appellant are not genuine and funds are deployed for personal benefit of its members. The Ld. PCIT (Central) erred in keeping heavy reliance on the statements recorded during search, without appreciating fact that the statements were recorded under peculiar circumstances and despite the fact of their retractions thereafter.*
11. *The Ld. PCIT (Central) overlooked the confirmations issued by students who categorically denied payment of any fee amounts over and above the prescribed fee to the society.*
12. *The Ld. PCIT (Central) has not considered the confirmations of the students who categorically confirmed that they have paid towards hostel fees only and not for any donation/capitation fees, wherein the hostel fees are already declared by the trustees in their individual hands.*
13. *The Ld. PCIT (Central) does not have the authority to cancel the registration of the society without demonstrable cause and without possessing concrete and reliable materials showing non-application of funds towards the society's objectives. As such, the cancellation order is untenable.*
14. *The Ld. PCIT (Central) wrongly held that the affidavits of retraction and confirmations made by various persons were baseless and treated them as an "afterthought," which are both factually and legally incorrect.*
15. *The Ld. PCIT (Central) failed to take into account the deficiencies in the investigation process, as pointed out by the appellant while cancelling the registration.*
16. *The Ld. PCIT (Central) did not consider the principle of breach of trust where the society has not violated the objective for which the same is incorporated. The Society should not be penalized or held responsible for any unlawful acts committed by its individual trustees, if any.*

17. *The Ld. PCIT (Central) also erred ignoring the facts that the assessment proceeding of search and seizure action have not yet reached finality and hence the action of cancellation of registration is a premature action in the absence of any assessment proceeding being concluded.*
18. *The Ld. PCIT(Central) has not appreciated the fact that there is no violation made by the appellant in achieving the object of promoting the education despite no objections were raised by the approving authorities i.e. UGC or the AICTE for violation of such objects.*
19. *The Exemption u/s. 12A is granted by Hon'ble Commissioner of Income Tax (Exemption) hence Ld. PCIT(Central) has no jurisdiction to cancel the registration.*
20. *That on facts and in law, the Ld. PCIT failed to appreciate that the power to cancel registration under Section 12AB(4) of the Act is vested exclusively with the Principal Commissioner/Commissioner of Income Tax (Exemption) vide CBDT Notification and the exercise of such powers by the Ld. PCIT/Respondent is without jurisdiction and also contrary to the provisions of Section 119 of the Act. As such jurisdiction is provided only for carrying out post search proceedings and meaningful assessments.*
21. *The Ld. PCIT(Central) out to have considered the notification issued by the Board which whereby has authorized Commissioner of Income Tax(Exemptions) to grant registration under Section 12AA as well as to cancel such registration.*
22. *The Ld. PCIT (Central) has wrongly cancelled the registration with retrospective effect from FY 2022-23, despite the absence of any violation under the Income Tax Act or any applicable law governing the functioning of societies in that year. Hence, the Ld. PCIT has no authority to cancel the registration of the Appellant Society with a retrospective effect.*
23. *The Learned PCIT (Central) erred in concluding that the appellant violated the explanation to Section 12AB(4) of the Act, even though no requisite direction, order, or decree was passed under any relevant statute to support such a finding.*
24. *Under the facts and circumstances of the case, the Ld. PCIT (Central) erred in passing the order of cancellation under Section 12AB (4) based purely on assumptions and incorrect facts without properly appreciating that there was no violation of the provisions under Sections 11 to 13 of the Income Tax Act.*
25. *The appellant craves leave to add, amend or alter any of the grounds during hearing.”*

3. The brief facts of the case are that the appellant/ assessee i.e. CMR Engineering Educational Society has been formed on 22.10.2009 and registered under the Andhra Pradesh Societies Registration Act, 2001 with the main objects of promoting moral and cultural traditions of secular India through imparting education to children's / students in the Educational Schools, Colleges, Institutions, to promote the study of science, to establish nursery, degree engineering & management colleges, working towards protection of environment, imparting education to children/students in the Educational Schools, Colleges, Institutions etc. The appellant society is running colleges in the name of "CMR Engineering College" and approved by Government of Andhra Pradesh, Jawaharlal Nehru Technological University (JNTU), Hyderabad and All India Council for Technical Education, New Delhi (AICTE). The appellant society is running various colleges and offering various degree courses. The appellant society has been granted registration u/s 12AA of the Income Tax Act, 1961 vide order of the Director of Income Tax (Exemptions), dated 21.12.2011 and the same has been extended/renewed from time to time on an application made by the appellant society. The appellant society also got provisional registration u/s 12AA of the Act as per the amended provisions of registration of trust/ institution in Form No.10AC for a period of 5 years vide order dated 05.04.2022 w.e.f. A.Y. 2022-23 to 2026-27. The appellant society has been regularly assessed to tax and filing return of income u/s 139(1) of the Act for all assessment years and also

filed relevant audit report in Form 10B on or before due date provided under the Act.

4. A search and seizure operation u/s 132 of the Income Tax Act, 1961 was conducted in the Malla Reddy Group of Institutions on 22.11.2022, including the appellant society premises in which certain loose sheets in the form of application forms, daily statements, excel sheets etc., were found and seized. Based on the loose sheets, college admission forms and some excel workings, the department came to the conclusion that the appellant society has collected the fee in excess of the fee prescribed by the Government for admission into various courses which are in the nature of donation or capitation fee. During the course of search, the material found was confronted to the trustees and a statement u/s 132(4) of the Act, has been recorded for which the trustees denied of having collected capitation fee or donation for admission of students to any of the courses.

5. Subsequently, the Principal Commissioner of Income Tax-[Central], Hyderabad, has received a Reference under second proviso to section 143(3) of the Income Tax Act, 1961 [in short "the Act"] in the case of the assessee for the assessment year 2022-23 from the Deputy Commissioner of Income Tax, Central Circle-2(1), Hyderabad and after careful consideration of the proposal and examination of the relevant records depicting the facts of the case, the following imputations were made *prima facie* by the Assessing Officer to the effect that, suppression of fee

receipts etc,. The Pr.CIT, Central further noted that, during the course of search certain incriminating material in the form of Admission Application forms, Daily Statements, Excel Sheets etc. were found and seized evidencing that, the assessee society was collecting fee over and above the maximum fee prescribed by the Government and the fee only to the extent prescribed by the Government collected in the form of cash was deposited in the bank account of the respective institutions and the same were shown as receipts in the financial statements of the society. The excess fee (donation/capitation fee) collected, over and above prescribed fee, by the colleges in the form of cash was never brought into the books of accounts of the assessee. It was also found that, the society did not maintain any proper books of account and no books of account were found at the registered address of the society at the time of search. Further, unaccounted cash found and seized from the residential premises of Trustees/relatives/trusted-persons evidence the fact that, the society has been generating unaccounted cash receipts from fee collections of the society. In view of the discrepancies, the learned PCIT, Central called-upon the assessee to show cause on the following two issues unearthed during the course of search operations and post search enquiries should not be treated as occurrence specified violations and why the registration of the assessee society shall not be cancelled as per provisions of Sec.12AB(4)(ii) of the Income Tax Act, 1961 i.e., (1) Where any income derived from property held under trust, wholly or in part

has been applied, other than for the objects of the trust or institution. (2) Any activity being carried out by the trust or institution is not genuine or is not being carried out in accordance with all or any of the conditions subject to which registration was granted to Society.

6. The Ld. PCIT (Central) has afforded an opportunity of being heard under clause (i) of sub-section (4) of section 12AB of the Act to produce necessary documentary evidence. In response, the assessee on 14.02.2025, through its Authorised Representative filed the written submissions, contending, *inter alia*, with respect to collecting fee over and above what is prescribed by the Government that, no details of such annexure/document/loose sheet impounded which has been mentioned in the letter are vague and ambiguous. Further, it was the submission of the assessee before the learned PCIT, Central that, the amount of fee is directly collected as a package from students which includes not only tuition fee, but also hostel fee, transport and other miscellaneous fees and the same has been submitted in the statement recorded during the course of search by Shri. Marri Rajashekar Reddy. The assessee submitted that, the fee attributable to the society is duly taken into the books of accounts of the society and the amount of hostel fee attributable to the Members of the society is duly taken in their individual capacity. The assessee further submitted before the learned PCIT, Central that with respect to hostel fee collected by the Management in their individual capacity, is only to provide hostel facilities to the

students. Further, the assessee had also given the detailed break-up of hostel fee collected year-wise and how the same has been accounted for in the returns of income of members in their individual capacity. The assessee society has also explained to the learned PCIT, Central, with respect to process of making admission of students that they are making admissions exactly as per the guidelines issued by the Telangana Government into respective stream of education, which is evident from the fact that, the Government has recognised the admission process and allowed intake of students of assessee society even during the year of search, i.e. the year 2022 and has not pointed-out any deficiencies in the admission process. Further, none of the students have raised any complaints of any malpractices. Therefore, it was the submission of the assessee society that, when the admission process happens strictly as per the conditions laid down by the Government, there is no scope for collection of additional fees over and above the prescribed fee. Further, the fee is being collected as a whole package which is combination of tuition fee, hostel fee and other miscellaneous fee. The portion of hostel fee which is attributable to hostel business carried out in the individual capacity is taken and the tuition fee attributable to the society is taken in the books of accounts. The assessee society further submitted that, Sri Rajashekar Reddy has worked out the total receipts collected as hostel fee and declared the same before the DDIT (Inv) at the time of search proceedings. It is also submitted that, the return of income is filed admitting the income

from hostel business and the assessments have been completed u/sec.143(3) r.w.sec.148 of the Income Tax Act, 1961, for the assessment years 2020-2021 to 2023-2024. The assessee society submitted that, for the year under consideration also, the assessee-society admitted the hostel income, however, assessment is pending.

7. With respect to not maintaining proper books of accounts and no such books have been found during at the place of business of the assessee society, the assessee society submitted before the learned PCIT, Central that, it has been maintaining proper set of books of accounts, which are duly audited and filed along with return of income being filed year on year within the due date as per the provisions of sec.139 of the Income Tax Act, 1961.

8. With respect to unaccounted income as mentioned in the notice, it was the submission of the assessee society that, it is the individual income of the Trustee Shri Marri Rajashekhar Reddy which was surrendered by him during the course of search proceedings vide statement recorded u/sec.132(4) of the Income Tax Act, 1961, and the same have been undertaken by the Assessing Officer while completing the Assessment. This itself shows that the declaration made by the members of the society is accepted. Accordingly, the assessee society submitted that the Assessee Society has not been collecting any form of donation/capitation fee from the students being admitted and all the fee received related to the students admitted have been duly

accounted for in the books of accounts and, therefore, submitted that, the assessee society has not violated any of the specified violations pointed-out by the learned PCIT, Central and, therefore, the assessee society was pleaded before the learned PCIT, Central that, since it has not violated any of the conditions stipulated in Sec.12AB(4) of the Income Tax Act, 1961, warranting cancellation of registration granted u/sec.12AA of the Income Tax Act, 1961 by exercising his powers vested u/sec.12AB of the Income Tax Act, 1961, show cause notice issued for cancellation of registration of Society is incorrect.

9. The Ld. PCIT (Central) after considering the relevant submissions of the appellant society and also taken note of reference from the A.O. in terms of 2<sup>nd</sup> proviso to Section 143(3) of the Act, and also taking into account specified violations referred to u/s 12AB(4) and the explanation provided therein observed that there are occurrence of the specified violations during the previous year relevant to assessment year 2022-23 as defined in explanation u/s 12AB(4) of the Act warranting cancellation of registration granted to the appellant society u/s 12AA of the Act, and hence, by virtue of powers vested with him u/s 12AB(4)(ii) of the Act, cancelled the registration of the trust w.e.f Assessment Year 2022-23. The Ld. PCIT (Central) had discussed the issue at length in light of findings of the search coupled with statements recorded from various persons and observed that the appellant society has applied income derived from property held under trust, wholly or in part, other than the objects of the trust or institution

and further, the activities of trust has been carried out is not genuine and are not being carried out in accordance with all or any of the conditions subject to which the registration was granted to the appellant society. The Ld. PCIT (Central) observed that the seized material found during the course of search reveals suppression of fee receipts which is evident from the fact that as per the admission forms found and seized during the course of search, reveals that the fee packages exceeding government limits with lumpsum tuition fee lacking clear bifurcation from ancillary charges. Although, the trustees stated that package amounts collected from students includes fee fixed by the regulatory authorities, miscellaneous fee and hostel fee, but there is no evidence of hostel facilities provided to the students by the trustees. Further, there is no break up of fee referred to in the admission forms which is evident from the lumpsum amount collected from the students which is over and above the amount of fee fixed by the Government for admission to relevant courses. Further, the appellant society has accounted fee collected from the students as fixed by the State Government and excess fee over and above the amount fixed by the Government has been diverted to the trustees in violation of provisions of the Act. Therefore, observed that, the claim of the appellant society that admissions were conducted as per the Government norms and that no student complained of any mal-practices and further government recognition of the admissions does not automatically validate the fee collections. Further, unaccounted cash was discovered at the

premises of the trustees and their associates which directly links the expenditure recorded in the diary to the excess fee collections by the society. The absence of the direct reference of the appellant society to the cash found during the course of search does not negate the circumstantial and corroborative evidence that demonstrate the connection between these funds and the appellant society financial mismanagement.

10. The Ld. PCIT (Central) further observed that the appellant society is not maintaining proper books of accounts, and no books of accounts were found at the registered address of the society at the time of search. This clearly shows that the appellant society activities are not carried out in accordance with all or any of the conditions subject to which the registration was granted u/s 12AA of the Act. Since the income derived from the property held under trust, wholly or in part has been applied, other than for the objects of the trust or institution and further, activities being carried out by the trust or institution is not genuine and are not being carried out in accordance with all or any of the conditions subject to which the registration was granted to the appellant society, the registration granted to the appellant society u/s 12AA of the Act should be withdrawn. Thus, rejected the explanation of the assessee and cancelled the registration granted u/s 12AA of the Act vide order dated 21.03.2025 w.e.f. A.Y. 2022-23 u/s 12AB(4)(ii) of the Income Tax Act, 1961. The relevant findings of the Ld. PCIT (Central) are as under :

*“5. On careful consideration of the above written submissions filed against the proposed cancellation of registration of the assessee society, it is found that they are not acceptable for the following reasons:*

***(i). Suppression of fee receipts.***

*(a) Seized admission forms reveal fee packages exceeding government limits, with lump-sum tuition fees lacking clear bifurcation from ancillary charges. This suggests unauthorized capitation or donation-like receipts. The assessee's claim of compliance lacks merit, as students may not want confrontation with the institution and hence may not complain. Government recognition of admissions does not justify excess fee collection, violating the Income Tax Act, 1961.*

*(b) The society's objective is to provide education on a no-profit basis, yet significant unaccounted funds were diverted for personal use, including property purchases by trustees and their families. Instead of enhancing educational infrastructure, these funds were misused, violating the society's purpose and triggering a “specified violation” under Section 12AB(4)(i) of the Income Tax Act, justifying exemption cancellation. Trustees inconsistently claimed the cash as hostel or advance tuition fees but failed to provide evidence, reinforcing the conclusion that funds were diverted for personal gain*

*(c) The assessee society has claimed that the excess fee collected is in respect of hostel facilities and advance tuition fees. However, despite multiple requests, the society failed to produce any documentary evidence such as lease agreements, invoices, or expenditure records that substantiate the provision of hostel facilities. No financial documents or bills relating to hostel maintenance (e.g., electricity bills, water bills, maintenance contracts, or agreements with hostel service providers) were produced to corroborate the claim that the excess fee was used to finance hostel related services. The AO has rejected the claim of hostel business of the assessee in the assessment orders of the trustees. Further to protect interest of revenue, AO has added the income estimated in case of Society, in hands of the trustees **protectively**. Thus, the above argument that AO has accepted in individual hands is misleading.*

*(d) An independent inquiry was conducted, during which notices under Section 133(6) were issued on a test-check basis to students. However, no response was received at the office of the undersigned. The student may have refrained from raising concerns due to fear of repercussions. Moreover, the substantial evidence gathered during the search operation cannot be discounted merely on the basis of these limited replies. Due to time constraints, the notices under Section 133(6) were issued to only a select few students, and therefore, the information obtained from this*

*small sample is insufficient to counterbalance the overwhelming evidence collected during the search.*

*(e) In view of these findings, it is evident that seized evidence clearly demonstrates non-compliance with the prescribed fee structure and accounting requirements, thereby justifying the cancellation of the society's registration under Section 12A/12AA/12AB.*

*(f) The assessee's claim that excess fees were personal receipts of trustees, not trust funds, is unsubstantiated. The noble intent of education does not exempt compliance with the Income Tax Act, 1961. No evidence was provided to distinguish trustees' private business from the trust's educational activities. If no extra fees were collected, transparency in financial statements should not be an issue. The funds were generated using the trust's infrastructure and reputation, making them trust income. The argument that unrecorded funds do not violate tax laws is misleading and untenable*

***(ii) Diversion of funds for personal use of trustees.***

*(a) During the search and post-search proceedings revealed that substantial sums of cash were found at various locations—including residential premises and bank lockers—associated with the trustees. The cash seized from various premises attributed to Marri Rajashekhar Reddy is as under:*

<i>Sl.No.</i>	<i>Premise at which cash was found and seized</i>	<i>Amount of cash found and seized</i>
<i>1</i>	<i>Laxmi Narasimha Reddy Nimma</i>	<b><i>Rs.3,40,51,700/-</i></b>
<i>2</i>	<i>Marri Rajashekhar Reddy</i>	<b><i>Rs.4,72,63,910/-</i></b>

*The seized cash was not recorded in the society's official accounts, and its presence strongly suggests diversion for personal use by the trustees.*

*(b) This diversion of funds contravenes the core principle that all income or receipts of a charitable institution should be applied solely for the purposes for which the institution was formed. The society's objective is to provide education on a no-profit basis, yet significant unaccounted funds were diverted for personal use, including property purchases by trustees and their families. Instead of enhancing educational infrastructure, these funds were misused, violating the society's purpose and triggering a "specified violation" under Section 12AB(4)(i) of the Income Tax Act, justifying exemption cancellation. Trustees inconsistently claimed the cash as hostel or advance tuition fees but failed to provide*

*evidence, reinforcing the conclusion that funds were diverted for personal gain*

***(iii) Violation of Telangana Educational Institutions (regulation of admissions and prohibition of capital fee) Act 1983.***

*(a) The Telangana Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 clearly prohibits the collection of any fee in excess of the amount prescribed by the Government Order. The evidence from the seized material unequivocally shows that the fee collected from management quota students exceeds these limits, regardless of any justification offered.*

*(b) The assessee society contends that its admission process is conducted strictly in accordance with the guidelines issued by the Telangana Government, including the split between convener quota and management quota. However, even if the admission process is in line with the prescribed guidelines, the recorded fee structures still indicate a collection of amounts beyond what is allowed. This discrepancy points to a fundamental flaw in the fee collection mechanism, which cannot be justified merely by the method of student selection or the categorization of seats.*

*(c) The society's explanation that the lump-sum fee recorded in the admission forms comprises both tuition and hostel fees is not substantiated by any detailed breakup or supporting documentation. There is no evidence to show that the portion of the fee attributable to hostel facilities has been separately calculated, approved by a competent authority, or subsequently utilized in a manner consistent with the trust's objectives. As such, the presentation of the fee as a lump sum without clear demarcation is tantamount to a misrepresentation of the actual fee components, which in turn constitutes a violation of the prescribed regulatory norms.*

*(d) The primary purpose behind setting a cap on tuition fees is to ensure that educational institutions remain accessible and do not exploit students by demanding exorbitant fees. The evidence of fee collection in excess of the government prescribed limit not only violates the law but also undermines the social objective of promoting equitable access to education.*

*This failure to adhere to the prescribed fee limits reflects a deviation from the core objectives for which the society was established, thereby justifying the withdrawal of its exemption status.*

***(iv) Violations of the objectives of society***

*(a) The memorandum of the society clearly states that its funds are to be applied exclusively for educational purposes, without any profit motive. The diversion of funds—whether through unaccounted excess fee receipts or the misuse of cash for personal gain—constitutes a clear deviation from these stated objectives. The evidence shows that rather than reinvesting surplus funds in educational infrastructure or student welfare, the society’s trustees have, in several instances, diverted these funds for personal or non-charitable purposes.*

*(b) A charitable institution is expected to uphold the highest standards of financial integrity and accountability, ensuring that every rupee received is used in furtherance of its stated objectives. The repeated lapses in proper record-keeping, the ambiguous nature of fee collection, and the clear diversion of funds all serve to erode public confidence in the society’s commitment to its charitable purposes. From a policy perspective, granting tax-exempt status to an institution that fails to demonstrate a genuine commitment to its stated educational objectives is contrary to the public interest.*

*(c) The society’s financial statements, as filed with the Income Tax Department, do not reconcile with the evidence obtained during the search and post-search proceedings. The discrepancies between the reported figures and the amounts indicated in the seized documents suggest that the society has either under reported its income or misclassified certain receipts and these inconsistencies further strengthen the finding that the society is not operating in accordance with its stated charitable objectives and is therefore not entitled to exemption.*

*6. In view of the foregoing, it is evident that the assessee society engaged in collection of unaccounted capitation fees, failed to maintain proper books of account and misrepresented actual fee collections. The society’s core objective is providing educational relief and as per elaborate discussion made above, excess fee collected in cash were omitted from the assessee society’s financial records and thereby following specified violations occurred during the previous year relevant to the A.Y 2022-2023 :*

- 1. The income derived from property held under trust, wholly or in part has been applied, other than for the objects of the trust or institution*
- 2. The activity being carried out by the trust or institution is not being carried out in accordance with all or any of the conditions subject to which registration was granted to Society.*

*7. In view of the above and after careful consideration of the facts and circumstances of the case and taking into cognizance the findings of the search and post search enquiries , it is found that there are occurrences of the above specified violations during the previous year relevant to A.Y 2022-2023 as defined in explanation to section 12AB(4) of the Act warranting cancellation of registration granted to the assessee society u/s 12AB(4)(ii) of the Act and hence by virtue of powers vested in me u/s 12AB(4)(ii) of the Act, the registration granted vide **URN No. AAAAC7790AE20211 dtd 05.04.2022** is hereby cancelled wef A.Y 2022-2023 with all attendant consequences including the invocation of the provisions of section 115 TD of I.T.Act, 1961.”*

11. Aggrieved by the order of the learned PCIT, Central, the assessee society is now, in appeal before the Tribunal.

12. C.A. Shri C. Maheswar Reddy, learned counsel for the assessee along with C.A. Shri K.C. Devadas, submitted that the Ld. PCIT (Central) erred in cancelling registration of the appellant society u/s 12AB(4)(ii) of the Act, on the ground that conditions precedent for invoking powers for cancellation of registration are not satisfied. The learned counsel for the assessee further referring to the Show Cause Notice and subsequent order passed by the Ld. PCIT (Central) submitted that the PCIT (Central) invoked jurisdiction for cancellation of the registration of society u/s 12AB(4) of the Act, on the basis of a reference received from the A.O. i.e. DCIT, Central Circle 2(1), Hyderabad, and on the basis of reference issued a Show Cause Notice for cancellation of registration on the ground that specified violations referred to under sub-section 4 of Section 12AB of the Act, and more particularly on the issue of diversion of income from property held under trust, wholly or in part has been applied, other than for the

objects of the trust or institution and activity being carried out by the trust or institution is not genuine or is not being carried out in accordance with all or any of the conditions subject to which registration is granted to the appellant society. The Ld. PCIT (Central) has reached to the above conclusion on the basis of search conducted in the case of appellant society and other group societies and recovery of certain materials in the form of admission form of students, excel sheets, daily sheets etc. and came to the conclusion that the appellant society is collecting fee in excess of the prescribed fee fixed by the state government or the regulatory authorities for admission of students into various courses. The Ld. PCIT (Central) has also observed that the appellant society is not maintaining regular books of accounts and books of accounts not available at the time of search. Therefore, opined that there existed one or more specified violations referred to u/s 12AB(4)(ii) and Explanation thereon which warrants cancellation of registration of the society. The learned counsel for the assessee referring to the above observation of Ld. PCIT (Central) submitted that the assessee has not collecting excess fee as claimed by the Ld. PCIT (Central), which is evident from various evidences filed in the form of the so called material relied upon by the Ld. PCIT (Central), including relevant admission forms of students and confirmations from various students indicating there was no capitation fee/donation for admitting students in the college run by the society. The appellant society has also maintained books of accounts and also filed return of income for

all assessment years along with relevant audit reports on or before the due date provided u/s 139(1) of the Act. Therefore, the allegation of the Ld. PCIT (Central) that conditions precedent for cancellation of registration are satisfied, is baseless and not on the basis of any evidences found during the course of search.

13. CA, C. Maheswar Reddy along with CA KC Devadas, Learned Counsel for the appellant society, submitted that, appellant society is running the educational institutions on independent basis and the trustees/management of the society are not related in the affairs of society in running the educational institutions. Further, the Assessing Officer completed assessment by treating the receipts as "Protective" in the hands of individual trustee and that, the protective assessments are only applicable where the ownership of income is uncertain. Therefore, it was inappropriate for the PCIT (Central) to initiate cancellation proceedings against the society based on mere suspicion, especially when ownership was still in question. Further, the learned PCIT-Central failed to appreciate the fact that, the amount is related to the individual trustees who are running the hostels and duly disclosed the receipts in their returns of income and paid the taxes. Therefore, cancellation of registration on the basis of assessing income of individual trustees in the hands of the Society is bad in law. Further, with respect to diversion of funds and excess fee collections, do not form part of the Society as the same does not belong to the Society and the Ld. PCIT (Central) ought not to have strongly relied on the statements recorded during search, without

appreciating fact that, the statements recorded were subsequently retracted. Further, the Ld. PCIT (Central) has also overlooked the confirmations issued by students who categorically denied payment of any fee amounts over and above the prescribed fee to the society. Similarly, the Ld. PCIT (Central) has also not take into account the confirmations of the students who categorically confirmed that, they have paid towards hostel fees only and not for any donation/capitation fees, wherein the hostel fees are already declared by the trustees in their individual hands in their respective returns of income. Further, the assessment proceeding of search and seizure action has not yet reached finality and hence the action of cancellation of registration by the Ld. PCIT (Central) is a premature action, in the absence of any assessment proceeding being concluded. The Learned Counsel for the Assessee further submitted that, since there were no violations made by the assessee society in achieving the object of promoting the education, no objections were raised by the approving authorities i.e. UGC or the AICTE for violation of such objects. The ld. Counsel for the assessee further submitted that with regard to not maintaining proper books of accounts and no such books have been found during at the place of business of the assessee society, the assessee society has been maintaining proper set of books of accounts, which are duly audited and filed along with return of income being filed year on year within the due date as per the provisions of Sec.139 of the Income Tax Act, 1961. Learned Counsel for the Assessee submitted that, in case of any of

violations by the Members/Trustees, the Assessee-Society is not responsible and as per the provisions of the Income Tax Act, if any, unaccounted amount or misappropriate funds are unearthed during the course of search, in the hands of individual Members, they alone are responsible, but, not the Assessee Society. Further, the Ld. PCIT (Central) has also failed to appreciate that, the power to cancel registration under Section 12AB(4) of the Income Tax Act, 1961 is vested exclusively with the Principal Commissioner/Commissioner of Income Tax (Exemption) vide CBDT Notification and the exercise of such powers by the Ld. PCIT/Respondent is without jurisdiction and also contrary to the provisions of Section 119 of the Act. Learned counsel for the Assessee, therefore, submitted that, the Ld. PCIT (Central) without appreciating the submissions of the assessee society and in absence of any complaint either from student community or from Approving Authority by the Government, cancelled the registration of the assessee society, which is not in accordance with law and, therefore, pleaded that the orders of the Ld. PCIT (Central) be set-aside in the interest of justice.

14. The learned counsel for the appellant society further submits that reference made by the A.O. under 2<sup>nd</sup> proviso to Section 143(3) of the Act for cancellation of registration of the society u/s 12AB(4)(ii) of the Act and further, the order passed by the Ld. PCIT (Central) cancelling registration of the society u/s 12AB(4)(ii) of the Act, is contrary to the provisions of the Act because, the A.O. initiated proceedings u/s 12AB(4) of the Act by a reference to the

Ld. PCIT (Central) without there being any pending proceedings for the assessment year under consideration. Further, there is no specified violations u/s 12AB(4) of the Act for A.Y. 2022-23 which lacks the jurisdiction for the Ld. PCIT (Central) to pass the impugned order u/s 12AB(4)(ii) of the Act, cancelling the registration of the appellant society with retrospective effect. The learned counsel for the appellant society referring to the 2<sup>nd</sup> proviso to Section 143(3) of the Act which was inserted w.e.f. 01.04.2022 by the Finance Act, 2022 submitted that the 2<sup>nd</sup> proviso has been inserted by the Finance Act, 2022 w.e.f. 01.04.2022 enabling the A.O. to send a reference to the Ld. PCIT (Central) for cancellation of the registration of the society or institution upon the satisfaction of the conditions that the activities of the trust and institution are not being carried out in accordance with all or any of the conditions subject to which such institutions or society was approved. Further, a similar amendment has been made to Section 12AB(4) of the Act, by the Finance Act, 2022 w.e.f 01.04.2022 where registration or provisional registration of a trust or an institution has been granted u/s 12AA of the Act, as the case may be and subsequently, the Pr.CIT or Commissioner has noticed occurrence of one or more specified violations during any previous year or the Pr.CIT or Commissioner has received a reference from the A.O. under the 2<sup>nd</sup> provision to Section 143(3) of the Act for any previous year, then the Pr.CIT or Commissioner shall call for such document or information from the trust or institution or make

such enquiry, as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violations and pass an order in writing cancelling the registration of any such trust or institution after affording a reasonable opportunity of being heard to the trust or institution. The said amendment has been made applicable w.e.f. 01.04.2022 relevant assessment year 2023-24 and therefore, application of the said amended provisions retrospectively for the assessment year under consideration is incorrect. In this regard, he relied upon certain judicial precedents, including the decision of ITAT, Delhi Bench in the case of Human Welfare Foundation Vs. DCIT (Exemptions) (2025) 174 Taxmann.com 650 and decision of ITAT Bangalore Bench in the case of Amala Jyothi Vidhya Kendra Trust Vs. DCIT (Central), (2024) 162 Taxmnn.com and The Srinivasa Educational Charitable Trust Vs. DCIT (Central) (2025) 173 Taxmann.com 577, Bangalore Tribunal.

15. Ms. U. Mini Chandran, learned CIT-DR for the Revenue, on the other hand, supporting the Order of the learned PCIT-Central submitted that, the seized material reveal fee packages exceeding government limits, with lump-sum tuition fees lacking clear bifurcation from ancillary charges. Further, the assessee's claim of compliance to Government norms lacks merit, as students may not want confrontation with the institution and hence may not complain. Further, during the course of searches at the colleges and residential premises of the Trustees, no documentary evidence supporting the claim that the Trustees, in their

individual capacities, provided hostel facilities to management quota students was found. Additionally, in statements recorded at the time of the search, none of the Trustees mentioned providing hostel facilities. Hence, the learned PCIT, Central has rightly considered the claim of the Trustees that they are providing hostel facility to the students, as an afterthought and designed to camouflage unaccounted cash collections. Further, the Trustee/Member never disclosed any hostel business in its original ITR nor was such income classified as business income before the search. The Trustee/Members declared the hostel fees only after post-search and claimed that, hostel fees were collected in an individual capacity and subsequently offered as business income under Section 148, instead of being voluntarily declared under Section 139 of the Income Tax Act, 1961. The learned CIT-DR, therefore, submitted that, the learned PCIT, Central has rightly confirmed that, this explanation is an attempt to legitimize the excess fees collected in cash and a clear indication of afterthought on part of the assessee. The other contention of the assessee that, admissions were conducted per Government norms and that no student complained of malpractices, learned CIT-DR submitted that, Government recognition of admissions does not automatically validate the fee collection method. The learned CIT-DR further drew the attention of the Bench that, the Assessing Officer has rejected the claim of hostel business of the trustee/member in the assessment orders of the trustees and in order to protect interest of revenue, the Assessing Officer has

added the income in case of Society on substantive basis, and in hands of the trustees on protective basis. Thus, the argument of the assessee that, the Assessing Officer has accepted in individual hands is misleading. Further, the burden of proof lies with the assessee to justify compliance. The documented evidence, including fee collection records, seized cash, and trustee statements and statement of various officials working in colleges, collectively establish non-compliance, warranting cancellation under Section 12A/12AA/12AB of the Income Tax Act, 1961. Furthermore, the unaccounted cash was discovered at the premises of trustees and their associates, which directly links the funds recorded in the diary to the excess fee collections by the society. The absence of a direct mention of the society's name does not negate the circumstantial and corroborative evidence that demonstrates the connection between these funds and the trust's financial mismanagement. The learned CIT-DR submitted that, Trustees' claims that the cash receipts were from personal businesses emerged only after search proceedings, indicating an afterthought rather than an established financial practice. Further, the Trustees failure to disclose these alleged earnings in prior tax filings undermines the credibility of their claims. The learned CIT-DR accordingly submitted that, the society has failed to adhere to its stated objectives. The institution has engaged in the collection of unaccounted capitation fees, failed to maintain proper books of accounts, and misrepresented actual fee collections and as such, these violations indicate significant non-

compliance with the provisions of the Act. Therefore, the learned CIT-DR submitted that, the learned PCIT, Central, after taking into cognizance the findings of the search and post search enquiries, rightly noted that, there are specified violations during the impugned assessment year 2022-23 and, therefore, the reasons given by the learned PCIT-Central for cancellation of registration under Section 12AB(4)(ii) of the Income Tax Act, 1961, is based on appreciation of relevant facts and findings and thus, the arguments of the appellant that, the allegation of the learned PCIT-Central is only on suspicion and surmises manner without there being any evidence is devoid of merits and cannot be accepted. Therefore, she submitted that, the Order of the learned PCIT-Central should be upheld.

16. We have heard both parties, perused the material on record and had gone through the orders of the authorities below. We have also carefully considered the relevant show-cause notices issued by the Ld. PCIT (Central) under Section 12AB(4)(i) of the Act, dated 25.09.2024, and subsequent order passed under Section 12AB(4)(ii) of the Act, dated 21-03-2025. The Ld. PCIT (Central) cancelled the registration granted to the Appellant Society under Section 12AA of the Act, by virtue of powers vested with him under Section 12AB(4) of the Act for occurrence of the specified violations during the previous year relevant to A.Y. 2022-23 as defined in the Explanation to Section 12AB(4) of the Act, 1961. The sole basis for the Ld. PCIT (Central) to invoke powers under Section 12AB(4)(ii) of the Act is a reference received from

the A.O., i.e., DCIT, Central Circle-2(1), Hyderabad under second proviso to Section 143(3) of the Act, for cancellation of registration of the Society granted under Section 12AA of the Act for occurrence of specified violations referred to under Section 12AB(4) and the Explanation provided thereon. The triggering point for reference by the A.O. to the Ld. PCIT (Central) for cancellation of registration of the Trust is a search and seizure operation conducted under Section 132 of the Act in the case of the Appellant Society on 22-11-2022, and consequent seizure of certain material, including admission forms of the institution, daily statements, excel sheets, etc. The Ld. PCIT (Central) observed that the seized documents reveal collecting fee over and above the maximum fee fixed by the Government, and fee only to the extent prescribed by the Government collected in the form of cash was deposited in the bank account of the respective institutions and the same were shown as receipts in the financial statements of the society. Further, the excess fee (donations/capitation fee) collected, over and above the prescribed fee by the college in the form of cash was never brought into the books of account of the appellant society. The Ld. PCIT (Central) further observed that the appellant society did not maintain proper books of account and no books of account were found at the registered address of the appellant society at the time of search. Therefore, cancelled registration granted under Section 12AA of the Act by virtue of powers vested with him under Section 12AB(4)(ii) of the Act, 1961 for A.Y. 2022-23. Therefore, it is necessary for us to

examine the reasons given by the Ld. PCIT (Central) for cancellation of registration of the appellant society under Section 12AB(4)(ii) of the Act, in light of the objects of the appellant society, activities carried out by the appellant society for the impugned assessment year, and the provisions of Section 12AB(4) of the Income Tax Act, 1961.

17. There is no dispute with regard to the fact that the appellant society has been formed on 22.10.2009 with the main object of promoting moral and cultural traditions of secular India through imparting education to children's / students in the Educational Schools, Colleges, Institutions, to promote the study of science, to establish nursery, degree engineering & management colleges, working towards protection of environment, imparting education to children/students in the Educational Schools, Colleges, Institutions etc. In pursuance of its objectives, the appellant society has established an educational institution under the name of "CMR Engineering Educational Society" for providing education to students. The institutions run by the appellant society have been recognized by the Government of Telangana, Jawaharlal Nehru Technological University, Hyderabad, and the All India Council for Technical Education, New Delhi, and the said approval granted by various authorities was in operation for the impugned assessment year, which is evident from relevant provisions and certificates furnished by the appellant society, which were found in the form of Paper Book filed by the appellant society. The appellant society is also a part of Malla Reddy Group of

Institutions, which runs a number of institutions for providing technical, medical, and professional education to various students and as claimed by the learned counsel for the appellant society, about 80,000 students are studying in various institutions run by the appellant society and other associated societies of the Group. The appellant society has been granted registration under Section 12AA of the Act on 21.12.2011 by the CIT (Exemptions), and the same has been extended/renewed from time to time on an application made by the appellant. Further, the appellant society had also obtained provisional registration as per the amended provisions of Section 12AA by the Finance Act, 2022, and the Department has granted provisional registration in Form No. 10AC for a period of 5 years, by the order dated 05.04.2022 with effect from A.Y. 2022-23 to A.Y. 2026-27. Further, admissions to technical and medical education in the State of Telangana is governed by the relevant admission test conducted by the State and the National Medical Council for admissions to medical courses. The appellant society is also governed by relevant regulatory requirements for conducting examinations and admitting students to various courses, including the admissions to Malla Reddy Institute of Technology. In other words, for the assessment year under consideration, the admissions to Malla Reddy Group of Institutions is through proper admission mechanism in place as provided by the State Government for admission to professional courses and through common counselling. These facts are undisputed by the Revenue. In fact,

there is no finding from the Ld. PCIT (Central) on the activities carried out by the appellant society insofar as running colleges in the name of “CMR Engineering College” and admission of students to said institution for the year under consideration, including any violations in the admission process conducted by the appellant society for the year under consideration. Therefore, it is necessary for us to examine the order passed by the Ld. PCIT (Central) under Section 12AB(4) of the Act, in light of the above facts.

18. The Ld. PCIT (Central) cancelled the registration granted to the appellant society under Section 12AA of the Act by virtue of powers vested under Section 12AB(4) of the Act for occurrence of specified violations referred to in the Explanation to Section 12AB(4) of the Income Tax Act, 1961. Therefore, it is necessary for us to reproduce the relevant provisions of Section 12AB(4) and the Explanation provided thereof.

*"12AB. Procedure for fresh registration.—(1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—*

- (a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;*
- (b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—*
  - (i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—*
    - (A) the genuineness of activities of the trust or institution; and*
    - (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of*

*achieving its objects; and*

- (ii) *after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (i),—*
- (A) *pass an order in writing registering the trust or institution for a period of five years;*
- (B) *if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;*
- (c) *where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought,*
- and send a copy of such order to the trust or institution.*
- (2) *All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be an application made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.*
- (3) *The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.*
- (4) *Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.*
- (5) *Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that—*
- (a) *the activities of the trust or the institution are being carried out in a manner that the provisions of sections 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; or*

- (b) *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,*

*then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of 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 philanthropic or charitable purpose created or established **after the commencement of this Act**, has applied any part of its income for the benefit of any particular religious community or caste; or*
- (e) *any activity being carried out by the trust or institution —*
- (i) *is not genuine; or*
- (ii) *is not being carried out in accordance with all or any of the conditions subject to which it was registered; or*
- (f) *the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality; or*
- (g) *the application referred to in clause (ac) of sub-section (1) of section 12A **is not complete or it contains false or incorrect information.***

19. The provisions of sub-section (4) of Section 12AB of the Act have been amended by the Finance Act, 2022, with effect from 01.04.2022. As per the provisions of Section 12AB(4), the

provisional registration of a trust or institution has been granted under (a) or (b) or (c) of sub-section (1) or clause (b) of sub-section (1) of Section 12AA of the Act, as the case may be, and subsequently, the Pr.CIT or CIT has noticed the occurrence of one or more specified violations during any previous year or a reference has been received from the A.O. under the 2<sup>nd</sup> Proviso to Section 143(3) of the Act, for any previous year, or 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 Pr.CIT or CIT calls for such documents or information from the trust or institution or makes such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation and pass an order in writing cancelling the registration of such trust or institution, or pass an order in writing refusing cancellation of the registration of trust or institution, if he is not satisfied about the occurrence of one or more specified violations after affording a reasonable opportunity of being heard to the trust or institution. For the purpose of sub-section (4), the “specified violation” has been defined, which includes diversion of income derived from property held under trust, wholly or in part for charitable or religious purpose other than for the objects of the trust or institution, or any activity being carried out by the trust or institution is not genuine or is not being carried out in accordance with all or any of the conditions subject to which it was registered.

20. In the present case, the Ld. PCIT (Central) invoked Clauses (a) and (e) of the Explanation to Section 12AB(4) of the Act. Before amendment by the Finance Act, 2022, w.e.f. 01.04.2022. sub-sections (4) and (5) deal with cancellation of registration, where the registration of a trust or institution has been granted under Section 12AA, and subsequently, the Pr.CIT or Commissioner is satisfied that the activities of such trust or institution are not genuine and 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. In other words, as per the un-amended provisions of Section 12AB(4) and Section 12AB(5), applicable up to 31.03.2022, the Pr.CIT or Commissioner shall cancel the registration of any trust or institution granted under Section 12AA of the Act, if the activities of the 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. Only after the insertion of amended provisions by the Finance Act, 2022 w.e.f. 01.04.2022, the “specified violations” has been defined so as to invoke cancellation powers under Section 12AB(4) of the Act. In other words, before the amendment of Sections 12AB(4) and (5), it is only upon satisfying that the activities of the trust are not genuine then the Principal CIT or Commissioner shall cancel the registration of any trust or institution, however only after amendment to provisions of Sections 12AB(4) and (5), it should

be only an occurrence of specified violations during any previous year, cancellation of trust or institution can be made in terms of Section 12AB(4)(ii) of the Income Tax Act, 1961. Therefore, from the above provisions of Section 12AB(4) and Section 12AB(5) of the Act, it is undisputedly clear that the basic purpose of Section 12AB(4) is to check misuse of exemption under the pretext of carrying out charitable activities when the same are not so. Therefore, it is necessary for the Principal CIT to make out a clear case for exercising powers under Section 12AB(4) of the Act, so as to cancel the registration under Section 12AB(4)(ii) of the Income Tax Act, 1961 and such powers can be exercised only upon satisfying the occurrence of one or more of the specified violations referred to in the Explanation under Section 12AB(4) of the Act. In absence of any occurrence of one or more specified violations, there is no power to the Pr.CIT to cancel registration granted to the trust or institution under Section 12AB(4) of the Income Tax Act, 1961. The Pr. CIT, before invoking powers under Section 12AB(4) of the Act, must have an objective satisfaction that the trust has committed one or more specified violations, which renders the activities of the trust are not genuine, and further, said trust or institution does not exist solely for the purpose of charitable activities.

21. The Ld. PCIT (Central)'s approach for deciding the eligibility of registration of a trust should be different from the angle by which an assessment of an income is made by the A.O. What purpose does it serve to Revenue by cancelling a registration if the

activities are in public interest because in case of any breach of the laws the same is subject to tax under Sections 11 and 12. These two provisions and few other provisions are competent enough to tackle firmly a defaulter of philanthropic application of income or funds of the trust. The other adverse side of cancellation is that on refusal of registration the entire receipts shall be subject to assessment without granting benefit of ss. 11 and 12 to assess income which does not form part of total income though the factual position could be that major part might have been devoted towards achieving the objects i.e. imparting education, as in this case, but the AO shall be automatically forbidden to grant advantage of exemption consequent upon the cancellation, as is mandatory in statute. The outcome of the deliberation made in detail hereinabove is that mercurial opinion is to debar the Ld. PCIT (Central) to enter into the area of investigation of source of income and also application of income, so that the amount of correct exempt income shall not be prejudice. If the Ld. PCIT (Central) had an information of some wrongful means of earning fees in the form of a donation or if an information talks about excessive charging of fees, then, the Ld. PCIT (Central) in his right can pass on the information to the concerned office bearers working under the Regulatory bodies who control capitation fee menace. These authorities have enough power to deal with such nature of default, side by side the Ld. PCIT (Central) is to limit his jurisdiction within the ambit of provisions of the Act and expected to give a finding on facts that

either the objects are not for charitable purpose or not achieved as prescribed under law. However presently the situation is that the Revenue has not said about any immoral activity of the appellant or the collection of fees was by wrongful means. Prima facie no case was made out by the Ld. PCIT (Central) so as to even vaguely demonstrate that the activities of the appellant were not genuine or activity of imparting of education, for which the Society was created, were not carried out. Even the Ld. PCIT (Central) has failed to establish that any part of the income/receipt of the trust was in any manner misutilized by the trustees for their personal benefit i.e., not in fulfilment of the object of the trust. Otherwise also there are three ways to look at this problem. One is, that the donations are raised but not utilized for achieving the objects i.e., towards imparting education, then such an institution must bear the consequence of cancellation of registration since ipso facto infringed Sections 12AA/12AB condition. Second aspect is, that though the donations received are meant to fulfil the objects but together with fees have infringed Anti Capitation Prohibition Act; that comes within the clutches of that Act but definitely not under sec. 12AA/12AB provisions. The provisions of section 13(1) are thus not directly relevant in this regard. "Nothing contained in section 11 or section 12 shall operate so as to exclude, from the total income of the previous year, of the person which clearly envisages operation of section 11 or section 12 before the provisions of section 13 can be applied or invoked in a given case. It also shows that the said provisions can be applied or invoked

only at the time of computation of total income of the previous year of the person who is claiming exemption under section 11 or section 12. Both these situations contemplated in section 13 can arise only and only if registration under section 12A is granted to the said person. If the same is not granted and the person is refused registration under section 12A, he would not be entitled to claim any benefit available under section 11 or 12 and there will be no occasion to the Assessing Officer to invoke or apply section 13 in his case. This position would not only be contrary to the scheme of the Act as laid down in sections 11, 12, 12A, 12AA and 13 but the same may also cause prejudice/hardship to the persons in certain cases.

22. Coming back to the appellant's case and the reasons given by the Ld. PCIT (Central) for cancellation of registration of the appellant society under Section 12AB(4) of the Income Tax Act, 1961. The Ld. PCIT (Central) cancelled registration of the Society under Section 12AB(4)(ii) of the Act for occurrence of two specified violations referred to in Explanation under Section 12AB(4) of the Act. The first and foremost violation considered by the Ld. PCIT (Central) is income derived from property held under trust, wholly or in part, has been applied, other than for the objects of the trust or institution. Further, Ld. PCIT (Central) had also applied sub-clause(3) of specified violation, i.e. any activity being carried out by the trust or institution is not genuine or is not being carried out in accordance with all or any of the conditions subject to which the registration was granted to the Society. The Ld. PCIT

(Central) had discussed the above two specified violations in light of material found and seized during the course of search conducted in the case of the appellant and other associated trusts or institutions on 22-11-2022. Admittedly, during the course of search, material in the form of admission application forms, daily statements, excel sheets, etc. were found and seized and the same was confronted to the trustees of the appellant society and a statement on oath was recorded. The Ld. PCIT (Central), on the basis of incriminating material found during the course of search, coupled with statements recorded from various persons came to the conclusion that the appellant society was collecting fee over and above the maximum fee prescribed by the Government for admission of students to various technical courses and the excess fee collected from the students over and above the prescribed fee has been diverted to the trustees. The Ld. PCIT (Central) observed that as per the admission application forms, fee packages exceeding government limits with lump sum tuition fee lacking clear bifurcation from ancillary charges has been collected and said fee amount is in excess of the prescribed fee fixed by the government for admission of students to various courses.

23. We have gone through the relevant fee details and material including the admission forms of students which are available in Paper Book filed by the appellant society. On perusal of the relevant admission forms, we find that, in fee details column, total package of tuition fee had been referred for all four academic years. Further, in the very same admission form, the details of

amounts paid under various heads were also referred. Upon perusal of the relevant admission forms, we find that although the package amount referred to therein exceeding the government limits with lump sum tuition fee lacking clear bifurcation from ancillary charges, but the same has been explained by the trustees in the statement given u/s 132(4) of the Act on the date of search, and explained that the package amount received from the students includes tuition fee for all four academic years, miscellaneous fee, and hostel fee. Further, the managing trustee or member, Shri Marri Rajashekhar Reddy, has clearly bifurcated the amount attributable to tuition fee and the amount attributable to hostel fee and also quantified the amount of hostel fee collected from management quota students admitted to the institutions/colleges and claimed that the trustees/members had provided hostel facilities to the students outside the institution premises. Further, Shri Marri Rajashekhar Reddy had also quantified the amount attributable to hostel fee for each assessment year, and the same has been offered in their individual hands under the head "Income from Business or Profession," and also admitted and undisclosed income of Rs. 25 crores for these assessment years. Therefore, from the above, it is very clear that the date of search itself, the institution has made it very clear that it has collected tuition fee as prescribed by the government for admission of students for technical courses and no excess fee has been collected from any student in the form of donation/capitation fee. This fact is further strengthened by the statement record from

Shri Marri Rajashekhar Reddy and admission of income in his individual hands. It is also relevant to refer to the confirmation letters filed by various students in response to summons issued by the A.O. under Section 133(6), where no student has admitted that they have paid capitation fee or donation for getting admission to the college. Further, the appellant society had also obtained confirmations from various students, which are available in Paper Book No.1 filed by the appellant society, where none of the students has made any confession or admission that the institution has demanded capitation fee or donation and in fact, they have confirmed the package amount collected by the institution for giving admission, which includes tuition fee, miscellaneous fee, hostel fee, and transportation fee. Therefore, the allegation of the Ld. PCIT (Central) on the basis of admission forms, excel sheets, and statements recorded from various persons, that the appellant society has collected donation or capitation fee in excess of the prescribed fee fixed by the government for giving admission to students in violation of the Capitation Fee Act of the State Government, which falls under the specified violations referred to under Explanation to Section 12AB(4) of the Act, is devoid of merit. Although, the Ld. PCIT (Central) linked the excess fees claimed to have been collected by the appellant institution from the students and cash found and seized during the course of search in the premises of trustees or related persons, in our considered view, going by the facts on record, the cash found during the course of search has been

assessed in the hands of Marri Rajashekhar Reddy on substantive basis and further, in the hands of respective individuals on protective basis. Therefore, the allegation of Id. Pr. CIT, Central that the appellant had collected capitation fees for admitting students in only on suspicious and surmise manner without there being any materials which suggest collection of capitation fees. Further, the Id. PCIT does not made out case of violation of capitation fees act by brining on record any single instances of collection of capitation fees from students and subsequent penal action taken by the regulatory authorities. In absence of any material which suggest collection of capitation fees, mere observation on the basis of admission form and statement employees who admitted collection of capitation fees is only an attempt to bring the case within the ambit of specified violations. Therefore, we are of the considered view that the observations of the Ld. PCIT (Central) that the appellant society has collected capitation fee or donation in excess of prescribed fee from the students and the same has been applied other than for the objectives of the trust, is only on suspicion and surmises manner without there being any evidence, which suggest diversion of income to the benefit of the interested persons.

24. Further, insofar as the allegation of the Ld. PCIT (Central) that the appellant society collected capitation fee or donation contrary to the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, in our considered view, going by the confirmations filed by the students

in response to notice under Section 133(6) issued by the A.O. or Ld. PCIT (Central), there is no doubts of whatsoever with regard to the fact that the Ld. PCIT (Central) failed to prove existence of any donation or capitation fee for the impugned assessment year under consideration and further, there is no evidence with the Ld. PCIT (Central) to allege that the appellant society has collected capitation fee. If at all the allegation of the Ld. PCIT (Central) is correct that the appellant society is collecting capitation fee, then there should have been evidences including any complaints from the students or parents to the concerned authorities for collecting capitation fee in violation of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. In the present case, there is no single evidence of any complaint filed by the parent with the concerned authorities or an order passed by the authority imposing any penalties on the appellant society for collecting capitation fee or donation contrary to the Act. In absence of any evidences, the mere allegation that the appellant society is collecting capitation fee is only an attempt made by the Ld. PCIT (Central) to bring the case within the ambit of 'specified violation' and, thus, in our considered view on the basis of suspicions, surmises and conjectures observations, cancellation of registration of the trust cannot be made under Section 12AB(4) of the Act.

25. Further, although the Ld. PCIT (Central) linked the cash found during the course of search at the residential premises of Marri Rajashekar Reddy and others to collection of donation or

capitation fees, but the fact remains that the said transactions were finally assessed on substantive basis in the hands of Shri Marri Rajasekar Reddy and on protective basis in the hands of respective individuals where the cash was found and seized and therefore, from the above, it is undisputedly clear that the A.O. himself was on the doubt that whether the cash is belongs to the appellant Society or the individuals. In our considered view, it is a well-established principle of law by the various judicial pronouncements, including the decision of the Hon'ble Supreme Court in the case of Lalji Haridas Vs. ITO[1961] 43 ITR 387 (SC), that in order to make substantive and protective assessments there should be uncertainty of ownership of the funds as well as that such uncertainty must be safeguarded to prevent actual loss to the revenue. In the present case, going by the assessment made by the A.O. towards cash found during the course of search in the hands of individuals on substantive basis and on protective basis, it is very clear that the A.O. himself is not sure about ownership of cash to the appellant society. Therefore, on the basis of said protective assessment, the allegation of the Ld. PCIT (Central) that the funds of the appellant society have been utilized other than for the objects of the trust, is devoid of merit and cannot be accepted. Further, from the above conduct of the A.O., it is very clear that the A.O. has no incriminating material to prove that funds of the trust were diverted to the trustees other than for the objectives of the trust. This would lead to only two possibilities; (i)that unexplained cash has not been received by the appellant society

at all, and (ii) that the funds have been utilized for the purpose of the objectives of the trust. Reason is that if the funds have been diverted for the benefits of the trustees or not utilized for the objects of the trust, then funds would have been lying with the appellant society. During the course of search, only Rs.16.64 crores found at the various premises of the managing trustees and the same was seized. Even it did not belong to the appellant society as the same has been added in the hands of the individuals on substantive basis and on further protective basis. Therefore, the allegation of the Ld. PCIT (Central) that the income derived from the property held under trust, wholly or in part has been applied, other than for the objects of the trust, is totally misconceived and not based on any evidences found during the course of search.

26. Further, unquestionably the onus for proving the existence of factors calling for the cancellation of a trust or institution is on the Department rather than on the institution. In the present case, the Ld. PCIT (Central) has miserably failed to discharge such onus. No material has been brought on record by the Ld. PCIT (Central) to prove that the appellant society existed not for charitable purposes. Further, the Ld. PCIT (Central) has not been able to discharge the onus of showing as to how the conditions for cancellation of registration have been breached by the appellant society. The appellant society remained enjoying the status of charitable obligation and also carrying out its activities in accordance with its objects by imparting education which is

evident even during the course of such proceedings, where the recognition and approval granted to the appellant society was intact. The appellant society was running colleges in the name of “CMR Engineering College” and also providing education to thousands of students. Once the predominant object of the appellant society is imparting education, and further, the appellant society is continuing to carry on charitable activities, in our considered view, mere suspicion of certain violations, including, specified violations cannot be a reason for cancellation of registration of a trust under Section 12AB(4) of the Income Tax Act, 1961. In the present case, although there is no condition precedent for invoking provisions of Section 12AB(4) of the Act, the Ld. PCIT (Central), without any specified violations, simply cancelled registration of a trust under Section 12AB(4) of the Act, 1961. In our considered view, even in the case where there is breach of trust on the actions of the trustees for their personal benefits, still the registration a trust or society cannot be cancelled, as long as the trust or society is carrying out its activities in accordance with its main objects as held by ITAT Hyderabad Bench in the case of ACIT Vs. Sai Society in ITA No.1857/2022. This is further fortified by the decision of Hon’ble Supreme Court in the case of CIT vs. Kamla Town Trust [1996] 217 ITR 699 (SC). Therefore, in our considered view, unless the Ld. PCIT (Central) makes out a case that there exists one or more specified violations referred to under Section 12AB(4) and the Explanation provided therein, merely on suspicion and surmises

basis the registration granted under Section 12AA of the Act, cannot be cancelled. In our considered view, suspicion however strong cannot take the place of evidence as held by the Hon'ble Supreme Court in the case of Umacharan Shaw & Bros Vs. CIT(1959) 37 ITR 271(SC). A similar view has been taken by the CIT Vs. Daulat Ram Rawatmull (1973) 87 ITR 349 (SC), where it was held that the onus to prove that apparent is not real is on the person who claims it to be so. This view is fortified by the decision of Hon'ble Supreme Court in the case of Omar Salay Mohamed Sait vs. CIT (1959) 37 ITR 151(SC) where it was held that no addition can be made on the basis of suspicion and conjectures. Therefore, in our considered view, going by the facts available on record, the reasons given by the Ld. PCIT (Central) for cancellation of the registration of the Society under Section 12AB(4)(ii) of the Act, are not based on appraisal of relevant facts and existence of one or more specified violations referred to under Section 12AB(4) of the Act, but purely on suspicion and surmises, which is not permissible under law.

27. Coming back to another observation of the Ld. PCIT (Central). The ld. PCIT observed that the appellant Society is not maintaining proper books of accounts, and further, at the time of search, the books of accounts were not found at the registered address of the appellant society. We, once again, do not subscribe to the observations of the Ld. PCIT (Central) for the simple reason that, the appellant society is maintaining proper books of accounts for all these assessment years, which is evident from the

return of income filed under Section 139(1) of the Act, along with audit report filed in Form 10B of the Income Tax Rules, 1962. Further, the appellant society was regularly filing return of income under Section 139(1) of the Act, and also maintaining regular books of accounts for relevant assessment years. Further, for few assessment years, the case of the appellant was subjected to scrutiny assessment, where there was no adverse inference against the books of accounts maintained by the appellant society for any of the assessment years. Since the appellant society is maintaining regular books of accounts for all these assessment years, and also filing return of income under Section 139(1), without there being any lapse for any of the assessment years, in our considered view, the observations of the Ld. PCIT (Central) that the appellant society did not maintain proper books of accounts, and no books of accounts were found at the registered address of the appellant society, is also a pure guess work and not based on any evidence and thus, is devoid of merit and cannot be accepted. Further, the observations of Ld. PCIT (Central) with regard to occurrence of one or more specified violations referred to under Section 12AB(4)(ii) of the Act, on the basis of reference received from the A.O. in light of findings of the Department during the course of search with regard to violation of Capitation Fee Act, diversion of funds to the members of the society and activities of the society are not genuine or not carried out in accordance with all or any of the conditions on which the registration was granted to the appellant society is only an

allegation by the Ld. PCIT (Central), but not a conclusive proof of specified violations so as to invoke provisions of Section 12AB(4)(ii) of the Act, for cancellation of registration of the Society. Therefore, in our considered view, the Ld. PCIT (Central) is erred in cancelling the registration of the society u/s 12AB(4)(ii) of the Act.

28. The learned counsel for the appellant society relied upon the decision of the ITAT Bangalore Bench in the case of M/s. Devaraj Urs Educational Trust for Backwards Classes Vs. DCIT in ITA No.500 to 506/Bang/2020 for A.Y. 2010-11 to 2016-17, and argued that as long as the objects of the trust or society are charitable in nature, and it is continuing its activities in accordance with its objects, registration of trust u/s 12AA(4) of the Act on the ground of activities being carried out are not genuine and are not being carried out as per the terms of the registration of the trust or society cannot be cancelled. We, find that Coordinate Bench of ITAT, Bangalore had considered an identical issue of denial of exemption and assessment of income on the basis of incriminating found during the course of search and held that on the basis of dumb documents or non-speaking documents, additions cannot be made towards capitation fee. The Coordinate Bench further held that in order to invoke cancellation of registration, there must be some material, which suggest occurrence of one or more specified violations referred to under Section 12AB(4) of the Income Tax Act, 1961. A similar view has been taken by the ITAT, Hyderabad Benches in the case of M/s.

Prathima Educational Society Vs. Assistant Commissioner of Income Tax (Central), Hyderabad, in ITA No.720 of 2012 order dt.08.11.2023, wherein the Tribunal held that the evidence collected not speaking with regard to collection of cash of unaccounted capitation fee cannot be the reason to deny the exemption under Section 11 of the Act. The seized material on which reliance is placed by the revenue authorities is not conclusive evidence to sustain the additions and deny exemption under Section 11 of the Act.

29. The Hon'ble Bombay High Court in the case of Vanitha Vishram Society Vs. CIT (2005) 280 ITR 345 held that existing solely for educational purpose is sufficient for claiming exemption. The relevant portion of order is extracted below.

*“The intention of the Legislature appears to be to grant exemption to the institution, under section 10(22) if it solely exists for educational purposes and not for the purposes of profit. [Para 10]*

*The legal position is well established on the strength of the various decisions that if a trust or society exists solely for educational purposes and it runs an educational institution, its income will be the income of the educational institution and, therefore, exempted under section 10(22). The fact that the assessee had other objects will not disentitle it to the exemption so long as the activity carried on by it in that assessment year was that of running an educational institution and not for profit. [Para 21]*

*In the instant case, there was no dispute about the fact that the assessee-trust existed only for educational purposes, i.e., for running schools and not for the purposes of making profit. There was an integral unity between the trust and the school for the purposes of section 10(22). The amount invested belonged to the school. The school was not merely a building in which it was housed, or the equipment that was contained in it, but something more. It was an institution, and that institution belonged to the trust. In dealing with the question, whether the income was that of the school, the significance of the expression ‘any income of a university*

*or other educational institution' in section 10(22) had to be noticed. Both words 'any' and 'of' carry a definite meaning. It is not income from the educational institution that is exempted but any income of the educational institution. What appears to be relevant is that the income should reach the school to be utilised by it for educational purposes and not for the purposes of profit. [Para 22]*

*It is, thus, obvious that granting exemption to the income of the educational institutions is to enable such institutions to utilise the money available with them for the purpose of running the educational institutions. The source from which the money are received is of no consequence, what is relevant is the application of income. So long as the income of the institution, which solely exists for educational purpose and not for earning profit, is applied for the educational purpose, such income of the institution is exempted under section 10(22). [Para 24]*

*Therefore, the assessee was entitled to exemption under section 10(22) on interest earned on surplus funds of the school run by it.*

30. The ITAT, Pune bench in the case of Maharashtra Academy of Engineering Education Research Vs. CIT (2010)133 TTJ 706(Pune) held that if CIT had an information of wrongful means of earning fees in the form of donation or about excess charging of fees, the CIT can pass on the information to the concerned authority, but when there is no evidence of misutilisation of funds and the prescribed activity if continued to carried on by the assessee, then the CIT had no jurisdiction to cancel registration u/s 12AA(3). The relevant portion of order is extracted below.

*"In the recent past sub-section (3) was inserted in section 12AA with effect from 1-10-2004 which gives power of cancellation of registration to the CIT, if he finds that the activities are not genuine or not being carried out in accordance with the object of the trust. The need for the enactment had arisen due to belief of some quarter that in the absence of explicit law the CIT cannot exercise the power of cancellation of registration. To overcome this hurdle this sub-section is incorporated and now in operation. Naturally these powers are conferred with a view to ensure that if once a registration has been granted under section 12AA, a trust or institution may not take any such liberty of misuse of the registration*

or the provisions by going haywire rather furthering the objects of the trust or genuinely not pursuing the activities for which it was established. [Para 11.4] The most important feature of section 12AA is that this section has only laid down the procedure of registration and this section nowhere speaks that while considering the application of registration, the CIT shall also look into the procedure of earning of income and sources from where receipts are derived. The argument was, it also does not speak anywhere that while considering the registration the CIT shall also see the manner in which the receipts or the income is being spent by the trust. Various related provisions, the power of enquiry, in respect of sources of receipts and the utilization of income is entrusted in separate sections as already discussed ante. The language thus used in section 12AA only confines to enquire about the activities of the trust and its genuineness, which means, in consonance with the objects for which created and those objects as also activities should not be a camouflage but pure, sincere, charitable and for public utility at large. What is implicit is that the CIT has to sincerely examine that the objects as also the activities should not be prima facie against the basic structure for which beneficial law is made and also be not in conflict with the general public utility. Naturally an institution if established to carry out an illegal activity or activities are causing any type of nuisance not in the interest of the public at large should definitely lead to cancellation of registration. Therefore, this is the first requisite of the statute to mandate for the registration and in the absence of such registration disentitlement of exemption. So what is explicit is that though an institution may be doing charitable activities as prescribed but in the absence of registration cannot be entitled for the exemptions or benefits of sections 11 and 12. It is also explicit that registration ipso facto does not necessarily entitle an institution to get the receipts excluded from the income or exemption be granted automatically by just showing the registration certificate to the revenue authorities. [Para 11.5] Procedure of registration is a first step and a preliminary stage where the CIT shall restrict the enquiries as to whether the trust is actually and whole heartedly performing all the duties and activities for which it was created. On careful reading of this section it was gathered that at this initial stage there is no scope of any apprehension of misutilization of funds or to judge the taxability income. The scheme of the Act otherwise does not subscribe and allow a trust to take the benefit of the provisions of section 11 and 12 unless it establishes the prescribed utilization of the income even if at all he trust holds the registration in its hands. Therefore at the stage of granting registration the CIT is not expected to bother himself about the other provisions of the Act and supposed to confine himself to the procedure of registration as laid down therein. [Para 11.6] Another feature of the impugned order of the CIT is in fact bothering that nowhere he has taken any objection to the charitable and educational nature of the institution. In fact, the objects of the institution, as declared in the trust deed does reflect that all are

*philanthropic or benevolent in nature, precisely for the purpose of imparting education. Strange enough there is no finding recorded by the CIT contrary to this fact. Be that as it may, the real and the only substantial objection for refusal of registration was that the institution has collected donations thus adopted some wrong means of collection of fees. But whether at this preliminary stage he had the right to draw an adverse inference so as to refuse registration or alternatively confine himself to the enquiry about the objects and the activities of the trust as per the limits of the jurisdiction of section 12AA. Rather this is also not the case of the CIT that the institution is doing some other activity of earning profit other than the activity of running educational institutions. The established factual position is that the institution is not doing in any other activity except running educational institutions. In such circumstances, can one uphold the action of cancellation of registration? Answer is obvious no. [Para 11.7] As far as the objective of the appellant is concerned this is not the case of the revenue that the assessee was not imparting education. The term education means to teach subjects to students for the development of his mind and also to equip students to deal with reality. The training process is either theoretical or practical but student has to be taught the essentials of the selected subjects so as to develop his skill and knowledge for the subjects studied by him. The appellant institute, admittedly, fulfils the requirements of imparting formal education by a systematic teaching and instructions. Since the question-about the imparting of education has not been doubted or challenged by the revenue therefore, the impugned order passed by the respondent is unsustainable in law. Strange enough there is nothing on record to prove sightlessly that the purpose of imparting of education was not fulfilled by this institute thus the revenue department has hopelessly failed to establish that there was any illegal activity or infringement of any law so that to doubt the genuineness of the activities. [Para 11.11] The sine qua non for cancellation of registration are two conditions prescribed in section 12AA(3) needs to be satisfied are: (a) That activities of the trust/institution are not genuine. (b) That activities of the trust are not carried out in accordance with the objects of the trust/institution. Thus the findings of the CIT has not to be only conceptual or contextual but should be within the four corners of law so that not surpassing the power, as listed above, granted in sub-section (3) of section 12AA. But unfortunately the fallacy is writ large as gathered on perusing the impugned order. The CIT's approach for deciding the eligibility of registration of a trust should be different from the angle by which an assessment of an income is made by the AO. About the ramification if one approve the action of CIT because in that case it may adversely affect the imparting of education especially when the revenue has not made out a case that the very purpose for creation of the trust was defeated. Rather one wonders that what purpose does it serve to revenue by cancelling a registration if the activities are in public interest because in case of any*

*breach of the laws the same is subject to tax under sections 11 and 12. These two provisions and few other provisions are competent enough to tackle firmly a defaulter of philanthropic application of income or funds of the trust. The other adverse side of cancellation is that on refusal of registration the entire receipts shall be subject to assessment without granting benefit of section 11 and section 12 to assess income which do not form part of total income though the factual position could be that major part might have been devoted towards achieving the objects, i.e., imparting education, as in this case, but the AO shall be automatically forbidden to grant advantage of exemption consequent upon the cancellation as is mandatory in statute; relevant section already reproduced ante. The outcome of the deliberation made in detail hereinabove is that percurian opinion is to debar the CIT to enter into the area of investigation of source of income and also application of income, so that the amount of correct exempt income be not prejudged. [Para 11.12] The aspect of morality as touched by the CIT is appreciable. Every vigilant and law abiding citizen has to be fair in his conduct and should refrain from immoral activities. But existing blue laws are derived from the numerous extremely rigorous laws designed to regulate morals and conduct. These laws are enacted in such a fashion that if implemented correctly and efficiently then there is no scapegoat for an offender. One is tempted to write an idiomatic language due to the sensitivity of the issue, that a CIT cannot be allowed to hold a baton of morality in his hand to hit an immoral; but the statute has given him a flexible stick for inflicting tax on defaulter; that includes a trust or educational institution. The gist is that if the CIT had an information of some wrongful means of earning fees in the form of a donation or the information tells about excessive charging of fees; then the CIT in his rights can pass on the information to the concerned office bearers working under the Maharashtra Capitation Fees (Prohibition) Act. These authorities have enough power to deal with such nature of default, side by side the CIT is to limit his jurisdiction within the ambits of provisions of the Act and expected to give a finding on facts that either the objects are not for general public utility or not achieved as prescribed under law. However presently the situation is that the revenue has not said about any immoral activity of the appellant or the collection of fees was by wrongful means; hence deregistration sans the Tribunal's approval. [Para 11.13] Prima facie no case was made out by the CIT so as to even vaguely demonstrate that the activities of the appellant were not genuine or activity of imparting of education, for which the trust was created, were not carried out. Even the CIT has failed to establish that any part of the income/receipt of the trust was in any manner misutilized by the trustees for their personal benefit i.e., not in fulfillment of the object of the trust. Otherwise also there are three ways to look at this problem. One is, that the donations are raised but not utilized for achieving the objects, Le., towards imparting education; then such an institution must bear the consequence of cancellation of*

*registration since ipso facto infringed section 12AA(3) condition. Second aspect is, that though the donations received are meant to fulfill the objects but together with fees have infringed Anti Capitation Prohibition Act; then comes within the clutches of that Act but definitely not under section 12AA(3) provisions. The third aspect is, that the donation plus fees do not exceed the prescribed limit of Anti Capitation Fee Act i.e., five times the normal fees; further that no evidence of misutilization other than the prescribed activity then no action can be suggested under section 12AA(3). The Assessee's case falls under the third category. With the result, totality of the circumstances thus warrants, in the light of the foregoing discussion, not to endorse the view of the CIT; consequence there upon reverse those findings. The order of cancellation of registration is hereby revoked".*

31. The ITAT, Hyderabad bench in the case of ACIT vs. B. Srinivasa Rao (2014) 159 TTJ 483(Hyderabad), held that department can cancel registration granted to a society u/s 12AA when activities of trust are not genuine or activities of trust are not carried on in accordance with object of trust. The relevant portion of order is extracted below:

*"The provisions of section 12AA states that, the Department can cancel registration granted to a society under section 12AA if the activities of the trust are not genuine and the activities of the trust are not carried on in accordance with the object of the trust. [Para 32]*

*In the present case, the Commissioner is not alleging that the assessee is not pursuing object of imparting of education. It is an admitted fact that the assessee had been carrying on educational institution imparting medical education and it fulfilled requirement of imparting education and the question of imparting education by the assessee has not been doubted or challenged by the Department. Being so, on this reason, registration cannot be cancelled. [Para 33]*

*The Commissioner has relied on the certain materials to demonstrate that the activities of the trust are not being carried out in accordance with the object of the trust. He expressly referred to the seized material to hold that the assessee's activities cannot be said to be for charitable purpose. These materials are independently not corroborated. Collection of capitation fee by the assessee was made out on the basis of Excel sheets*

*found during the course of search. The Department is not conclusively sure whether the assessee has collected capitation fee or not so that it made assessment in the hands of the chairman, as well as the assessee trust. The cash found during the search action tallied with the books of account. The document relating to a parent cannot be relied as this was not subject-matter of cross-examination. Similarly, the evidence relating to another parent cannot be relied upon since he denied payment of any fees more than what was prescribed. He said that his son got admission in normal course. Similarly, in the case of another parent, the evidence is demolished by the assessee, that the details cannot be used against the assessee as the papers submitted to the assessee by the parents trust were for the purpose of facilitating the financial assistance from bank. Being so, the activities of the trust cannot be held as non-genuine or it can be said that the activities of the assessee are not being carried out in accordance with the object of the trust or institution. There cannot be any other legally sustainable reasons for cancelling or withdrawing the registration granted to the assessee. [Para 34]"*

32. The Hon'ble Karnataka High Court in the case of CIT. Vs. Fr. Mullers Charitable Institutions(2014) 363 ITR 230(Kar) held that in case of a charitable trust, it is only income from investment or deposit which has been made in violation of section 11(5) that is liable to be taxed and that violation under section 13(1)(d) does not tantamount to denial of exemption under section 11 on total income of assessee-trust. The SLP filed by the department before hon'ble Supreme Court, has been dismissed, therefore, no denial of exemption, if there is a violation.

33. The Hon'ble Allahabad High court, in the case of CIT vs. Shri Advait Ashram Society (2012) 28. Taxmann.com 18 (all) held that non filing of return of income for last several years cannot be a ground for declining registration u/s 12AA of the Act.

34. The Hon'ble Madras High court in the case of CIT vs. Sarvodaya Ilakiya Pannai (2012) ITR 300(Mad) held that once Commissioner grants registration to a trust under section 12AA(1)(b)(ii) after satisfying himself about activities of trust, such a registration cannot be cancelled by following very same provision of section 12AA(1)(b) to go into genuineness of activities of trust.

35. The ITAT, Ahmadabad in the case of Ajith Education Trust vs. CIT (2010) 143 TTJ 483 held that non maintenance and non filing of regular returns cannot be a ground for cancellation of registration. The relevant portion of order is extracted below.

*“The objects have explicitly stated that the trust was established for educational purposes. Nowhere in the order of the CIT there was an allegation that the trust was not running an educational institution. Therefore one has to examine the correctness of the cancellation of the registration in terms of the language of s. 12AA as prescribed in sub-s. (1) and particularly in cls. (a) and (b) of the section. So far as the running of the educational institution is concerned, even the AO while passing assessment orders for several years, has held that the trust is entitled for exemption under s. 10(23C)(iiiad). If the Revenue officer himself is qualifying this trust as an educational institution and then granting the said exemption, then as a result it was not justifiable on the part of the CIT to hold such a conflicting view, which can be said to be altogether contrary to the facts of the case. The allegation was that the books of account were not found in a proper manner. Because of the absence of the books of account, it was also doubted whether the educational fees received from the students was ever applied for the purpose of education. In the present case, the trust being an educational institution and undisputedly imparting education, therefore, it was not justifiable on the part of the CIT to deny the registration. Nevertheless, the application of income and the utilization of funds is always subject to scrutiny by the AO while assessing the income of the trust. It is therefore, clarified that merely by granting a registration under s. 12A/12AA a trust ipso facto is not entitled for the exemptions prescribed under ss. 11 and 12. Neither de jure nor de facto, i.e., neither in principle nor in practice, a trust can get exemption under ss. 11 and 12 merely on getting a registration under s. 12AA (in the past s. 12A). In the light of above discussion, the*

*cancellation of registration, on both the counts i.e., on merits as also on the legality of jurisdiction, was not in accordance of law.—Maharashtra Academy of Engineering & Educational Research (Maer) vs. CIT (2010) 36 DTR (Pune)(Trib) 321.”*

36. In the case of CIT vs. Sree Narayana Chandrika Trust 212 ITR 456, the Hon'ble Kerala High Court held that application of income for charitable purpose is sufficient for claiming exemption. Relevant portion of order is extracted below.

*“Section 10(22A) provides that in computing the total income of a previous year of any person, any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, shall not be included. This section is akin to section 10(22) which excludes from levy income of a University or other educational institution existing only for educational purposes and not for purpose of profit. From the memorandum explaining the provisions of the Finance Bill, 1970 introducing section 10(22A) and CBDT Circular F. No. 194/16-17 IT(A-I) it is manifest that the object was to exempt the income of hospitals and similar institutions from the levy of tax, even if any surplus was derived, provided the surplus was used for philanthropic purposes, which need not be medical purposes. In other words, what was intended was a benefit to hospitals and to trusts or societies running them, provided the institution was not one run for profit. On the strength of various decisions under section 10(22) which, as mentioned above, is analogous to section 10(22A) the position is well established that if a trust or society exists solely for educational purposes and it runs an educational institution, its income will be the income of the educational institution, and, therefore, exempt under section 10(22). The fact that the assessee had other objects, will not disentitle it to the exemption so long its the activity carried on by it was that of running an educational institution, and its activities were not for profit. The same ratio must apply to hospitals as well The trust which is running the hospital and is existing solely for that purpose falls within the purview of section 10(22A) with exemption for its income, if the other requirements of the section are satisfied. It should be treated as the hospital itself, as it existed solely for running of the hospital and not for any other purposes. In other words, the society cannot be dissociated from the hospital which is run by it. They have to be treated as one and the same.*

*As regards exemption of the income derived by the trust as a partner of the firms, it must be mentioned that if there is an integral unity between the trust and the hospital for purposes of section 10(22A), 44 Kunhitharuvai Memorial Charitable Trust as held above, the amount invested belongs to the hospital and the income derived on such investment is also that of the hospital. A hospital is not merely the building in which it is housed, or the equipments that are contained in it, but something more. It is an institution, and that institution belongs to the trust. In dealing with the question whether the income is that of the hospital, the significance of the expression 'any income of a hospital' in section 10(22A), has to be noted. Both the words 'any' and 'of' carry a meaning. It is not income from a hospital that is exempt but 'any income of hospital'. If the word had been 'from', the position would have been that the income should have been derived from the actual running of the hospital itself. What is relevant is that the income should reach the hospital to be utilised by it for philanthropic purposes and not for purposes of profit. The stress appears to be on the recipient of the income. If that is the hospital, that is the trust running it, section 10(22A) must apply. The emphasis is not on whether the income was derived from the educational institution, or hospital itself, but on the purpose for which the institution, trust or society was existing and utilising the income. Such an interpretation will subserve the object of the two provisions of clauses (22) and (22A) which appear to be to foster the growth of educational institutions and hospitals existing solely for such purposes and not for profit.*

*As regards exemption of the income of the assessee-trust for the years when the hospital was under construction, it was clear that the works relating to the hospital were started in the year 1973 though it became functional as a hospital only on 25-4-1978. All the activities in the meanwhile were geared to the establishment of the institution and its functioning as a hospital and, therefore, the income derived during the period was also the income of the hospital entitled to exemption. Adoption of any other view of the matter will be to syphon off the income required for the starting of a hospital by way of tax, thereby depleting the resources available to the institution, defeating the very object behind section 10(22A) for the years 1977-78 and 1979-80.*

*Therefore, the Tribunal was justified in holding that the assessee was entitled to exemption under section 10(22A)."*

37. The Hon'ble Karnataka High Court in the case of CIT vs. Islamic Academy of Higher Education (2015) 229 Taxmann. 274 held that where assessee trust was fulfilling its main object of

imparting education, registration of trust could not be cancelled on the basis that trustees were misappropriating trust funds. The Relevant portion of order is extracted below.

*“In the instant case, the material on record shows that the trust has established educational institution and imparting medical education. Every year, students are admitted. Huge investment is made for construction of buildings for housing the college, hostel and to provide other facilities to the students who are studying in the college. The college is recognized by the Medical Council of India, State of Karnataka and all other statutory authorities. Therefore, it cannot be said that the trust is not genuine. Admittedly, the students are being admitted every year. Students are studying in all courses. Thus the object of the constitution of the trust namely imparting of education is going on uninterruptedly. Therefore, it cannot be said that the activities of the trust are not being carried out in accordance with the objects of the trust. When the aforesaid two conditions are fully satisfied, on the ground that the trustees are misappropriating the funds of the trust the registration of the trust cannot be cancelled. If the trustees are misappropriating the funds, if they are maintaining false accounts, it is open to the authorities to deny the benefit under section 11, but that is not a ground for cancellation of registration itself. That is precisely what the Tribunal has held. Therefore, the substantial question of law is answered in favour of the assessee and against the revenue. [Para 8]”*

38. The ITAT, Hyderabad in the case of Vignana Jyothi vs. DIT(E), (2017) 81 taxmann.com 204, held that where assessee society was carrying on activity of imparting education, mere fact that it had collected donation from students at the time of admission would not result in invoking provisions of section 12AA(3) so as to cancel its registration. The relevant portion of order is extracted below.

*“As can be seen from the order, the DIT(E) based his conclusion on the basis of enquiry from four parents/relations in assessment proceedings concluded in the year 2007 for assessment year 2005 06 and in year 2008 for assessment year 2006-07. Even though those findings in assessments were not conclusive and matters were restored to Assessing Officer for further enquiry, no such enquiry was made as can be seen from the orders passed again on 31-03 2014 for the above years. These*

*orders at present are pending adjudication before Commissioner (Appeals). Thus, the order of DIT(E) is based on premature conclusions and the contention of revenue stating that the department has 'conclusively proved' the collection of capitation fee is devoid of any merit. [Para 10]*

*As can be seen from the facts, only four cases were examined and on the basis of that, all the donations received including from Members of Society were considered as capitation fees and were brought to tax. Assessee filed the letters from the above four persons that the donations are voluntary and no capitation fee was collected. No further enquiry was conducted in spite of remitting matter for examination of the same. Even though the matter is pending adjudication before the Commissioner (Appeals) in assessment proceedings, these four isolated instances which were relied on by Assessing Officer do not conclusively establish that the society has violated the objects for which it was established and registration framed so as to invoke provisions of section 12AA(3) to cancel registration. [Para 10.1]*

*The provision envisages that 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. Even though DIT(E) has used the above words in the order before cancelling the registration, there is no such finding that the activities are not genuine or are not being carried out in accordance with the objects. Assessee no doubt is running an educational institution and i.e., of charitable nature. Even though donations are collected, they are permitted by the Memorandum and as discussed above, permitted by the Statute also [Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983]. There are no complaint or proceedings that assessee was collecting any fees more than what was prescribed. There are no allegation that any of the society funds were being misused/diverted for any purpose other than for the objects of society. In view of the above, the provisions of section 12AA(3) were not satisfied so as to cancel the registration. [Para 13]*

*As stated earlier, there is no allegation that funds are being misused or diverted or assessee is not imparting education. The activities of the trust cannot be considered as not genuine. Further, the trust is spending the funds for fulfilling the objects of the trust for which it is formed. Therefore, twin conditions prescribed for cancellation of trust registration have not been fulfilled. It is open to the authorities to deny the benefit under section 11 but this cannot be a ground for cancellation of registration.”*

39. The Hon'ble Karnataka High Court in the case of DIT Vs. Garden City Educational Trust, 28 DTR (Kar) 139 held that "where there is no dispute in respect of the objects of the trust, that of imparting education and also when there is no dispute regarding the fact that the trust has actually imparted education and not carrying on any other activities, the trust is qualified for getting registration u/s. 12A as a charitable institution and the question regarding the application of funds and allowability of benefit of exemption U/ss. 11 & 12 are matters which are to be examined by the assessing authority at the time of assessment and not by the registering authority".

40. In this view of the matter and considering the facts and circumstances of the case and also by following the ratios of various judicial precedents, we are of the considered view that the conditions precedent for cancellation of registration granted to the appellant society under Section 12AA of the Act by virtue of powers conferred to the Ld. PCIT (Central) under Section 12AB(4)(ii) are not satisfied, inasmuch as the allegation of the Ld. PCIT (Central) that one or more specified violations occurred during the previous year relevant to the assessment year under consideration for invoking provisions under Section 12AB(4) of the Income Tax Act, is devoid of merit and cannot be accepted. Therefore, we are of the considered view that the order passed by the Ld. PCIT (Central) cancelling the registration of the Society granted under Section 12AA of the Act, by virtue of powers conferred under Section 12AB(4) and (5) of the Act, is illegal and

cannot be upheld, and thus, we quash the order passed by the Ld. PCIT (Central) cancelling registration of the Society under Section 12AB(4)(ii) of the Income Tax Act, 1961 and restore the registration of society u/s 12AA/12AB of the Act.

41. Coming back to legal grounds taken by the appellant society challenging the powers of the Ld. PCIT (Central), cancelling the registration of the trust under Section 12AB(4) of the Act prior to assessment year 2022-23.

42. We have heard both the parties and considered relevant arguments of the learned counsel for the appellant society and the Ld. CIT-DR present for the revenue, in the light of the provisions of Section 12AB(4) of the Income Tax Act, 1961, existed prior to 01-04-2022 and also as amended by the Finance Act, 2022 with effect from 01-04-2022. Although, the learned counsel for the assessee and the Ld. CIT-DR argued the issue at length in light of amended provisions of section 12AB(4) of the Act, along with rules of interpretation of taxing statutes, but in our considered view arguments of both sides becomes academic in nature because, on merits, we quashed the order passed by the ld. Pr. CIT (Central) u/s 12AB(4)(ii) of the Act, and restore registration of the Society u/s 12AA/12AB of the Income Tax Act, 1961. Thus, in our considered view, grounds taken by the appellant Society, challenging the powers of the ld. PCIT(Central), cancelling registration of the Trust with retrospective effect from Asst. Year 2022-23 on the basis amended provisions of section 12AB(4) of

the Act, by the Finance Act, 2022, w.e.f. 1-4-2022 has been dismissed as infructuous.

43. The appellant society had also, through ground nos.19 to 21, challenged the validity of the order passed by the Ld. PCIT (Central) u/s 12AB4(ii) of the Act, cancelling registration of the appellant society in light of Section 119 of the Income Tax Act, 1961 and argued that it is only the Ld. CIT (Exemptions), who is authorized to grant registration and also cancelled registration of any trust or institution, or society and thus, the order passed by the Ld. PCIT (Central) without such authority is invalid and void ab initio.

44. Although both parties argued the issue at length in light of relevant provisions of the Act along with certain judicial precedents, but in our considered view, the issue becomes academic in nature because the cancellation of registration of the appellant society has been dealt with by us on merits and the order passed by the Ld. PCIT (Central) under section 12AB(4)(ii) of the Act has been quashed. Therefore, we reject these ground nos.19 to 21 taken by the appellant society, as infructuous.

45. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 10.10.2025.

<b>Sd/-</b> श्री विजय पाल राव <b>(VIJAY PAL RAO)</b> <b>उपाध्यक्ष / VICE PRESIDENT</b>	<b>Sd/-</b> (मंजूनाथ जी) <b>(MANJUNATHA G.)</b> <b>लेखा सदस्य/ACCOUNTANT MEMBER</b>
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Hyderabad, dated 10.10.2025.

*TYNN/sps*

**आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	CMR Engineering Educational Society, C/o. B. Narsing Rao & Co. LLP, Plot No.554, Road No.92, MLA Colony, Jubilee Hills, Hyderabad. PIN – 500 096.
2.	राजस्व/ The Revenue	:	The DCIT, Central Circle-2(1), Aayakar Bhavan, Basheerbagh, HYDERABAD – 500 004. Telangana
3.	The Pr. CIT, Central Circle, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER