

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 688/JP/2019

Assessment Year:

M/s Wholesale Cloth Merchant Association, New Cloth Market, Kota.	बनाम Vs.	Pr.C.I.T. (Central), Jaipur (Rajasthan)
PAN No.: AAATW 0127 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Siddarth Ranka &
Shri Shravan Kr. Gupta (Advs)
राजस्व की ओर से / Revenue by : Shri Ambrish Bedi (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 14/10/2020
उदघोषणा की तारीख / Date of Pronouncement : 06/01/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. Pr.CIT(Central), Rajasthan, Jaipur dated 22/03/2019 passed U/s 12AA(3) and 12AA(4) of the Income Tax Act, 1961 (in short, the Act). Following grounds have been taken by the assessee:

- “1. That in the facts and in the circumstances of the case and in law, the Id Pr. CIT(Central), Rajasthan, Jaipur has grossly erred in cancelling the registration of the assessee appellant trust under Section 12A of the Act by invoking Section 12AA(4) of the Act w.e.f. 01/04/2013.
2. The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing.”

3. *In the facts and in the circumstances of the case and in law the penalty proceedings initiated u/s 271F, 271(1)(b), 271(1)(c) may kindly be deleted.*
4. *The petitioner craves the right to add, alter or in any way amend the grounds of appeal at or before the hearing.”*

The assessee has also raised additional grounds of appeal and the same is reproduced as under:

- “1. *That the impugned order dated 22.03.2019 passed by the Id. Pr. CIT(Central), Jaipur as well as the Show cause Notice dt. 22.02.2019 issued by Ld. Pr. CIT(Central), Jaipur both are bad in law, invalid, illegal as well as on the facts of the case and without jurisdiction and for many other reasons. Hence the Registration so cancelled u/s 12A is contrary to the provisions of law and facts of the case the same kindly be quashed.*
2. *That the Ld. Pr. CIT(Central) grossly erred in law as well as on the facts of the case in cancelling the Registration granted u/s 12A on the basis of issue relating to assessment, which have no bearing with the registration u/s 12A, namely fraud done by ex-president, non-filing the return and audit report invoking the provision Sec. 12AA(3) and 12AA(4) etc. vide show cause notice dt.22.02.2019 and order dated 22.03.2019 with retrospective effect from A.Y. 2013-14 onwards on the wrong basis and footing. Hence the Registration so cancelled u/s 12A is contrary to the provisions of law and facts of the case the same kindly be quashed.*

These additional Grounds of appeal are being legal grounds of appeal and also clearly arose from the order of Pr. CIT(Central) and having directly linked up with other grounds of appeal before your honours and as per settled law and legal position that the legal grounds of appeal may be taken at any stage.

Therefore in the interest of justice your honours are humbly requested to kindly admit the above additional grounds of appeal and oblige.”

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.
3. In this appeal, the assessee has also raised additional grounds of appeal. The grounds taken are legal in nature and connected with main grounds of appeal, therefore, for the sake of convenience, we admit additional grounds raised by the assessee for adjudication.
4. The brief facts of the case are that the assessee is a Trust and is registered under the Non-Trading Companies Act, Rajasthan vide Reg. Certificate No. 215/1976 dated 09.03.1976 and the Trust having main objects to develop the cloth business in Kota for the benefit of the general public or businessmen under the name of Wholesale Cloth Merchant Association, Kota. The Trust is also registered u/s 12A of the Income Tax Act, 1961 (in short, the Act) vide registration certificate No. 8/93-94/2609 dated 10.08.1994. The Id. Pr. CIT in its order dated 22/03/2019 noted that the registration was granted so as to enable the assessee to fulfil all the objectives enumerated in the deed/ Memorandum of Association. However, it was observed by the Id. Pr. CIT that the assessee is not working as per the objective of the Trust and case falls u/s 12AA(3) & 12AA(4) of the Act on the reason that a

search and seizure action was conducted in the case of "Bajaj Group", Kota on 30.06.2016 and consequent survey u/s 133A of the Act was also conducted at the assessee on 19.07.2016. During the course of survey statement of Sh. Giriraj Nayati, President of the assessee Trust was recorded on oath, who admitted that the assessee had filled the return of the income only up to A.Y. 2013-14 and had not filed the ITR for A.Y. 2014-15 to 2016-17 and also not filed the Tax Audit Report and assessee has continuously been claiming exemption u/s 11 and 12 of the Act. In view of the above, the Id. Pr. CIT(Central) has held that the activities of the assessee association are not 'genuine' and are not being carried out in accordance with the stated objects of the assessee. Therefore, the Registration of the assessee u/s 12A was cancelled by invoking the provisions of Sec. 12AA(3) and 12AA(4) w.e.f. 01.04.2013 i.e. from the financial year in which the irregularities came to notice.

5. Against the impugned order of the Id. Pr.CIT, the assessee has preferred the present appeal before us on the grounds mentioned hereinabove

6. Ground No. 1 and additional grounds No. 1 and 2 of the appeal are interrelated and interconnected and relates to challenging the order of

the Id. Pr.CIT (Central), Rajasthan for cancelling the registration of the assessee Trust U/s 12A of the Act. Therefore, we have decided to adjudicate these grounds by this common order.

7. The Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. Pr.CIT. It was submitted that the Id. Pr.CIT has grossly erred in cancelling the registration of the assessee Trust U/s 12A of the Act by invoking provisions of Section 12AA(4) of the Act w.e.f. 01/04/2013. It was submitted that the impugned order dated 22/03/2019 passed by the Id. Pr.CIT as well as show cause notice dated 22/02/2019 issued by him are bad in law, invalid, illegal and are without jurisdiction. The registration so cancelled U/s 12A of the Act of the assessee Trust is contrary to the provisions of law and facts of the case. The Id AR also submitted that Id. Pr.CIT(Central) had grossly erred in law as well as on the facts of the case in cancelling the registration on the basis of issue relating to assessment, which has no bearing with the registration U/s 12A of the Act i.e. fraud done by Ex-President, non-filing the return and audit report invoking provisions U/s 12AA(3) and 12AA(4) vide show cause notice dated 22/03/2019 and order dated 22/03/2019 with retrospective effect from A.Y. 2013-14 onwards. The Id AR also relied

upon the written submissions as well as additional written submissions filed before us and the same is reproduced hereinbelow:

1. Show cause notice as well as order is without jurisdiction:

1.1 At the very outset it is submitted that the show cause notice issued by the Id. Pr. CIT(Central) as well as the consequent order passed by him is illegal and is without jurisdiction. Because as admittedly the assessee is a trust registered u/s 12A of the IT Act and this class of assessee or case come in the Jurisdiction of CIT(Exemption), Jaipur w.e.f. 22.10.2014.

1.2 As in Sec. 120 of the IT Act the criteria of Jurisdictions of Income Tax Authorities has been provided by the CBDT and as per provisions of Sec. 120(3) there are four criteria as under:

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

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

1.3 And as per this the CBDT by the Notification No. 52/2014 and 53/2014 dated 22.10.2014 has given power to CIT(Exemption) Jaipur for the state of Rajasthan for All cases of persons in the territorial area specified in column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Income-tax Act, 1961 and assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014.

Thus, from the Oct. 2014 CIT(Exemption) has been constituted separately for these class or type of cases. Hence, the case of the assessee admittedly falls in the jurisdiction with the CIT(Exmp.). Copy of Notification is enclosed (PB303-309).

1.5 As a search and Seizure operation has been carried out in the case of SPS (Bajaj Group) Kota on 30.06.2016. In consequent there a survey u/s 133A has also been carried out on the assessee in 19th July 2016. Thereafter the Id. ADIT(Inv.) Kota has sent a proposal u/s 127 to the Pr. DIT(Inv.) Raj. Jaipur on dt. 19.08.2016 to transfer the case for limited purpose i.e for the Assessment proceedings vide letter dt. 19.08.2016(PB292-293) and the reason for centralize in the case of assessee was given for Co-Ordinate Assessment with the cases of SPS Bajaj Group (PB293). The Pr.DIT has sent the same to the Pr. CIT(Central) vide letter dt. 29.09.2016 (PB295-296). Thereafter the Pr. CIT(C) has written letter to Pr.CIT(E) dt. 28.09/03.10.2016(PB297-298) to transfer the case from ITO(E) Kota to ACIT, Central Kota. Thereafter the CIT(E) has transferred the case from ITO(E) Kota to ACIT, Central Kota vide letter dt. 05/06.12.2016 (PB299). In all these there is no any copy or notice or information have been sent to the assessee.

1.6 Thereafter the Id. DCIT(CC) Kota, has sent a proposal to the Pr. CIT(C), Jaipur to cancel the 12A registration of the assessee vide letter dt. 31.12.2018 has been received in the office of Pr. CIT(C) on dt. 23.01.2019 vide order sheet (PB300). On the basis of proposal form DCIT(CC) Kota, the Id. Pr. CIT has issued the show cause notice to the assessee u/s 12AA(3)/(4) on dt. 22.02.2019. Thereafter the assessee has appeared and filed the details and submissions before the Pr. CIT(Jaipur) on dt. 18.03.2019 and the Id. Pr. CIT(C) has passed the impugned order on dt.22.03.2019 u/s 12AA(3) and 12AA(4).

1.7 Thus on perusal of the above facts and proceedings of 127 was only for a limited purpose of Co-Ordinate Assessment. And as there was neither any search in & Seizure nor any notice u/s 153A or 153C or assessment u/s 153A or 153C in the case of assessee and there was only a survey u/s 133A. And the assessment has also been completed u/s 148/143(3) on dt. 19.12.2018. As the assessment has been completed the purpose of transfer u/s 127A has also been completed. Although No any notices regarding the transfer of the cases u/s 127 have been sent to the assessee for the purpose of Co-ordinate assessment. And the purpose of transfer was Co-Ordinate Assessment as clearly mentioned in the transfer letter 19.08.2016(PB293). And the assessment was completed u/s 148 rws 143(3) 19.12.2018 and the proposal was sent to the Pr. CIT(C) thereafter i.e on dt. 31.12.2018 received in the office of Pr. CIT(C) on dt. 23.01.2019(PB300) after more than one month.

1.8 Thus on perusal of the above facts and proceedings of 127 was only for a limited purpose of Co-Ordinate Assessment. And as there was neither any search in & Seizure nor any notice u/s 153A or 153C or assessment u/s 153A or 153C in the case of assessee and there was only a survey u/s 133A. And the assessment has also been completed u/s 148/143(3) on dt. 19.12.2018. As the assessment has been completed the purpose of transfer u/s 127A has also been completed. Although No any notices regarding the transfer of the cases u/s 127 have been sent to the assessee for the purpose of Co-ordinate assessment. And the purpose of transfer was Co-Ordinate Assessment as clearly mentioned in the transfer letter 19.08.2016(PB293). And the assessment was completed u/s 148 rws 143(3) 19.12.2018 and the proposal was sent to the Pr. CIT(C) thereafter i.e on dt. 31.12.2018 received in the office of Pr. CIT(C) on dt. 23.01.2019(PB300) after more than one month.

1.9 In said Notification there is no mention that the CIT(Exmp.) can transfer its power or jurisdiction to other CIT or Pr. CIT. In the said notification the CBDT has authorised the CIT(Exmp.) to issue order in writing for the exercise of the powers and functions by the Add. CIT or JCT or TRO who are the subordinate to them and has authorised to the Add. CIT to issue order in writing for the exercise of the powers by the Assessing Officer who are the subordinate to them. In section 124 Jurisdiction of Assessing Officer has been given not Jurisdiction of Commissioner.

1.10. Further in Sec. 127 power of transfer of cases have been given and transfer of cases is given from one Assessing Officer to other Assessing officer not from CIT to CIT. Sec. 127 provides as under:

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

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to

whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—

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

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

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

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

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

proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

1.11. In Sec 120 (4) to 120(6) also provide how the work assigned to the subordinate officers as under

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

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

(b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

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

other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

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

1.12 And as per Sec. 120(6) the CBDT by the Notification No. 52/2014 and 53/2014 dated 22.10.2014 has given power to CIT(Exemption) Jaipur for the state of Rajasthan for All cases of persons in the territorial area specified in column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Income-tax Act, 1961 and assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014.

1.13 Thus firstly as per above notification, provisions of Sec. 120 and 127 the Id. CIT(Exmp.) cannot transfer or hand over or given his work or power or duties to the other same rank of CIT at all to cancel the Registration u/s 12AA. However, at the worst, if it is necessary then there has to be followed proper proceedings in writing. As there has to be some order in writing from his higher authorities i.e. from Chief Commissioner of Income Tax (Exmp.) Delhi or CBDT in writing and an opportunity of being heard is to be given to the assessee before transferring the case and all these are absent in the present case as we have come to know on the inspection of the 12A cancellation proceeding records in the office of Pr. CIT(Central) Jaipur as an official inspection has been done by the undersigned Counsel on 04.03.2020.

1.14. In the Act in s. 127 the transfer of cases has been given to the Assessing Officers not to Commissioners of Income Tax and CIT is not an

Assessing Officer. To pass an order for 12A registration or cancellation is not in the jurisdiction or power with an Assessing Officer. Thus, how the case for the purpose of 12AA proceedings can be transferred from the CIT (Exmp.) Jaipur to Pr. CIT(Central) Jaipur. Hence the registration u/s. 12A can be withdrawn only by the Prescribed Authority who has empowered to grant the same and by the Notification dt. 22.10.2014 the CIT(Exmp.) has empowered for the same, hence the Pr.CIT (Exmp.) cannot cancelled the same, this is not the matter of assessment.

1.15 As in the present case being a search on the third party and consequent the survey carried out in assessee's case the case u/s 127 has been transfer to the Central Circle for the limited purpose of Co-Ordinate assessment admittedly (PB293). It means not that the 12A proceeding has been transferred to the Pr. CIT(Central) Automatically, when both the proceedings are separately or independent and also has to be done or conducted by the different rank Authorities. And when for the purpose of Exemption cases or 12A registration a Separate Commissioner of Income Tax has been Authorized for whole of Raj. by the CBDT by the Notification dt. 22.10.2014.

1.15 The Id AR has relied on the decision in the case of DilipTanaji Kashid vs. M.I. Karmakar PR. CIT& ANR. (2018) 304 CTR 0436 (Bom)

1.16 No Transfer or agreement u/s 127 for 12AA proceedings:- However on inspection of the record and letters of transfer of case u/s 127(PB292-300) we have not found any such agreements between both the CIT's regarding the 12A proceedings. The agreement was only limited purpose of Co-Ordinate assessments. On perusal of the Instruction No. F.No.286/88/2008IT(Inv-II) dt. 17.09.2008 which referred by the Revenue for transfer the case is regarding the search assessment where the search conducted it is not regarding the 12AA or other proceedings which have to be done by the CIT's or other higher Authorities to Assessing Officers. And as per all the above position there must be a separate agreement between CIT's for the above purpose. In the Instruction No. F.No.286/88/2008IT(Inv-II) dt. 17.09.2008 in para (d) it has been provided that the ADIT (Inv.) should send proposal for Centralization through Add. ADIT(Inv) with in 30 of initiation of search. And in the present case the search in the other group case was conducted on 30.06.2016 and the ADIT(Inv.) has sent the proposal on 19.08.2016 i.e. after 30 days.

The Id AR has relied on the decision in the case of Rentworks India (P) Ltd. vs. Pr.CIT & ANR. (2017) 100 CCH 0258 Mum HC

Ajantha Industries & Ors. vs. Central Board Of Direct Taxes & Ors. (1976) 102 ITR 0281

Noorul Islam Educational Trust vs. CIT AND Ors (2016) 388 ITR 0489 (SC)

1.17 *Thus in view of the above facts and legal position the show cause notice issued as well as the consequent order passed by the Pr. CIT(Central) is illegal and without jurisdiction and liable to be quashed.*

2. *The Id AR has further submitted that no denial or cancellation of registration for the misappropriation of fund by other persons: Further it is submitted that the Id. Pr. CIT has cancelled the 12A registration on the misappropriation of fund by other persons, which is also incorrect. He has relied upon the following decision:*

CIT V/s State Urban Development Agency (Suda) (2013) 85 CCH 0179 All HC.

CIT vs. A.S. Kupparaju Brothers Charitable Foundation Trust (2012) 205 TAXMAN 0009

Kunhitharuvai Memorial Charitable Trust vs. CIT(Central) (2017) (1) TMI 1671 (Cochin)

3. *No denial or cancellation of registration for the reason not filling the ITR and Audit Report:*

3.1 *Further it is submitted that Id. Pr. CIT has cancelled the registration on the ground that the assessee has not filed its ROI and Audit report. The reason of not filing of the same are that as the assessee is trust and was depended on the accountant and the president and the other members were under impression that the act of return filling, Audit report and books are being care take by them. As there was on default since its registration from 1976 to 2013. And the fraud done by the president and books not completed by the accountant was not in the knowledge of the assessee. However when these facts have come to the notice of the assessee it filed its ROI income and Audit report. Hence for*

the negligence of the President and accountant the whole institute must not be punished.

3.2 However it is also settled legal position of law that if an assessee has not filed his ROI and filed ROI and not shown any claim or deduction in the ROI filed and claim the same during the course of assessment proceedings even although during the course of appellate proceedings. The Honble courts has allowed the same by stating that if the assessee is entitled for any claim as per law cannot be denied for the reason that he has not claimed in the ROI. In this regard, he has relied upon the decision in the case of Amina Ismil Rangari vs. ITO (2017) 51 CCH 0595 Mum Trib

3.3 However the assessee had file the ROI and Audit report in response to the notice u/s 148. And also much prior to issuance of show cause notice for cancellation. And at the time of issuance of Show cause notice u/s 12AA(3)/12AA(4)no return or Audit report were pending. As per the section 147 and section 148 of the Income Tax Act 1961 itself provide the opportunity to assessee for filing the return of income, hence we could not say that the Income Tax Return was late filed. And the Return filed u/s 148 is treated as filed u/s 139 and all the provision are applicable for the same. If there was any default why the show cause notice has been given when the default had come to the notice of the Revenue in July 2016 and the notice has been issued 31 Months i.e. Feb. 2019. And even in last three years i.e. form F.Y. 2016-17 to 2018-19 no defaults have been found.

3.4 Further the Id. Pr. CIT in the entire order has stated that the assessee has not filed Tax audit report. In this regard it is submitted that the assessee is trust registered u/s 12A and not a businessman and not doing the business. Hence Tax Audit u/s 44AB is not applicable in this case. The same is applicable for the person who is doing business or trading. Hence the allegation of the Id. Pr. CIT is wrong or incorrect or invalid. And liable to be quash. The Audit of the trust comes u/s 12A(b) in form 10B.

3.5 Further if there was any procedure default for non-filing the ITR and Audit report, for that there many other penalties or provision has been given and in Sec. 12AA(3)/12AA(4) it has not been provided anywhere that if an assessee has not filed ITR and Audit report the registration shall be cancelled. The Id AR has also relied on the following decisions:

CIT vs. Raj State Seed & Organic Production Certification (2018) 98 CCH 0466 Raj HC

Cotton Textiles Export Promotion Council v/s ITO (Exemption) 117 ITD 90 (Mum)

Additional Director of Income Tax (Exemption) v/s Manav Bharati Child Institute & Child Psychology 20 SOT 517(Del)

Haryana Welfare Board v/s CIT 83 CCH 268(P&H)

Association of Corporation & Apex Societies of Handlooms v/s ADIT 351 ITR 287(Del)

Raghavan Nair vs. ACIT 402 ITR 0400 (Ker) (2018)

3.6. *The Id. Pr. CIT stated that if a person fails to get audited his books of accounts from a chartered accountant, then he will not able to get benefit of section 11, 12 and 12A. But many provisions are in the nature of procedural compliance hence if that kind of provision are not satisfied even though assessee would not be punished for cancellation of registration u/s 12A. In this regard, he has relied on the following decisions:*

M/s Sir Kika Bai Prem Chand Trust Vs. ITO Mumbai ITAT

CIT v/s Hardeodas Agarwalla Trust 198 ITR 511(Cal)

CIT vs. Lucknow Public Educational Society 318 ITR 0223 (All HC)

Kunhitharuvai Memorial Charitable Trust vs. DCIT (2019) 6 TMI 595 (Cochin)

4. *Application of funds deemed to have been made for the benefit of specified person Section 13(2): In some earlier years there was a miss happening with the assessee association that his president deliberately withdraw cash from association's bank account for his personal use in the name of other person, out of that kind of withdrawal some amount has been debited to our ex-president account (Sh. Tejendra Pal Singh), by keeping the other members in dark or without their knowledge. For that kind of transaction association had also filed FIR against him for miss utilization of funds/ betray/ Forgery/imitation/ replica of signatures/ for*

unfaithful work and Misappropriation of funds of trust. Except above mentioned transactions no any mistakes is found in daily activities/transactions of the trust. As the assessee:

- a. No Loan given to any specified person during the year under consideration.*
 - b. None of any specified persons are allowed to use land, building or any other property.*
 - c. No Salary, allowances are paid to specified persons during the year under consideration.*
 - d. Association will not provide any kind of services to specified persons without inadequate remuneration.*
 - e. No property / Shares and security transferred by any specified person to association.*
 - f. No property / Shares and security transferred to any specified person from association.*
 - g. No income or property of trust diverted to a specified person.*
 - h. Trust has not invested any fund where specified person having substantial interest.*
- 4.1. Only due to the negligence or cheating of past executive members and bad intention/intention of miss appropriation of funds of ex-president, they were not willing to maintained the books of accounts and get their accounts audited by a chartered accountant. But after change of management and involvement of new committee, books of accounts have been prepared and audit has also done and now all the work is going on in proper way. During the A.Y. form 2014-15 to 2016-17 heavy amount withdrawn by the ex-president, out of total amount some entries are debited in account of Sh. Tejendra Pal Singh and some entries are debited in other parties account because vouchers was made in the name of other parties name and later on came to know that these parties have not received amount and when management went to bank to trace out the truth all disputed entries were bearer cheques, but at that time books of accounts have been finalized and*

audited, so assessee was not able to change the account name. Hence at the time of filing FIR they include all the amount. This amount not given by the trust to the president but the same was misappropriated, pinched, embezzled and cheated by the ex-president therefore FIR filed by the trust against the ex-president (i.e. Tejendra Pal Singh). Copy of FIR is enclosed (PB28-34). And for the cheating or fraud by the Ex-President, if any, the whole trust cannot be suffered, which is against the principal of natural justice.

Further nowhere it has been proved that the Act of the President was in the knowledge of the assessee and the other members were involved knowingly. And was part of that fraud. And if any fraud has been done behind the assessee cannot be treated as done by the assessee. Assessee has not itself given any benefit to the assessee.

5. *No retrospective effects should be given: Further the Id. Pr.CIT (Central) cancelled such approval from A. Y. 2014-15, though the assessee has already assessed from A. Y. 2014-15 under section 143(3)/148 of the Income Tax Act. And it is also settled legal position of law that Registration cannot be cancelled from retrospective effects. In this regard, he has relied upon the following decisions:*

State of Rajasthan and others vs Basant Agrotech India Ltd. and other 388 ITR 81(SC)

Indian Medical Trust V/s PCIT (Central) 2019 (6) TMI 996 (Rajasthan)

Oxford Academy for Career Development Vs. Commissioner of Income Tax: (2009) 315 ITR 382

Assistant Commissioner of Income Tax Vs. Agra Development Authority: (2018) 90 Taxman 288

CIT V/s Manav Vikas Avam Sewa Sansthan 336 ITR 250 (All)

5.1 *No cancellation of Registration u/s 12A can be made of all years: In the present case the Id. Pr. CIT(C) or PA has found or made allegation or objection or diversion of mis appropriations of funds and not filling the Audit report and ITR, if any only in A.Y. 2014-15 to 2016-17 & not in other years either prior years or later years, if so then how the cancellation of Registration u/s 12A can be made for other years*

except A.Y. 2014-15 to 2016-17 if any at the worst. Hence at the worst no withdrawal can be made except for the A.Y. 2014-15 to 2016-17 if any, however as we have already stated that no retrospective cancellation can be made.

Further neither in the Sec. 12AA(3) nor in Sec. 12AA(4) it has been provided or is seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively no cancellation for the past years or date and the same at the worst can be made from the date of show cause notice or date of order for cancellation. He has relied upon the decision in the case of Auro Lab vs. ITO (2019) 411 ITR 0308 (Mad) 20

6. The Id. Pr. CIT(C) has stated that the activities of the assessee associations are not genuine and are not being carried out in accordance with the stated objects of the assessee. However the allegation of the Id. Pr. CIT(C) are incorrect. Because there was no change in the activities of the assessee since starting to till date. The Id. PCIT(C) has failed to state that which activities have been done by the assessee in these years there apart to earlier and what activities are not according to the aims and objects of the Associations or have not been followed or done. The assessee has not violated any provision of Sec. 12AA(3)/12AA(4). An allegation remains only allegation unless not proved.

The Id AR has also filed additional written submissions and the contents of the same are reproduced below:

- 1. No denial or cancellation of registration for the reason not filling the ITR and Audit Report for the A.Y. 2014-15 to 2016-2017:*
- 1.1 That clause (ba) was inserted by Finance Act, 2017 to section 12A(1) of the Act, w.e.f. 01.04.2018*
 - (ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions*

of sub-section (4A) of section 139, within the time allowed under that section.

- 1.2 *In the matter, the memorandum explaining the relevant provisions of the Finance Bill, 2017 reads as under:*

"as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/s 139 of the Act or otherwise. In order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act.

These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years

- 1.3 *Circular No.02/2018 dated 15.02.2018 containing "Explanatory Notes to the Provisions of the Finance Act, 2017" on insertion of clause (ba) in Sub section (1) of section 12A is quoted as under:*

"the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income-tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax.

Amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of

income within the time allowed under section 139 of the Income-tax Act.”

“Thus, for a trust registered u/s 12AA of the Act to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Accordingly, orders u/s 143(1)(a) in those cases in which demand has been raised on this issue may please be rectified.”

Hence, the Assessing Officer can deny the grant of exemption u/s. 11 of the Act for belatedly filing of return from the assessment year 2018-19 onwards.”

1.4 *The Id. AR has relied on the following judicial pronouncements:*

- (i) *United Educational Society v. JCIT (2019) 7 TMI 738 (ITAT Delhi)*
- (ii) *Sahid Munshi Ram Memorial Education Society v. CIT (2017) 11 TMI 1128 (ITAT Delhi)*

1.5 *Application of funds deemed to have been made for the benefit of specified person: That due to internal differences between the office bearers a FIR came to be filed for misappropriation of funds by the new management against the previous management. Subsequently, the Police after thorough investigation not finding any case for misappropriation of funds has proposed FR (Final Report) in the instant FIR vide its report dated 31.01.2019.*

1.6 *That in the instant case, the Id. Assessing Officer & Id. Pr. Commissioner of Income-tax without any independent verification have alleged misappropriation of funds. The assessment of the assessee appellant trust and its ex-president Shri Tejendra Pal Singh was done by the same Assessing Officer and in the assessment orders passed u/s. 153A of the Act dated 20-21.12.2018 for the A.Y. 2014-2015 to 2016-2017 in the case of Shri Tejendra Pal Singh, no*

addition has been proposed for so called misappropriated income. Thus, without carrying out any independent verification and on account of mere suspicion, without any proof the said allegation has been levelled against the assessee appellant Trust. In this regard he has relied upon the decision in the case of ACIT v. Sri Koundinya Educational Society (2019) 1 TMI 266 (ITAT Visakhapatnam)

8. On the other hand, the Id CIT-DR has relied upon the order passed by the Id. Pr.CIT(Central), Rajasthan and also submitted that there were various evidences in possession of the department which indicated that the assessee was not working as per the objectives referred and therefore, the case of the assessee falls 12AA(3) and 12AA(4) of the Act based on the following observations:

"3. *A search & seizure action was conducted in the cases of "Bajaj Group" group of Kota on 30.06.2016. The case of the assessee was covered under survey u/s 133A of the Income-tax Act. During the course of survey, the statement of Shri Giriraj Nayati, president of the association was recorded on oath. Shri Giriraj Nayati had admitted that the assessee had filed IT Returns only upto A.Y, 2013-14. At the time of survey, the assessee had not filed IT Returns for A.Y. 2014-15, 2015-16 and 2016-17. The assessee has also not filed the tax audit report which is required to be filed by the assessee. However, the assessee has continuously been claiming exemptions u/s 11 and 12 of the Income-tax Act. Such a claim by the assessee is illegal in view of provisions of Section 12A(1)(b), which is reproduced as under:*

Conditions for applicability of sections 11 and 12

12A. (1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

- (a)*
- (aa)*
- (ab)*

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below subsection (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed;

- 4. In view of Section 12A(1)(b), the assessee was required to furnish both the IT Return as well as the Tax Audit Report in order to claim benefit of Section 11 & 12. However, since F.Y. 2013-14, the assessee was neither filing IT Returns nor the Tax Audit reports. By wrongly claiming exemptions without filing IT Returns, the activities of the assessee are not being conducted in accordance with the objectives of the assessee-trust.*
- 5. It was also observed that the then president of the assessee trust Shri Tejendra Pal Singh Sahni has withdrawn huge amounts from the assessee's account and utilized these monies for personal benefit, which is also evident from the submission of the Authorized Representative before the Assessing Officer, which is reproduced as under:-*

*"Details of account withdrawn by the past president of the association:-
As per records of the association and FIR filed by the association against the then president of the association total amounting Rs.2,52,00,000/- withdrawn by the then president, out of this an*

amount of Rs.1,08,00,000/- transferred in the account of Sh. Rajendra Gupta and remaining amount was withdrawn from bank through bearer Cheques and vouchers made in the name of some contractors of the association but out of these contractors some contractors denied the receipt of cheques from the Association. After that episode, Association tried to know the truth, therefore Association went to bank and got all the copies of disputed cheques and found all the cheques were bearer cheques. List of Disputed cheques for the year under consideration are hereby produced for your kind reference:

S. No.	Date	Cheque No.	Name on Cheque	Amount	Cash Receiving Person
1	16.07.2014	858035	Self	800000	Past President.
2	29.08.2014	858067	Self	1000000	Past President
3	07.10.2014	001668	Self	800000	Vinay Kumar Jain
4	20.10.2014	925295	Self	700000	Past President
5	22.10.2014	925299	Self	600000	Past President
6.	16.12.2014	925351	Self	800000	Past President
7	20.12.2014	925356	Self	1000000	Past President
8	22.12.2014	925360	Self	1000000	Past President
9	24.12.2014	925368	Rajendra Gupta	4000000	Crossed Cheque transferred in the account of Association's Employee Rajendra Gupta
10	27.12.2014	925372	Rajendra Gupta	4000000	Crossed Cheque transferred in the account of Association's Employee Rajendra Gupta
11	22.12.2014	925373	Self	700000	Past President
12	30.12.2014	925375	Rajendra Gupta	2000000	Crossed Cheque transferred in the account of Association's Employee Rajendra Gupta
13	12.01.2015	001708	Self	500000	Past President
14	22.01.2015	982788	Self	700000	Past President
15	22.01,2015	982793	Self	800000	Past President
16	19.03.2015	982842	Self	500000	Past President

All of above mentioned details of cheques has already been conveyed to all the members of the association by its management through circulating a letter among its members and copy of the letter is enclosed with this letter for your kind perusal and ready reference."

6. *It is also observed that, the specified person was allowed to use fund of the assessee for his personal benefit. On going through the above discrepancies, it is noticed that, during the F.Y.13-14, Shri Tejendra Pal Singh, president has taken loan & advances of 231,50,000/- from the assessee and violated the provisions of section 13(2) of the Act. Further no proper books of accounts were maintained by the assessee. TDS provisions have not been complied properly. Therefore, the assessee is not entitled for claiming exemption under section 11 to 13 of the I.T. Act, 1961.*

It was also submitted by the Id CIT-DR that in view of above findings, the activities of the assessee Trust falls under the purview of Section 12AA(3) of the Act and the assessee Trust is also guilty of allowing the ex-president of the assessee Trust to utilize the funds of the assessee for his personal benefit. The assessee had also caused its property to be used or applied directly for the benefit of a persons referred to U/s 13(3) of the Act. Therefore, as per the provisions of Section 13(1)(c)(ii) of the Act, nothing contained in Section 11 and 12 shall operate so as to exclude the total income of the assessee. Therefore, the activities of the assessee was also hit by the provisions of Section 12AA(4) of the Act and hence after providing opportunity of hearing by issuing show cause notice to the assessee and after taking on record the replies/stand of the assessee, the Id. Pr.CIT (Central) has passed detailed cancellation order and the same was relied upon by the Id. CIT-DR.

9. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From perusal of the record, we noticed that the assessee was registered U/s 12A of the Act vide order dated 10/08/1994. However, Id. Pr.CIT found that objectives referred by the assessee Trust falls U/s 12AA(3) and 12AA(4) of the Act.

10. As per the facts, a search and seizure action were conducted in the case of "Bajaj Group", Kota on 30.06.2016 and consequent survey u/s 133A of the Act was also conducted at the assessee on 19.07.2016. During the course of survey statement of Sh. Giriraj Nayati, President of the assessee was recorded wherein the said Sh. Giriraj Nayati admitted that the assessee had filled the return of income only up to A.Y. 2013-14. It was also noticed by the department that the assessee had not filed income tax returns for A.Y. 2014-15 to 2016-17 and had also not filed the Tax Audit Report which was required to be filed by the assessee. Since the assessee was continuously been claiming exemption u/s 11 and 12 of the Act, therefore, it was found by the department that such claim by the assessee was illegal in view of provision of Sec.12A(1)(b) of the Act. As per facts, it was also noticed by the department that the ex-president of

the assessee Trust Sh. Tejendra Pal Singh had withdrawn huge amount from the assessee's account and utilized these monies for personal benefit and the details of those have already been mentioned in para No. 6 of the impugned order. It was further observed that the specified person was allowed to use the funds of the assessee for his personal benefit, thus there was violation of provisions of Sec. 13(2) of the Act as no proper books of account were maintained by the assessee. Therefore, the assessee was found to be not entitled for claiming u/s 11 to 13 of the Act. The assessee had also filed its detailed reply with the Ld. Pr.CIT (Central) wherein it has been submitted that on receipt of notice U/s 148 of the Act from the A.O., the assessee had filed its income tax returns and audit reports. It was further contended that since the compliance was made by the assessee by filing income tax returns in response to notice issued U/s 148 of the Act, therefore, the assessee was not hit by provisions of Section 12AA(4) of the Act. As regards the misutilization of assessee's fund by then President of the assessee Trust is concerned, in this respect, the Id AR of the assessee had submitted that ex-president of the assessee Trust Sh. Tejendra Pal Singh had withdrawn huge amount from the assessee's trust fund account and utilized these monies for personal benefit for which an FIR was also registered by the assessee. It was further submitted that after change of management and involvement

of new committee, books of account have been prepared and audit has also done and now all the work is going on in proper way as per objectives of the Trust.

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

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

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

Therefore, in furtherance of the said provisions, the CBDT vide notification Nos. 52/2014 and 53/2014 both dated 22/10/2014 had given powers to Id. CIT(Exemption) Jaipur for the State of Rajasthan for all cases of persons in the territorial area specified in column (4), claiming

exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Act and assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014. Thus, in this way from Oct. 2014 Id.CIT(Exemption) has been constituted separately for these class or type of cases. Hence, the case of the assessee admittedly falls in the jurisdiction with the Id. CIT(Exemption).

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

Pr.CIT(E) dated 28.09/03.10.2016 to transfer the case from ITO(E) Kota to ACIT, Central Kota. Thereafter the CIT(E) has transferred the case from ITO(E) Kota to ACIT, Central Kota vide letter dated 05/06.12.2016, which is placed at page No. 299 of the paper book. In all these there is no any copy or notice or information have been sent to the assessee.

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

14. We found that the above facts and proceedings of power of transfer U/s 127 was only for a limited purpose of Co-Ordinate Assessment. Neither any search & Seizure action nor any notice u/s 153A or 153C of the Act or assessment u/s 153A or 153C of the Act in the case of assessee were initiated and there was only a survey u/s 133A of the Act in the case of assessee. The assessment has been completed u/s 148/143(3) of the act vide order dated 19.12.2018. As the assessment

has been completed, the purpose of transfer u/s 127A has also been completed. Although No notices regarding the transfer of the cases u/s 127 have been sent to the assessee for the purpose of Co-ordinate assessment and the purpose of transfer was only Co-Ordinate Assessment as clearly mentioned in the transfer letter 19.08.2016. The assessment was completed u/s 148 r.w.s 143(3) 19.12.2018 and the proposal was sent to the Pr. CIT(C) which has been received on 31.12.2018 in the office of Pr. CIT(C) on 23.01.2019 after a lapse of more than one month.

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

16. Further in Sec. 127 of the Act, the power of transfer of cases is given from one Assessing Officer to another Assessing officer not from

CIT to CIT. For ready reference, we reproduce Sec. 127 of the Act, which provides as under:

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

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

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

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

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

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

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

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

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

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

(b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional

Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

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

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

18. We also observe that as per Sec. 120(6) of the Act, the CBDT by its Notification No. 52/2014 and 53/2014 dated 22.10.2014 has given power to CIT(Exemption) Jaipur for the State of Rajasthan for all cases of

persons in the territorial area specified in column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Act and assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014. Thus firstly as per above notification and provisions of Sec. 120 and 127 the Id. CIT(Exmp.) cannot transfer or hand over or given his work or power or duties to the other same rank of CIT at all to cancel the Registration u/s 12AA. However, in case, if it is necessary to do so then there has to be proper proceedings in writing. As there has to be some order in writing from higher authorities i.e. from Chief Commissioner of Income Tax (Exmp.) Delhi or CBDT in writing and an opportunity of being heard is to be given to the assessee before transferring the case whereas all these are absent in the present case and nothing has been demonstrated by the department.

19. We further observe that Sec. 127 of the Act empower to transfer cases among Assessing Officers but not to Commissioners of Income Tax as CIT is not an Assessing Officer. In our view, to pass an order u/s 12A for registration or cancellation is not within the jurisdiction or power of an Assessing Officer. Hence registration u/s. 12A can be withdrawn only by

the 'Prescribed Authority' who has been empowered to grant the same and by the Notification dated 22.10.2014 the Id.CIT(Exmp.) has empowered for the same, hence the Pr.CIT (Central) cannot cancelled the same.

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

Transfer of jurisdiction—Power of competent officers—Centralization of case—Dissenting note—Assessee was issued notice enshrining proposal for transfer of his case from Kolhapur to Mumbai, so as to centralise cases relating to D.Y. Patil Group—Assessee objected that such notice did not referred to any agreement being reached by officers of equal rank at Mumbai and Kolhapur—These objections were however overruled and assessee's case was transferred—High Court quashed purported transfer u/s 127—Held, "Centralisation Committee" which took decision for transfer of jurisdiction, is not authority envisaged u/s 127(2)—Counter-affidavit filed on behalf of Revenue does not disclose that there was any agreement

between authorities of equal rank, as a pre-condition for invoking powers u/s 127—“Absence of dissenting note” from officer of equal rank who has to agree to proposed transfer would not constitute agreement, envisaged u/s 123(2)(a)—Assessee’s petition allowed.

21. It was also been brought to our notice that the AR had inspected the records of the case but there was no agreement between both the CIT’s regarding initiation of proceedings U/s 12A of the Act. The entire communication on record is with regard to limited purpose of Co-Ordinate assessments only. Even the Instruction No. F.No.286/88/2008IT(Inv-II) dated 17.09.2008 has relied upon by the Revenue also relates to “search assessment” and was not with regard to proceedings U/s 12A or other proceedings. Even no agreement for initiation proceedings U/s 12AA of the Act has been found out on record. Even, the proposal for centralization was not sent within the statutory time of 30 days from the date of search as admittedly the search was conducted on 30.06.2016 and the proposal was sent on 19.08.2016 i.e. after 30 days of the search. In this respect, the Id AR has relied upon the decision in the case of **Rentworks India (P) Ltd. vs. Pr.CIT & ANR.(2017) 100 CCH 0258 Mum HC** wherein it has been held that

Income tax authorities—Power to transfer cases—Jurisdiction—CIT, issued notice to assessee taking recourse to subsection 2 of Section 127—Assessee was put to notice that there was proposal to transfer case of assessee to DCIT, for proper co-ordinated investigation—Impugned order was made by Principal CIT under sub-section 2 of section 127 by

*which case of assessee was transferred to DCIT—Held, in Noorul Islam Educational Trust it was held that as Income-tax/assessment file of assessee had been transferred from one AO in Tamil Nadu to another AO in Kerala and two AO were not subordinate to same Director General or Chief Commissioner or Commissioner of Income Tax u/s 127(2) (a) agreement between Director General, Chief Commissioner or Commissioner, as case might be, of two jurisdictions was necessary—Counter affidavit filed on behalf of Revenue did not disclose that there was any such agreement—**In fact, it had been consistently and repeatedly stated in said counter affidavit that there was no disagreement between two Commissioners—Existence of agreement between two jurisdictional Commissioners was condition precedent for passing order of transfer—Clause (b) of sub-section (2) of section 127 provides for consequences when there was no such agreement—When jurisdiction to pass order of transfer under clause (a) of sub-section (2) of Section 127 could be exercised only when there was such agreement, fact that such agreement exists ought to had been stated in show cause notice as same was jurisdictional fact—It was on basis of written document that finding was recorded that there was agreement between Jurisdictional Commissioners of Ranchi and Delhi—Even going by case made out by revenue, no such agreement was spelt out.***

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

9. In the present case, it is not even the case made out in the show cause notice that the agreement as contemplated by the first part of clause (a) of sub-section (2) of section **127** exists. The existence of such agreement between two jurisdictional Commissioners is a condition precedent for passing the order of transfer. Except for the request which came from the investigation office, Chennai of transferring the case,

there is no reference whatsoever to any such agreement. Clause (b) of sub-section (2) of section 127 provides for consequences when there is no such agreement. When the jurisdiction to pass an order of transfer under clause (a) of sub-section (2) of Section 127 can be exercised only when there is such an agreement, the fact that such an agreement exists ought to have been stated in the show cause notice as the same is a jurisdictional fact. Apart from the failure to mention the same in the show cause notice, the only stand of the revenue is that there is an agreement by implication. This stand is completely contrary to paragraph 5 of the decision of the Apex Court in the case of Noorul Islam Educational Trust (supra). The decision in the case of Ramswaroop (supra) will also bind this Court for the reasons stated above.

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

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

12. Accordingly, for the reasons quoted above, we pass following order:

Impugned order dated 25th May 2017 (Exhibit-H to the petition) is hereby quashed and set aside. Rule is made absolute on above terms with no order as to costs.

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

"The CBDT sent a notice to the appellants under s. 127 proposing to transfer their case files "for facility of investigation" from the respective

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

Held :

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

The Hon'ble Supreme Court in the case of **Noorul Islam Educational Trust vs. CIT AND Ors (2016) 388 ITR 0489 (SC)** held that

*Special Leave Petition—**Transfer of case—Validity**—High Court of Madras, Madurai Bench, upheld order of C.I.T.1, Madurai, Tamil Nadu, transferring file of assessee from Tamil Nadu to Kerala—**Held**, as Income-tax/assessment file of assessee has been transferred from one Assessing Officer in Tamil Nadu to another Assessing Officer in Kerala and two Assessing Officers are not subordinate to same Director General or Chief Commissioner or Commissioner of Income Tax, u/s 127(2) (a) an agreement between Director General, Chief Commissioner or*

Commissioner, as the case may be, of two jurisdictions is necessary—Absence of disagreement cannot tantamount to agreement as visualized under Section 127(2) (a) which contemplates a positive state of mind of two jurisdictional Commissioners of Income Tax which is conspicuously absent—Transfer of Income-tax/assessment file of assessee from Assessing Officer, Tamil Nadu to Assessing Officer, Kerala is not justified—High Court order set aside—Special appeal allowed.

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

22. Apart from above, the Id AR has also raised a technical ground that the registration of the assessee Trust cannot be denied or cancelled for the reasons for not filing of income tax return and audit report for the A.Y. 2014-15 to 2016-17. In this regard, it was submitted that clause (ba) was inserted by Finance Act, 2017 to section 12A(1) of the Act, w.e.f. 01.04.2018

(ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.

The **memorandum explaining the relevant provisions of the Finance Bill, 2017** reads as under:

"as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/s 139 of the Act or otherwise. In order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act.

These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years

Circular No.02/2018 dated 15.02.2018 containing "***Explanatory Notes to the Provisions of the Finance Act, 2017***" on insertion of clause (ba) in Sub section (1) of section 12A is quoted as under:

"the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income-tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax.

Amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income-tax Act."

"Thus, for a trust registered u/s 12AA of the Act to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Accordingly, orders u/s 143(1)(a) in those cases in which demand has been raised on this issue may please be rectified."

Hence, the Assessing Officer can deny the grant of exemption u/s. 11 of the Act for belatedly filing of return from the assessment year 2018-19 onwards."

The Coordinate Bench of ITAT, Delhi Bench in the case of **United Educational Society v. JCIT** (2019) 7 TMI 738 (ITAT Delhi) has held as under:

Reopening of assessment u/s 147 - exemption u/s 11 denied - assessee has not filed the return u/s 139 (4A) reads with section 12A (b) - assessee society was carrying out educational activities which fell within charitable activities u/s 2(15) , it was granted registration u/s 12A - whether, the filing of audit report alongwith the return filed in response to notice u/s 148 will entitle the assessee for benefit of computation of section 11 ? - HELD THAT:- We are of the view that, whether it is a case of a regular assessment or it is a case of an assessment consequent to issue of notice u/s 148, not only the procedure of return as given in section 139 has to be applied, but also such the income has to be computed on the basis of such return in accordance with the provision of the Act, which of course will be subject to any specific provision in the Act which itself bars a claim or an exemption.

Section 148 provides that all the provision of the Act has to apply on such return furnished in response to notice u/s 148. The Ld. CIT DR has referred to the words 'so far as may be' to canvass the proposition that all the provision will not apply. This contention of the Ld. DR is not correct in view of our reasoning given above. The meaning of these words 'so far as may be' will not mean to exclude provision of section 11 of the Act.

Our above view gets further supported from the amendment made by the Finance Act, 2017 whereby a further clause (ba) has been inserted imposing a further condition that such return of income is to be furnished in terms of section 139(4A), within the time allowed under that section. Firstly, this requirement was not there before this amendment; and secondly, this insertion of additional clause clearly shows that such condition was not there in existing clause (b) of section 12A. Had such condition being there in clause (b) itself, then there was no need to insert a further clause (ba) by the Legislature for denying benefit of

section 11 & 12 in case return is not filed in time as per provision of section 139 (4A).

We are also not in agreement with the contention of the Ld. DR that this amendment is clarificatory in nature. As rightly pointed out by the Ld. Counsel that this amendment has been made by the Finance Act, 2017 effective from A.Y. 2018-19, meaning thereby that this clause has not been made applicable even for the A.Y. 2017-18, the return of which were still to be filed. Thus, the Legislature has thought fit to make this amendment applicable from next assessment years onwards and not even to the current A.Y. 2017-18.

While interpreting the amendment made by the Finance Act No. 2 of 2014 whereby section 11 (6) was inserted so as to exclude such assets while computing depreciation in respect of which deduction has been allowed as an application of income u/s 11.

In view of the above, we hold that AO was not justified in denying the benefit of the exemption u/s 11 of the Act and we direct the AO to compute the income in accordance with the provision of section 11. Ground no.6 is accordingly allowed.

23. Another submission of the assessee in order to counter the allegation of the department that the application of funds 'deemed to have been made for the benefit of specified person' has been countered by submitting that

Due to internal differences between the office bearers a FIR came to be filed for misappropriation of funds by the new management against the previous management. Subsequently, the Police after thorough investigation not finding any case for misappropriation of funds has proposed FR (Final Report) in the instant FIR vide its report dated 31.01.2019.

In the instant case, the Id. Assessing Officer & Id. Pr. Commissioner of Income-tax without any independent verification have alleged

misappropriation of funds. The assessment of the assessee appellant trust and its ex-president Shri Tejendra Pal Singh was done by the same Assessing Officer and in the assessment orders passed u/s. 153A of the Act dated 20-21.12.2018 for the A.Y. 2014-2015 to 2016-2017 in the case of Shri Tejendra Pal Singh, no addition has been proposed for so called misappropriated income. Thus, without carrying out any independent verification and on account of mere suspicion, without any proof the said allegation has been levelled against the assessee appellant Trust.

Hon'ble ITAT, **Visakhapatnam** Bench in the case of **ACIT v. Sri Koundinya Educational Society** (2019) 1 TMI 266 (ITAT **Visakhapatnam**) has held as under:

Charitable activity - grating exemption u/s 10(23C)(vi) - exemption u/s 11 - CCIT observed that, assessee cannot be said to be existed only for educational purposes and accordingly rejected the contention of the assessee for grating exemption u/s 10(23C)(vi) - Held that:- ITAT Delhi Bench in the case of Puranchand Dharmath Trust Vs. ITO, Wd-1, Gurgaon [2018 (5) TMI 630 - ITAT DELHI] held that where the assessee Trust advanced money as a loan to another Trust for which the assessee had not received any interest and the said sum was returned by the Trust, the amount advanced not being investment could not be held to be in violation of section 13(1)(d), 11(5) of the Act.

Therefore, respectfully following the view taken by this Tribunal in the assessee's own case, and as per our findings, we hold that there are no violations and the revenue did not make out any case to substantiate the violations in respect of 13(1)(c), 13(2)(a), 13(2)(g) and 13(2)(h) of the Act. Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld."

24. In view of the above facts and circumstances, we observe that the Id. Pr. CIT has cancelled the registration on the ground that the assessee has not filed its ROI and Audit report. The reason of not filing of the same according to the assessee are that as the assessee is trust and was depended on the accountant therefore the president and the other members were under impression that the act of return filling, Audit report and books are being taken care by them. As there was no default since its registration from 1976 to 2013. The fraud done by the president and books not completed by the accountant was not in the knowledge of the assessee. However, when these facts have come to the notice of the assessee it filed its ROI income and Audit report. Hence for the negligence of the President and accountant, the whole institute must not be punished. However, it is also settled legal position of law that if an assessee has not filed his ROI and filed ROI and not shown any claim or deduction in the ROI filed and claim the same during the course of assessment proceedings even though during the course of appellate proceedings. The Hon'ble courts have allowed the same by stating that if the assessee is entitled for any claim as per law, then the same cannot be denied for the reason that he has not claimed in the ROI. In this regard, the Id AR has relied on the decision in the case of **Amina Ismil Rangari vs. ITO (2017) 51 CCH 0595 Mum Trib** wherein it has been held that:

*Capital gains—Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house—Rejection of claim of exemption—Case of assessee was re-opened and notice u/s 148 was issued—Assessee filed her return of income declaring taxable income after claiming exemption u/s 54F against 'Long-term capital gains' arising from sale of shares—AO held that share transaction entered into by assessee resulting in long term capital gains were not genuine—Since long-term capital gains were not treated to be genuine, AO also rejected claim of assessee for exemption u/s 54F—CIT(A) held that, rejection of claim of exemption u/s 54F by AO, was in order—Held, section 54F, neither provided as pre-condition requirement of filing of 'return of income' by assessee within stipulated time period, nor places any embargo as regards claim of such exemption in case 'return of income' filed by assessee involves some delay—When assessee raised claim u/s 54F in 'return of income' filed by her in compliance to notice u/s 148, therefore, it was obligatory on part of AO to have deliberated on entitlement of assessee towards claim of exemption u/s 54F—Due to dismissal of claim of exemption in **limine** by AO, there was no occasion for lower authorities to have deliberated upon satisfaction of requisite conditions contemplated u/s 54F by assessee—As assessee had during course of hearing of appeal submitted complete details as regards his entitlement towards claim of exemption u/s 54F, AO was directed to verify genuineness and veracity of claim of assessee—Claim of exemption u/s 54F, as raised by assessee should be allowed—Assessee's appeal allowed.*

25. We also observe that the assessee had file the ROI and Audit report in response to the notice u/s 148 of the Act also much prior to issuance of show cause notice for cancellation and therefore, at the time of issuance of Show cause notice u/s 12AA(3)/12AA(4) no return or Audit report were pending. Section 147 and section 148 of the Act itself provide opportunity to the assessee for filing the return of income, hence it cannot be said that the Income Tax Return was late filed and the return filed u/s 148 is treated as filed u/s 139 and no show cause notice was

given to the assessee when they had come to the notice of the Revenue in July 2016 and the notice has been issued 31 Months i.e. Feb. 2019. Even in last three years i.e form F.Y. 2016-17 to 2018-19 no defaults have been found. The Id. Pr. CIT in its order has stated that the assessee has not filed **Tax audit report**. In this regard we observe that the assessee is trust registered u/s 12A and not a businessman and not doing the business. In our view, Tax Audit u/s 44AB is not applicable in this case. Hence the allegation of the Id. Pr. CIT is wrong and invalid. The Audit of the trust comes u/s 12A(b) in form 10B.

26. We are also of the view that if there was any 'procedural default' for non-filing the ITR and Audit report, then it is nowhere provided that registration shall be cancelled. In this regard, the Id AR has relied on the decision in the case **CIT vs. Raj State Seed & Organic Production Certification (2018) 98 CCH 0466 Raj HC** wherein it has been held that

Charitable Trust—Charitable purposes—Denial of registration—Application for registration sought by assessee society u/s 12A came to be rejected on ground that its activities were not charitable within meaning of s. 2(15) and audit report was not filed in Form 10B—However, ITAT directed CIT(E) to grant registration—Held, Madras High Court in Director of Income Tax (Exemptions) vs. Spic Educational Foundation, observed that non-filing of audit report in Form No. 10B would not defeat claim of assessee for exemption under Ss 11 & 12—Activities of assessee were for advancement of object of general public utility, hence charitable within meaning of s. 2(15)—If an institution was having surplus, then after considering application

and accumulation prescribed u/s 11, remaining amount was chargeable to tax—But that in itself does not lead to a conclusion that institution was not meant for charitable purpose—Delay in moving registration application was also explained that it was due to bona fide belief that assessee was a part of government hence, not liable to income tax—Revenue's appeal dismissed.

In the case of **Cotton Textiles Export Promotion Council v/s ITO**

(Exemption) 117 ITD 90 (Mum) it has been held that

notice for accumulation in form No.10 r/w s. 11(2) can be made not only in respect of current assessment year but also in respect of subsequent assessment year and it is not necessary to file form No. 10 for each assessment year. Exemption u/s 11 could not be denied on the ground that form no. 10 was not filed alongwith return for subsequent year. The above case is fully applicable in the present case because the assessee has filed form no. 10 in earlier year and also filing in subsequent year when there is no change facts and circumstance. Hence once the form 10 No. admittedly filed and accepted in earlier years then it should be deemed to be filed in subsequent year till there is no change.

In the case of **Additional Director of Income Tax (Exemption) v/s**

Manav Bharati Child Institute & Child Psychology 20 SOT

517(Del) was held that

"though filing of Form No. 10 in respect of accumulation of Income of surplus income is mandatory to claim exemption u/s 11 and 12, the same can be filed at any time during the pendency of assessment proceeding and benefit of accumulation of income cannot be denied. Here the case of assessee is on much strong footing because the assessee had filed the same much before show cause notice by the Pr. CIT although after due date of return filling."

27. We also noticed that the Id. Pr. CIT stated that if a person fails to get audited his books of accounts from a chartered accountant, then he

will not be able to get benefit of section 11, 12 and 12A. In our view, the provisions are in the nature of 'procedural compliance' hence even if that kind of provision is not satisfied even then assessee would not be punished for cancellation of registration u/s 12A of the Act. In this regard, the Id AR has relied on the decision in the case of **M/s Sir Kika Bai Prem Chand Trust Vs. ITO Mumbai ITAT** wherein it has been held that

"Though s. 12A (1)(b) provides that the exemption u/s 11 will be available only if the accounts are audited and audit report "furnished along with the return", the same is not mandatory but is directory. The audit report in Form 10B affirms the statements contained in the balance sheet and income-expenditure statement and is intended to enable the AO to allow the exemption by relying on the audit report and without having to ask the assessee to furnish supporting documents in support of the claim. Such a procedural provision cannot be construed as mandatory because the defect can be cured at a subsequent stage. It is not the intention of the Legislature that the exemption u/s 11 should be denied merely because the audit report was not filed with the return."

"Aggrieved by the order of the Assessing Officer the assessee preferred an appeal before CIT(A). Before CIT(A) the assessee reiterated the stand as taken before the AO. The assessee further contended that in the event of Form No.10B not having been filed along with return of income, the return of income ought to have been considered as defective and a notice u/s. 139(9) of the Act ought to have been issued to the assessee to rectify the defect. The assessee further relied on certain judicial pronouncements and submitted that the requirement of filing Form No.10B along with return of income is not a mandatory requirement and that the said form even if filed in the course of assessment proceedings should be treated as sufficient compliance. Further reliance was also placed on the decision of Hon'ble Supreme Court in the case of CIT vs. Nagpur Hotel Owners Association, 247 ITR

201, wherein the Hon'ble Supreme Court held that filing of Form No.10 as required under section 11(2) r.w.r. 17 is mandatory and the same can be filed during the course of assessment proceedings. Specific reference was made to decision of the Hon'ble Calcutta High Court in the case of CIT vs. RajbahadurBishwesharlal Motilal Malwasie Trust, 195 ITR 825(Cal) and CIT vs. HardeodasAgarwalla Trust (1992) 198 ITR 511 (Cal), wherein it was held that audit report filed in Form No.10B in the course of assessment proceedings is sufficient to claim exemption u/s. 11 of the Act."

In the case of **CIT v/s Hardeodas Agarwalla Trust 198 ITR 511(Cal)** it has been held that:

It is now well-settled that a procedural provision, ordinarily, should not be construed as mandatory, if the defect in the act done in pursuance of it can be cured by permitting the appropriate rectification to be carried out at a subsequent stage. Procedural laws are devised and enacted for the purpose of advancing justice. It does not mean that the procedural laws should be brushed aside by the Court. It depends on the facts and circumstances of a particular case as to whether a breach in the observance of any procedural law, if not excused or overlooked, would cause real and substantial injustice to the parties. Having regard to the object of s. 12A, it cannot be said that the legislature intended that, even where the trust has got its accounts audited and the certificate obtained in Form No. 10B before the assessment is completed, merely because such report could not be filed in the course of the assessment proceedings, it would deprive a trust of getting the exemption if it is otherwise entitled to it in law. As in this case, the audit report had been obtained before the assessment was completed. The ITO, before completion of the assessment, did not allow any opportunity to the assessee to furnish the audit report. The direction that the audit report should accompany the return is not mandatory as the omission to do it may be rectified by filing the report at a later stage before the assessment is completed. The result of ignoring such return or the audit report will be denial of exemption to the trust although the income has been spent for charitable or religious purposes. This was not intended by the legislators. If an assessee fails to obtain the audit report in the prescribed form before the assessment is completed, he

may not, ordinarily, be entitled to get the benefit of exemption. In this case, however, the assessee was not given an opportunity to file audit report in the prescribed form which was available with assessee before assessment was completed. In such a case, appeal being a continuation of the original proceedings, the appellate authority has the power to accept the audit report and direct the Assessing Officer to re-do the assessment

28. We further observe that due to the negligence or cheating of past executive members and bad intention of misappropriation of funds by ex-president, they had not maintained the books of accounts and get their accounts audited by a chartered accountant. But after change of management and involvement of new committee, books of accounts have been prepared and audit has also been done. During the A.Y. from 2014-15 to 2016-17 heavy amount was withdrawn by the ex-president, out of total amount some entries are debited in account of Sh. Tejendra Pal Singh and some entries are debited in other parties account because vouchers was made in the name of other parties name and later on came to know that these parties have not received amount and when management went to bank to trace out the truth all disputed entries were bearer cheques, but at that time books of accounts have been finalized and audited, so assessee was not able to change the account name. Therefore, FIR was filed by the trust against the ex-president (i.e. Tejendra Pal Singh) for the cheating or fraud. Therefore, we are of the view that because of the misdeeds of ex-president, the whole trust

cannot be allowed to suffer, which is otherwise against the principles of natural justice. Further nowhere it has been proved that the Act of the President was in the knowledge of the assessee and the other members were involved knowingly and were part of that fraud. And if any fraud has been done behind the assessee, then the same cannot be treated as done by the assessee. Therefore, keeping in view our above discussion and observation, we are of the view that registration of the assessee could not be cancelled because of non-filing of I.T. return and audit report or on account of misdeeds of ex-president.

29. We further observe that the Id. Pr.CIT (Central) cancelled such approval from A. Y. 2014-15, though the assessee has already assessed from A.Y. 2014-15 under section 143(3)/148 of the Act. It is also settled legal position of law that Registration cannot be cancelled from retrospective effects. In this regard, the Id AR has relied on the decision of the Hon'ble Supreme Court in case of **State of Rajasthan and others vs Basant Agrotech India Ltd. and other 388 ITR 81(SC)** wherein it has been decided that

"only a legislation can make a law retrospective and prospectively subject justifiability and acceptability within the constitutional para-meters. The subordinate legislation can be given with retrospective effect if a power in this behalf is contained in the principle Act. In the absence of such conferment of power the Government the delegated authority has no power to issue a notification with retrospective effect. Therefore, in the absence of any provision contained in legislative Act the delegatee

cannot make a delegated legislation with retrospective effect. When no power has been conferred by the act on the competent authority to withdraw the approval retrospectively, then the withdraw of the approval u/s 10(23C)(vi) of the Act can only be prospective. Hence such of approval gentled under section 12A from back date are also not according to the law and facts of the case and at the worst after the year of notice it can be done if any."

In the case of **Indian Medical Trust V/s PCIT (Central) 2019 (6)**

TMI 996 (Rajasthan) it has been held that:

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

In the case of **Oxford Academy for Career Development Vs.**

Commissioner of Income Tax: (2009) 315 ITR 382, it was thus

observed that:

16. In the instant case, the petitioner is a registered society, which was earlier granted registration under Section 12A on 1-4-1999. A survey was conducted at the business premises on 20-9-2002, from where

documents were impounded. The registration was cancelled for the assessment years 2000-01 and 2001-02 for the reasons that the surplus was quite heavy. In the impugned order, it was mentioned by the CIT that there was an unusual huge margin and the petitioner was engaged in the commercial activities rather than charitable. As per the balance-sheet, huge amount from the student was charged. The profit margin embodied in the charges taken from the students are so huge and it proves the profit motive of the petitioner. The funds were misused by the president and his family members of the petitioner.

20. The expression "charitable purpose" is defined in Section 2(15) of the IT Act, 1961. It is of inclusive nature as revealed in the language. Earlier the words "the advancement of any other object of general public utility" in this definition were succeeded by the words "not involving the carrying on of any activity for profit". These words were omitted by the Finance Act, 1983, w.e.f. 1st April, 1984.

26. In the light of the above discussion and by considering the totality of the facts and circumstances of the case, we hold that the order dt. 9th March, 2004, passed by the CIT (Annex. No. 15 to the writ petition) as per the then law is without power and jurisdiction and therefore, it is liable to be set quashed.

27. Accordingly, the impugned order dt. 9th March, 2004, passed by opposite party No. 2 withdrawing/rescinding the order granting registration on 1st April, 1999, to the petitioner's society under Section 12A of the Act, is quashed. Consequently, the registration granted to the petitioner's society on 1st April, 1999, stands restored for the assessment years under consideration."

30. Thus, keeping In view of about above discussion we are of the opinion that in the present case the Id. Pr. CIT(C) has found or made allegation or objection of diversion or mis appropriations of funds and not filling the Audit report and ITR, if any only in A.Y. 2014-15 to 2016-17 & not in other years either prior years or later years, then the cancellation of Registration u/s 12A cannot be made for other years. Even otherwise

we are also of the view that no retrospective cancellation could be made as neither in the Sec. 12AA(3) nor in Sec. 12AA(4) it has been provided or is seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively no cancellation for the past years could be ordered. In this regard, the Hon'ble Madras High Court on the question as to whether the cancellation will operate from a retrospective date has dealt in the case of **Auro Lab vs. ITO (2019) 411 ITR 0308 (Mad)** **20** wherein it was held as under:

the amendment to Section 12AA(3) is prospective and not retrospective in character. The courts reasoned that even when the parliament had plenary powers to enact retrospective legislation in matters of taxation, the amended section is not seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively, the cancellation cannot operate from a past date.

21. On the third question of the effective date of operation of the cancellation order, it was held that the cancellation will take effect only from the date of the order/notice of cancellation of registration. Since the act of cancellation of registration has serious civil consequences and the amended provision is held to have only a prospective effect the effect of cancellation, in the event the pending Tax Appeal is decided in favour of the Revenue, will operate only from the date of the cancellation order, that is 30.12.2010. In other words, the exemption cannot be denied to the petitioner for and up to the

*Assessment Year 2010-11 on the sole ground of cancellation of the certificate of registration. Also refer **Indian Medical Trust v/s Pr. CIT & ors 182 DTR 252(Raj.)** is held that cancellation of registration with retrospective effect is invalid."*

Therefore, in view of the decision of Hon'ble High Court, we are also of the view that cancellation of registration with retrospective effect is invalid in the present case.

31. We also noticed that the Id. Pr. CIT(C) has stated that the activities of the assessee associations are not genuine and are not being carried out in accordance with the stated objects of the assessee. However, the allegation of the Id. Pr. CIT(C) are incorrect. Because there was no change in the activities of the assessee since starting to till date. The Id. PCIT(C) has failed to state that which activities have been done by the assessee in these years which were apart to earlier years and what activities are not according to the aims and objects of the Associations or have not been followed or done. The assessee has not violated any provision of Sec. 12AA(3)/12AA(4) of the Act. Therefore, in view of the above facts and circumstances, case laws discussed and the material placed on record, we found merit in the contention of the Id. AR. The Id. CIT-DR has not filed any contrary material against the assessee Trust,

therefore, we set aside the order of the Id. Pr.CIT(Central) and allow the grounds taken by the assessee.

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

Order pronounced in the open court on 06th January, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 06/01/2021

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Wholesale Cloth Merchant Association, Kota.
2. प्रत्यर्थी / The Respondent- The Pr.C.I.T. (Central), Jaipur (Rajasthan).
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 688/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar