

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “H”, MUMBAI****BEFORE VIKAS AWASTHY (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)****I.T.A. No.1524/Mum/2023**

Heart Foundation of India 5 th Floor, Hemdil, Linking Road Santacruz (West), Mumbai AAAAH0500R	vs	Commissioner of Income Tax- Central, Pune Bodhi Tower, Aaykar Sadan, 6 th Floor 548/2b, Gultekadi, Salisbury Park, Pune 411 037
APPELLANT		RESPONDENT

Assessee represented by	Dr. K Shivram A/w Mr. Sashi Bekal
Department represented by	Smt.Madhumalti Ghosh, CIT DR

Date of hearing	12-07-2023
Date of pronouncement	27-07-2023

O R D E R**PER : MS PADMAVATHY S. (AM)**

This appeal is against the order of the Principal Commissioner of Income-tax (Central), Pune (in short, ‘PCIT’) dated 06/03/2013 passed under section 12AB(4) of the Income-tax Act, 1961 (‘the Act’).

2. The assessee is a charitable trust set up vide trust deed dated April 21, 1988. The Trust was granted registration under section 12A of the Act vide

certificate dated July 21, 1889. The assessee has been carrying on its activities in accordance with the trust deed since its inception. There was a search carried out on one M/s.Emcure Pharmaceuticals Ltd and its group companies on 16/12/2020. Simultaneously, a survey action was carried out on the assessee. A statement from Dr. Lekha A Pathak, trustee was also recorded. The case of the assessee was centralized in Pune vide order dated March 07, 2022. The assessee had been filing the return of income in the status of charitable trust upto the A.Y. 2020-21. The assessee for the assessment year 2021-22 filed a return of income on October 11, 2022 in the status of Association of Persons (AOP) declaring a total income of Rs.3,75,070/-. The return was filed in the status of AOP for the reason that the assessee had not applied for the registration of the trust under the new provision i.e. section 12AB of the Act due to Covid lockdown and its impact on the medical industry. The case of the assessee was selected for scrutiny and the Assessing Officer made a reference under the Second Proviso to section 143(3) of the Act to PCIT (Central) Pune alleging that the assessee has made specific violation as per Explanation (e) and (f) to section 12AB(4) of the Act. It was alleged in the said reference that the assessee trust as provided freebies to doctors which are in violation of the Indian Medical Council (Professional Conduct & Ethics) Regulations, 2002. The assessee was issued notice under section 12AB of the Act by the PCIT(Central), Pune. The assessee made its submissions before the PCIT. However, the PCIT did not accept the submissions of the assessee and proceeded to cancel the registration of the trust with effect from AY. 2016-17.

3. The assessee is in appeal before the Tribunal against the retrospective cancellation of registration. The assessee raised 8 grounds regarding the issue of cancellation of Registration under section 12AB with retrospective effect. The

assessee also raised an additional ground contending the jurisdiction of PCIT to cancel the registration. The relevant additional ground reads as under:-

“1. On facts and circumstances of the case and in law, the Ld. Principal Commissioner of Income-tax (**PCIT**) - Central Circle, Pune has erred in passing an order under section 12AB(4) of the Income-tax Act, 1961 (Act) cancelling the registration of the assessee-trust without jurisdiction. Hence the cancellation is bad in law.”

In support of the admission of the additional ground, the ld A.R. submitted that it involved only adjudication of pure legal issue and no fresh facts were required to be examined. The learned DR opposed the admission of additional ground. Taking into consideration the entire conspectus of the facts and circumstances of the case and the additional ground raised before us we are convinced that its adjudication does not require any fresh investigation of facts and involves pure legal issue. Respectfully following the judgement of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT [(1998) 229 ITR 383 (SC)] we admit this additional ground for adjudication. Accordingly we will first proceed to adjudicate the legal objection raised through additional ground.

4. The Ld.AR in this regard submitted that the PCIT, Central Circle is not the prescribed authority and is not the authority for granting registration or cancellation of the registration. It is submitted that the jurisdiction lies with the CIT(Exemption) who is the prescribed authority in this connection. The Ld.AR drew our attention to the CBDT Notification No.52 & 53 of 2014 dated 22/10/2014 notifying the prescribed authorities for various territorial areas (page 135 of paper book). The ld AR submitted that for the territorial area of Greater Mumbai and Navi Mumbai (serial No.12), the Commissioner of Income-tax

(Exemption), Mumbai is the prescribed authority for the purpose of sections 11 & 12. The Id AR in this regard relied on the decision of the Jodhpur Bench of the Tribunal in the case of Pacific Academy of Higher Education and Research Society vs. PCIT (Central) ITA 04-05/Jodh/2020 dated January 25, 2023 (Jdh)(Trib) where a similar jurisdictional issue is considered and it was held that the PCIT (central) is not correct authority for cancellation of registration issued under section 12A. The Ld.AR further relied on the decision of Jaipur Bench in the case of wholesale Cloth Merchants Association vs PCIT (Central) ITA 688/Jp/2019 order dated January 06, 2021 where a similar view has been expressed. Accordingly, it was prayed that the cancellation of registration of the trust by the PCIT(Central) is void of jurisdiction and contrary to CBDT Circular and hence, may be quashed.

5. The Ld.AR presented without prejudice arguments to submit that the cancellation of the registration of the trust cannot be done retrospectively. The Ld.AR in this regard relied on the decision of Rajasthan High Court in the case of Indian Medical Trust vs PCIT (2019) 414 ITR 296 (Raj) and the judgement of the Hon'ble Madras High Court in the case of Auro Lab vs ITO (2019) 411 ITR 308 (Mad). The Ld.DR submitted that in above two decisions, it has been held that the Commissioner is not authorized under section 12AA(3) to cancel the registration of the trust retrospectively. The Ld.AR further submitted in assessee's case the registration is cancelled under the new section 12AB(4) and clause (ii) of the said section specifically provides that the cancellation of registration cannot be retrospective. The relevant extract of the section reads as follows:-

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

(a) to (c) *****

(i) *****

(ii) pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;”

6. The Ld.DR, on the other hand, submitted that the PCIT is an authority above the CIT and, therefore, has jurisdiction over the CIT(Exemption). Accordingly, the Ld.DR submitted that the jurisdiction of the PCIT cannot be questioned. Further, the Ld.AR submitted that section 12AB(4) provides that a reference can be made to the PCIT or the CIT and that when the language of the section gives jurisdiction to the PCIT, the notification cannot override the powers of the PCIT. Accordingly, the Ld.DR submitted that the PCIT has correctly exercised his jurisdiction in passing the order cancelling the registration of the assessee trust.

7. We heard the parties and perused the materials on record. There was a search in the case of M/s.Emcure Pharmaceuticals group and its associate concerns on 16.12.2020. Simultaneously there was a survey under section 133A in the case of assessee and accordingly the case of the assessee and co-ordinate investigation was centralised with the Assistant Commissioner of Income-tax, Central Circle, Pune (the Assessing Officer). The Assessing Officer made a reference to the PCIT (Central), Pune under second proviso to sub section (3) of section 143 for cancellation of registration under section 12AB(4) of the Act. The PCIT, based on the statements recorded from one of the trustees and on

perusal of various other documents came to the conclusion that the activities of the trust are neither genuine nor being carried out in accordance with the objects of the trust. It was further held that the assessee has violated other laws while carrying out the activities which are in the nature of specific violations specified in clause (e) and clause (f) of Explanation below section 12AB(4). The PCIT accordingly withdrew and cancelled the registration granted to the assessee with effect from A.Y. 2016-17. With regard to the contention that the PCIT (central) does not have the jurisdiction to cancel the registration and that too retrospectively, we notice that as per serial no.12 of the CBDT notification Nos 52 & 53, the jurisdiction for all cases in Greater Mumbai and Navi Mumbai, claiming exemption under sections 11 and 12 lies with the Commissioner of Income-tax (Exemption) Mumbai. Therefore we see merit in the submissions of the ld AR that the PCIT (Central) does not have jurisdiction to cancel the registration under section 12AB. It is also noticed that the Jodhpur Bench of the Tribunal in the case of Pacific Academy of Higher Education & Research (supra) has considered a similar issue and held that –

“6.3. We found from perusal of the record that a search and seizure operation has been carried out in the case of Pacific Group of Udaipur on 26.08.2015. Warrant of authorization under section 132(1) of the Act was also issued and duly executed in respect of the assessee trust being part of the Pacific Group. The Notification referred above does not provide that Id. CIT (E) can transfer his power or jurisdiction to other CIT or PCIT. In the said notification the CBDT has authorized the CIT (E) to issue order in writing for the exercise of powers and functions by the Addl. CIT or JCIT or TRO who are subordinate to him, and has authorized the Addl. CIT to issue order in writing for the exercise of powers by the Assessing Officer who are subordinate to him. In section 124 jurisdiction of Assessing Officer has been given, not the jurisdiction of Commissioner. Further, in section 127 power of transfer of cases has been given from one Assessing Officer to other Assessing Officer and not from CIT to CIT. Therefore, registration under section 12A or approval under section 10(23C)(vi) can be withdrawn only by the prescribed authority who is empowered to grant the same. Notification No. 52/2014 and 53/2014 dated

22.10.2014 only empower the CIT (E) to withdraw the registration/approval. The Pr. CIT has not been given power to withdraw/cancel the registration/approval.

6.4 Further, 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 CU(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'.

6.5 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.

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 reissue 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.

6.6 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.

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.

6.7 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 cancel the same.

6.8 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 Ko/hapur— 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.

6.9 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 parameters. 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 granted 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 CJT 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

Thus, keeping in view the above discussion, we are of the opinion that in the present case the Id. Pr.CIT(Central) has no jurisdiction to pass the impugned order. Accordingly, we quash the same. 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) 411ITR 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."

8. The ratio laid down by the Hon'ble Tribunal is that in the search case when the case is centralized it is for the purpose of assessment only. The CIT(Exemption) who is having the jurisdiction to handle cases claiming exemption under section 11 and 12 cannot transfer or hand over or give his work or power or duties. In case, if it is necessary to do so then there has to be proper proceedings in writing. In assessee's case the facts are identical where the assessment is centralized and there was no proceeding or communication to the

assessee that the CIT(Exemptions) has transferred his power to PCIT. Therefore respectfully following the ratio laid down in the above decision by the Jothpur Bench of the Tribunal and considering the facts of the present case we hold that the PCIT does not have the jurisdiction to cancel the registration under section 12 AB.

9. In above decision, the Hon'ble Tribunal has also held that the withdrawal of registration cannot be retrospective. In assessee's case, the PCIT has cancelled the registration under the new section 12AB. The clause (ii) to subsection section (4) of section 12AB specifically provides that cancellation can be done for such previous year and all subsequent previous years which makes it clear that the cancellation cannot be retrospective. Therefore, we hold that even otherwise the cancellation of registration by the PCIT retrospectively from AY 2016-17 is not tenable.

10. During the course of hearing the Ld.AR, also presented arguments with regard to the alternate contentions

- (i) That assessee never applied for registration under section 12AB and hence the cancellation of the registration of the trust could only be done under section 12AA(3) or section 12AA(4) of the Act.
- (ii) That the assessee himself filed the return of income for A.Y. 2021-22 as an AOP and not in the status of a trust and that as per the second Proviso to section 143(3) reference could be made only with respect to a trust
- (iii) That the assessee has not committed any specific violation under explanation (f) of section 12AB(4)

- (iv) That the decision of the Supreme Court in the case of Apex Laboratories (P) Ltd., vs DCIT [2022] 135 taxmann.com 286 (SC) is applicable only to Pharma companies and the assessee being a Trust is not covered by the said decision.

11. We have already held that the cancellation of registration retrospectively from AY 2016-17 under section 12AB(4) by the PCIT is not valid. Therefore the arguments presented on the alternate contentions have become academic not warranting specific adjudication.

12. In result the appeal of the assessee is allowed.

Order pronounced in the open court on 27/07/2023.

Sd/-

sd/-

(VIKAS AWASTHY)	(PADMAVATHY S)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 27th July, 2023

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai