

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'D'**

**BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER
AND
SHRI RAJPAL YADAV, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.3119/Ahd/2014

निर्धारण वर्ष/Asstt. Year: -

Paramount Charity Trust Paramount Complex Nr. Natubhai Circle, Gotri Road Race Course Baroda 390 007.	Vs.	CIT(1)-1 Baroda.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri M.K. Patel, AR
Revenue by :	Shri Vasundhara Upmanyu, CIT-DR

सुनवाई की तारीख/Date of Hearing : 19/01/2018

घोषणा की तारीख/Date of Pronouncement: 27/02/2018

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present appeal is directed at the instance of the assessee against order of Id.CIT-I dated 30.9.2014 passed under section 12AA(3) of the Income Tax Act, 1961 vide which the Id.Commissioner has cancelled registration granted to assessee under section 12A of the Act.

2. Originally assessee took seven grounds of appeal, which were running into three pages, thus, they were descriptive and argumentative in nature. However, subsequently assessee has

revised grounds. In the concise ground, it has pleaded that the Id.Commissioner has erred in cancelling registration under section 12AA w.e.f. the amendments made in trust deed.

3. Brief facts of the case are that the assessee-trust came into existence on 15.6.1977 when it was registered with Assistant Charity Commissioner, Baroda vide registration No.E/2469/Vadodara. It was a public charitable trust. The assessee-trust has applied for grant of registration under section 12A of the Income Tax Act. This, application of the assessee was allowed and it was granted registration on 1.1.1982 vide order dated BRD/SIB/110-6-P/81. At this stage, it is pertinent to take note of objects of assessee-trust in original trust deed. Such objects have been enumerated by the Id.Commissioner in the show cause notice issued for cancellation of registration. They are available at page no.2 of the impugned order. They read as under:

"(1) To establish and or acquire maintain support of schools, colleges, vidhyapeeths and other institutions for imparting education and training of students and/or teachers in such lines or courses as the trustees may from time to time deem fit.

(2) To promote education, learning vocational training in all the branches

(3) To conduct experiments, research project etc.

(4) To prepare and publish reports magazines and any other publications

(5) To grant monetary assistance from time to time to any schools, colleges, libraries, reading rooms and other institutions which impart education upon such conditions as the trustees may deem fit.

(6) To grant monetary assistance by way of buying books, food and clothes, school or college fees, including scholarship and/or loans to poor deserving students, or trainees to enable them to receive such education training and

qualification in India or abroad as the trustees may approve and for such period as the trustees may deem fit.

(7) To arrange educational campaigns, exhibitions, study circle lectures, discussions etc.

(8) To grant relief in any form to disabled and poor.

(9) To grant subscription and donations to hospitals, dispensaries, convalescent homes, asylums, nursing homes and other public institutes for administering the medical relief to the poor upon such terms and conditions for such period as the trustees may think fit.

(10) To organize and render relief work in normal times as well as in the event of any national or local catastrophe such as famine, flood, fire, epidemic, war etc,

(11) To subscribe contribute and/to donate to any public charitable objects as stated above and such as relief by means of pecuniary or any other help in the shape of monthly or periodically allowances/loans. Otherwise to such parties as shall in the opinion of the trustees deem fit.

(12) The trustees shall have full power and absolute authority to add and introduce any other specific public charitable objects not in consistent with the objects and purpose of this presents and in that case such newly added subjects decided by the trustees shall be deem to have been incorporated in the objects of these presents. This is subject to the Bombay Public Trust Act."

4. It is pertinent to mention that the assessee-trust was granted registration under section 80G(5) of the Act which was renewed from time to time. According to the assessee, Assistant Commissioner of Charity under Bombay Public Trust Act 1980 carried out an inquiry under section 22A of this Act with regard to objects of the assessee. It was noticed that in clause (6) of the object clause the expression "abroad" means that assistance could be given within and outside India. Thus, on the basis of this inquiry the trustees amended trust-deed on 24.6.1977. They have unanimously agreed to delete the word "abroad" to include expression "education and training of students/teachers" in clause (3), (4) and (7) of the original trust-deed. It was pointed out to

the Id.Commissioner that in 1989-90 there was an acute need for setting up of a centre which could provide medical diagnostic services to public of Baroda because there were no facilities available at the relevant time in the city and patients have to travel far places in Ahmedabad and other places. Thus, an amendment was carried out in the trust deed by way of a resolution dated 24.2.1990. The following objects which according to the assessee ancillary to already existing objects were added.

"13) To provide all kinds of medical, diagnostic, family welfare and general health facilities and treatment to the patients, in the field of allopath, homeopathy, or Ayurved, without any distinction of castes, creed, race, religion or language basis, either on free of charge or no profit basis.

To buy, acquire, hire, take on lease, import medical or diagnostic machineries and equipments to run a hospital, dispensary, maternity home, nursing home, diagnostic centre, sanatorium or camps and to construct or acquire on rent or otherwise, any building or premises to provide the above facilities and to employ technical and non-technical personnel and to consult experts and specialists in the relevant fields of medicine for the purpose of proper and smooth operations of the above objects."

5. According to the Id.commissioner the fact with regard to addition of above objects were being noticed by the AO while passing assessment order in the Asstt.Year 2010-11. He formed an opinion that addition of these objects in the trust without communication to the Department would expose the assessee for irregularities in conducting its activities inconsistent to objects originally pursued by the assessee on the basis of registration granted under section 12A. Thus, he issued a show cause by exercising power under section 12AA(3) of the Act for withdrawal of approval granted to the assessee under section 12A of the Act.

Copy of the show cause notice has been reproduced in the impugned order. In response to the show cause notice, the assessee has filed detailed submissions. Submissions running into 33 pages have been noticed by the Id.Commissioner verbatim in the impugned order nos.5 to 39. After considering submissions of the assessee, the Id.Commissioner has held that diagnostic centre being run by the assessee is commercial venture which was not there in the original objects, hence, it is inconsistent to objects on whose genuineness, registration under section 12A was granted. The Id.Commissioner has cancelled the registration w.e.f. the date amendment was made in the trust deed.

6. Before us while impugning order of the Id.Commissioner, the assessee has reiterated its submissions reproduced in the impugned order. It was contended by the Id.counsel for the assessee that as per section 22 of the Bombay Public Trust Act, changes in the trust deed was duly brought to the notice of the Id.Assistant Charity Commissioner. The changes were duly notified and recorded on 8.5.1990 in the register of public trust maintained by the Id.Commissioner. Copy of such details is being placed on paper book on page no.72. He also pointed out that on the basis of these changes and registration under Bombay Public Trust Act it could avail loan from IOB.

7. In its second fold of contentions, it was submitted that registration under section 80G of the Act was granted to the assessee in 1977. Meaning thereby, donors of the assessee could avail exemption from payment of tax on such donation. After amendment carried out on 1.4.1990 by including of objects number 13 in the trust-deed, it has applied for renewal of

registration granted under section 80G in Form No.10G on 31.3.1991. Copy of such application has been placed in the paper book on page no.81 and 82. According to the Id.counsel for the assessee, it was mandatory to file following documents for grant of registration under section 80G of the Act viz. (a) copy of Income Tax Registration Certificate, (b) Trust deed, (c) details of activities since its inception or last three years, whichever is less, (d) copy of audited accounts of institution since its inception or last three years whichever is less. The assessee has submitted copy of the trust-deed including addition of objects under clause 13. Based on these details, its application for renewal under section 80G was allowed vide letter dated 11.12.1991. Copy is placed at page no.84 of the paper book. Thereafter the said approval is renewed from time to time, and ultimately vide letter dated 19.9.2012 Id.CIT informed the trust that approval would in perpetuity. The letter is placed on page no. 132 of the paper book. The Id.counsel for the assessee contended that the assessee-trust filed application to the AO in form No.10 for accumulation of income under section 11(2) of the Act, which was granted upto Asstt.Year 2010-11. The Id.counsel for the assessee further submits that trust has carried out these activities of diagnostic centre since 1990 till today. It has been filing income returns along with audited accounts showing this income from CT/MRI scanning and granted exemption under section 11/11(2) of the Act till A.Y.2010-11. He also pointed out that in some of the years assessments were reopened and after detailed scrutiny of all the replies/documents filed by the assessee were gone through. Assessments were framed accepting stand of the assessee for grant of benefit under sections 11/12 of the Act. He

drew our attention towards page 161 to 252 of the paper book wherein documents relating to the assessments of the Asstt.Years 2003-04, 2005-06, 2006-07 and 2010-11 are placed. Assessment order for the Asstt.year 2005-06 was passed under section 143(3) and copy of the same is available on page no.199 of the paper book. Similarly, assessment order for the Asstt.Year 2006-07 was also passed under a scrutiny assessment under section 143(3) and copy of this assessment order is placed on page no.219 of the paper book. Thus, according the Id.counsel for the assessee right from 1-4-1990, fact with regard to inclusion of medical relief in its object was known to the department. It has considered all these aspects and did not disturb its affairs. In other words, it has accepted the assessee as a charitable institution from last 20-25 years. It is wrong at the end of the Id.Commissioner to observe that the assessee has withheld the information. He relied upon the following decisions:

- i) *Bhansali Trust, ITAT, Mumbai ITA No.5948/Mum/2012*
- ii) *Mehta Jiveraj Makandas & Parekh Trust, ITAT, Mumbai ITA No.2212/Mum/2010;*
- iii) *Moolchand Khairati Ram Trust, Delhi High Court, ITA No.141/2013;*
- iv) *Vivekanand General Hospital, ITAT, Bangalore, ITA No.1195 & 1196/2012;*
- v) *Shree Balaji Educational Trust, ITAT, New Delhi, IT no.877/Del/2014;*
- vi) *Shree Anjaney Medical Trust, Kerala High Court, ITA No.17 of 2015;*
- vii) *Samarpan Samiti, ITAT, Agra, ITA Nos.427/2011 & 36/2012*

8. He also placed on record copies of these decisions.

9. In his next fold of submission, it was submitted that diagnostics facility falls within the ambit of medical relief as per

section 2(15). This activity is *per se* a charitable. Even if some incidental profits on performing a charitable activities result to the assessee then that surplus is always applied for the objects of the trust. It is not being pocketed either by the trustee or by some persons. Section 13 of the Act duly take care of any surplus generated by a charitable trust and also take care of the activities for some undue benefit is being given either to the trustees or any persons associated with the trust. He made reference to sub-clause (3) of section 13 in this regard. He relied upon following decision for buttressing that registration could not be cancelled by the Id.Commissioner more so, from date such alteration was made to the trust deed.

- i) *Mehta Jiveraj Makandas & Parekh Trust, ITAT, Mumbai ITA No.2212/Mum/2010;*
- ii) *Bhansali Trust, ITAT, Mumbai ITA No.5948/Mum/2012*
- iii) *Moolchand Khairati Ram Trust, Delhi High Court, ITA No.141/2013;*

In other words, there is no power with the Id.Commissioner to cancel registration with retrospective effect i.e. prior to the date when even show cause notice was not issued.

10. The Id.CIT-DR on the other hand relied upon the order of Id.Commissioner. She pointed out that form No.10G has been designed as per Rule 17A of the Income Tax Rules. Conditions contemplated in this form are being violated as it contemplates that applicant would inform authority any alteration in the terms/object of the trust or even in the rule governing institution. The moment assessee failed to inform the department about changes in the trust deed, its object would not be genuine and registration deserves to be cancelled. She pointed out that the

Id. Commissioner has considered this aspect elaborately in the impugned order and has also rightly cancelled the registration.

11. We have considered rival contentions and gone through the record carefully. Section 2(15) and 12AA(3) are the provisions, which have direct bearing on the controversy. Therefore, it is pertinent to take note of relevant part of these provisions which read as under:

Section 2(15)

"charitable purpose" includes relief of the poor, education, [yoga,] medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

[Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;]]*

Section 12AA(3)

" Section 12AA(3) states that where a trust or an institution has been granted registration under clause (b) of sub-section(1) [or has obtained registration at any time under

section 12A [as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996)] and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard."

12. A perusal of section 2(15) would indicate that this clause contemplates meaning of expression "charitable purpose", and in that stride it illustrates few activities of an institution for falling within the ambit of "charitable purpose" in two categories, viz. in the first category "charitable purpose" would indicate relief to the poor, education, yoga, medical relief, preservation of environment and in the second category advancement of any other objects of general public utility. So far as objects performed for activities carried out in the first category are concerned, these activities are *per se* charitable. We have taken cognizance of this clause; in order to examine the issue whether inclusion of any new objects by an amendment to trust-deed is to be construed as an illegality which would disentitle the assessee from registration under section 12AA and consequently registration earlier granted to the assessee deserves to be cancelled. Otherwise, it is to be seen whether non-communication of amended trust-deed to the department was a mere irregularity which could have been or which should have been rectified by the Id.Commissioner instead of cancelling the registration. Before considering these aspects, let us appraise ourselves with the power of Id.Commissioner provided under section 12AA(3) of the Income Tax Act as

extracted (supra). A perusal of the above section would indicate that where a trust or institution was granted registration under section 12AA and subsequently, the Id.Commissioner is satisfied that activities of such trust or institution are not genuine or are not being carried out in accordance with objects of the trust or institution, as the case may, he shall pass an order in writing cancelling of such trust or institution. It means, if the Commissioner is satisfied that activities of such trusts or institution are no longer remained genuine or they are not carried out activities in accordance with objects of the trust, then after providing an opportunity of hearing to an assessee he will cancel registration by passing an order in writing. Two important factors ought to be considered by the Id.Commissioner i.e. either objects are not genuine or they are not being undertaken by the trust, instead of that trust has been doing other activities. As observed earlier, activities performed or objects of the assessee-trust are concerned, they are *per se* charitable. Even new objects included by the assessee vide amendment dated 1.4.1990 is also charitable in nature. Thus, question before us is whether objects of the assessee-trust are non-genuine or it has commenced any activities which are not in accordance with objects of the trust. A perusal of impugned order would indicate that the Id.Commissioner basically did not examine objects of the assessee-trust. He simply harboured a belief that diagnostic centre is to be categorized as a commercial venture which does not fulfill any philanthropic objects. In his second objection, he further objects that since running of a diagnostic centre was not part of original objects on whose genuineness registration was granted to the assessee, therefore it is to be construed that the

assessee-trust has not carried activities in accordance with objects on the basis of which registration under section 12A was granted to it.

13. At this stage, before adverting to the specific facts of the present case, we would like to take note of the case laws relied by the Id.counsel for the assessee in order to appraise us whether non-communication of an amended trust-deed as accepted by the Revenue would automatically be construed that registration to the assessee-trust would be cancelled. First decision referred by the Id.counsel for the assessee is that order of the ITAT, Mumbai Bench in the case of Bhansali Trust (supra). In this case the assessee trust came into existence on 19.3.1969. It was registered under section 12A. It had carried out charitable activities for more than 50 years, but the Id.AO denied benefit under sections 11/12 of the Act in the Asstt.Year 2009-10 by holding that objects of the trust have been amended after grant of registration under section 12A of the Act. The assessee trust ought to have been got it re-registered with DIT(Exemption) under section 12A of the Act after such amendment in the objects. In this background, Tribunal has made following discussion:

"3 In the background of the above analysis of the changes in the object clause, in our view, there is no change in the tone and tenor of the objects pursued by the assessee in a real sense. In fact, our aforesaid analysis of the changes in the Trust deed, do not reflect that that objects of the assessee Trust has undergone changes but the amendments are merely enabling clauses which provide only 'means' or 'power' to achieve objects in the Trust Deed. In our considered opinion, having regard to the aforesaid fact situation, it would be inappropriate to construe the amendments of 1957 and 1979 as insertions of any new objects of the assessee Trust, rather the amendments only

seek to provide enabling powers to the Trust to accomplish its original objects which are in the fields of educational purpose, medical purpose, relief of poverty and objects of general public utility not involving carrying on any activity for profit. In fact, Hon'ble Bombay High Court in the case of Deccan Gymkhana vs. CIT, 262 ITR 459 (Bom) as well as the judgment of Hon'ble Supreme Court in the case of PHD Chamber of Commerce & Industry vs. DIT, 130 ITR 186 (SC) has laid down that a distinction has to be made between the 'purpose' of a Trust and the 'powers' conferred upon the Trustees as being incidental to accomplish the purpose of the Trust. In our considered opinion, the amendments in 1975 & 1979, which have been noticed above only seek to enable the Trustees to carry out activities for accomplishing the purpose of the Trust which we have found earlier to be for a 'charitable purpose' as per original Trust deed. Therefore, factually speaking, even if one has to consider the amendments of 1975 & 1979 made in the Trust Deed, in our view it does not signify that the registration granted to the assessee on 27/11/1973 under section 12A of the Act is rendered nugatory."

14. The Tribunal has considered judgment of Hon'ble Allahabad High Court in the case of Allahabad Agricultural Institute & Another Vs. Union of India and Others, 291 ITR 116 (All). The Id.CIT(A) allowed benefit under sections 11/12 to such assessee and Tribunal upheld allowance of such benefit.

15. Next decision relied upon by the Id.counsel for the assessee was from the order of ITAT, Mumbai Bench in the case of Mehta Jivaraj Makandas & Parekh Trust (supra). In this case also, the assessee trust got registration under section 12A on 21.11.1975. Its objects were amended and it filed an application for renewal of registration under section 80G on 13.4.2001 which was denied to the assessee. Allegation against the assessee was that it had not complied with requirement in the statutory form no.10A because the assessee had to give an undertaking to communicate forthwith

any alteration in objects of the trust or in the rule governing institution. According to the Revenue changes were intimated only after 15 years vide letter dated 23.12.2009. In this background, the Tribunal has examined the aspects and allowed the application directing the DIT to grant registration. Observation of the Tribunal in para-9 is worth to note. It reads as under:

"9. We also note that the original object of the trust of providing hostel accommodation to the students has not been deleted. The object has only been modified so as to include other deserving students also in addition to the students of Modh community. There is only one addition fee in the objects which is providing medical aid to the poor and deserving persons of any community. Thus even the amended objects remain charitable and have not caused any detriment to the original objects as students of the Modh community continued to be eligible for the benefits. Further the trust had already been granted exemption under section 80G based on the amended objects for the subsequent period. There is no statutory requirement of intimating the changes to the Income-tax Department. The requirement of intimation is mentioned only in the form No.10A and even in the form No.10A there is no time limit prescribed. The assessee has already intimated the changes to the department though later and therefore technically there is no violation on the part of the assessee because of no time limit being prescribed. Moreover, there being no statutory requirement of intimating changes, registration cannot be cancelled or the trust cannot be declared invalid only on the ground that changes were not intimated."

16. The next case law referred to by the Id.counsel for the assessee is of Hon'ble Delhi High Court in the case of Moolchand Khairati Ram Trust (supra). He placed on record copy of the decision. It is pertinent to observe that the Id.Commissioner has relied upon order of the ITAT in this case. One of us (JM) was

party to the order passed by the ITAT, Delhi Bench in the case of Moolchand Khairati Ram Trust. The issue in that case was that late Lala Khairati Ram executed a Will dated 23-12-1927 and codicil dated 8.1.1928. In terms of the said Will certain properties were settled in trust for furtherance of the objects as set out in the Will. The main object was to set up a hospital named Shri Mool Chand Khairati Ram Hospital and Ayurvedic Research Institute in Lahore. After partition of the Country in 1947, the assessee applied for allotment of land to the Government of India, and in 1958 an institution was set up known as "Shri Mool Chand Khairati Ram Hospital and Ayurvedic Research Institute. The assessee was granted registration under section 12A in December, 1974. In the assessment year 2006-07 it was raised by the AO that the trust was settled for running an Ayurvedic Hospital and Research Centre, whereas it has started running an Allopathic centre which is not in consonance with the objects of the trust. Hence, it is not entitled for benefit under sections 11 and 12. Ultimately, dispute travelled upto the Hon'ble Apex Court, and the Hon'ble Delhi High Court has set aside order of the ITAT and held that running an Allopathic Hospital would also in a way a medical relief and boost Ayurvedi system in hospital in question, apart from considering activity of running allopathy system of medicine in consonance with objects of the trust. Hon'ble High Court has further observed that once the department has allowed things to settle in earlier years, even if two opinions are possible, the AO should not have unsettled the issue, when there are no changes in the facts and circumstances. We would like to take note of the finding of the Hon'ble Delhi High Court on this aspect as under:

"39. The next issue to be addressed is whether it was open for the AO to take a view different from the one that has been accepted by the Revenue for the past several decades. It is well established that each year is a separate assessment unit and the principles of *res judicata* are not applicable. However, in this case, it would be appropriate to note that the activities carried out by the Assessee have been accepted as being amenable to exemption under Section 11 of the Act for the past several decades. In the past period, the Assessee has been granted exemption under Section 11 of the Act and also under Section 10(22)/10(22A) or Section 10(23C) of the Act. Concededly, the exemptions granted to the Assessee for past several decades would not be available if the activities of the Assessee were considered by the concerned AOs/Authorities to be *ultra vires* its objects.

40. In the circumstances, it would not be apposite to permit the Revenue to challenge a position that has been sustained over several decades without there being any material change. In *Radhasoami Satsang (supra)*, the Supreme Court observed as under:-

"....each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.."

41. In *Parashuram Pottery Works Co. Ltd. v. ITO*: (1977) 106 ITR 1 SC, the Supreme Court reiterated the principle that if the parties have allowed a position to sustain, it would not be appropriate to change the position in a subsequent year. The said decisions have also been followed by the Supreme Court in its later decision in *Excel Industries Ltd. (supra)*.

42. In *Krishak Bharati Co-operative Ltd. (supra)*, a Division Bench of this Court struck a note of caution that the rule of consistency is not of a wide application and a blind adherence to this rule would lead to anomalous results. Thus, in the circumstances, where the views are mistaken and apparently erroneous, it would not be apposite to compel the Revenue to follow the same on the principle of estoppel or of consistency. However, in cases, where two views are plausible, it would be,

plainly, whimsical to frame an assessment contrary to the position accepted in earlier years. This would render the exercise of assessment highly subjective; clearly, an Assessee cannot be subjected to such vagaries. Indisputably, the powers of AO are wide but its exercise cannot be undisciplined. In cases where there is a palpable mistake or the position accepted by the Revenue in earlier years is apparently erroneous, the AO would not be bound to accept the view of his predecessors. However, in cases - such as the present case - where the Assessee's claim for exemption has been accepted for several decades, it would not be open for AO to think of new grounds, which at best raise contentious issues, to cast a wider net of tax. It is trite law, that if two views are possible, the one favoring the Assessee must be adopted. This rule would apply a fortiori in cases where the Assessee's claim has been consistently accepted by the Revenue in the past. Thus, in cases where the claim of an Assessee has been accepted in earlier years, unless the claim of an Assessee is found to be devoid of any basis or plainly contrary to law, it would not be open for the AO to take a view contrary to the position which has been accepted by the Revenue in earlier years and has been permitted to sustain for a significant period of time.

43. In the facts of the present case, it is not possible to accept that grant of exemption to the Assessee for the past several decades was palpably erroneous and successive AOs were wrong in accepting that the activities of the Assessee were in furtherance of its charitable objects, entitling the Assessee to escape the levy of income tax.

44. In view of the above, the second question is answered in affirmative and Assessee would not be entitled to exemption under [Section 11](#) of the Act if its activities are outside the scope of its objects, even if its activities are charitable in nature. However, the first question is answered in the negative and in favour of the Assessee and in our view, the Tribunal was not justified in allowing the Revenue's appeal and denying the Assessee's claim under [Section 11](#) of the Act."

17. There are other decisions relied upon by the Id.counsel for the assessee, but we do not deem it necessary to recite and recapitulate the proposition of law canvassed in those decisions because it is suffice to say that core of the decisions is to the

effect that if amended objects of the trusts are not non-genuine and charitable in nature, then mere failure on the part of the assessee to intimate this amended objects to the department would not goad the Id.Commissioner to cancel registration. It is an irregularity which could be rectified. In the light of the above, let us examine the facts of the present case. As observed earlier, objects of the assessee were construed as genuine and charitable. It was granted registration under section 12A. By way of amendment carried out in April, 1990 it has included one more objects which authorise it to establish diagnostic centre for advancing medical relief to the needy. This object is also *per se* charitable. The Id.Commissioner has not recorded any adverse finding *qua* this object. He has made reference at two-three places that it was a commercial venture, but how establishing of diagnostic centre is not to be construed as a medical relief to the public and how it will automatically become a commercial venture is not discernable. It is pertinent to observe that in clause 8 and 9 of the original trust deed, the assessee is having objects to grant relief in any form to disabled and poor and also to grant subscription and donation to the hospitals and dispensaries. Thus, in its original objects, the assessee was having certain objects of providing relief to the poor. It can be in the form of finance, medial, education etc. Thus, establishment of a diagnostic center is in the line or coherent to its existing objects. It is not something alien or some different activities have been started, which would disentitle it for getting registration under section 12AA of the Act. As far as non-communication of amended trust deed to the department in form no.10A of the Act is concerned, in the case of Mehta Jivraj (*supra*) ITAT Mumbai has held that there

is no requirement in the Act for furnishing the amended deed; it is being contemplated in the clause of form no.10A under rules, thus worst-to-worst it could be an irregularity. We find that changes were duly notified and recorded in the Register of Public Trust maintained by the office of Charity Commissioner. The assessee was enjoying registration under section 80G since 1977. It had applied for renewal of 80G in form no.10A on 31.3.1991. It is mandatory to file following documents along with application for grant of registration under section 80G viz. (a) copy of Income Tax Registration Certificate, (b) Trust Deed, details of activities since its inception or last three years whichever is less, (c) copy of audited accounts of the institution since its inception or last three years whichever is less. Thus, at the first available occasion, it has supplied amended trust deed to the department. Thereafter, time and again renewal of 80G registration was granted to it and every time it has filed trust deed. Assessment of the assessee has been framed under scrutiny more particular assessments for the A.Y.2003-04, 2005-06 and 2006-07. They were passed under section 143(3). Orders for the Asstt.Year 2005-06 and 2006-07 are available on page no.199 and 219 of the paper book. It means that the AO must have gone through all the records. He must have seen the income from the diagnostic centre. Establishing of a diagnostic center was in the knowledge of the department. Impliedly intimation was given to it. The department did not change status of the assessee continuously for more than 20 years. It has accepted the status of the assessee as charitable institution. There is no change in the facts and circumstances of the assessee-trust through these twenty years which can authorise the Id.Commissioner to call for details and

brand activities of the assessee as non-genuine or not in accordance with objects of the assessee. Thus, in our opinion, judgment of the Hon'ble Delhi High Court in the case of Moolchand Khairati ram Trust (supra) is duly applicable on the facts of present case. As far as judgment of the ITAT, relied upon by the Id.Commissioner i.e. in the case of Moolchand Khairati Ram Trust, this decision has been reversed by the Delhi High Court. Other decisions considered by the Id.Commissioner i.e. ITAT, Jaipur Bench and of Allahabad High Court have been considered by the ITAT Mumbai Benches. We have taken into consideration this aspect and facts in these cases are distinguishable. On due consideration of the above facts and circumstances, we are of the view that order of the Id.Commissioner is not sustainable. It is set aside. Registration granted to the assessee under section 12A is restored.

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

Order pronounced in the Court on 27th February, 2018.

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER