

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Sh. H. S. Sidhu, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(E-Court Module)**

**ITA No. 6054/Del./2018 : Asstt. Year :**

Gian Sagar Educational & Charitable Trust, Flat No. 509, 5 <sup>th</sup> Floor, Indraprakash Building, Barakhamba Road, New Delhi-110001	Vs	Asstt. Commissioner of Income Tax, Central Circle-27, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAATG5827B</b>		

**Assessee by : Sh. Amol Sinha, Adv.**

**Revenue by : Ms. Sunita Singh, CIT DR**

**Date of Hearing: 28.08.2020**

**Date of Pronouncement: 03.09.2020**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. PCIT, New Delhi dated 27.10.2017.

2. Following grounds have been raised by the assessee:

*"1. That the learned Pr. Commissioner of Income Tax (Exemptions) has grossly erred both in law and on facts in passing the impugned order dated 27.10.2017 under section 12AA(3) r/w section 12 of the Income Tax Act, 1961, withdrawing registration granted to the appellant under section 12AA of the Income Tax Act, 1961 vide CIT-XI, Chandigarh - II, Chandigarh letter F. No. CIT/CHD- II/Tech/3612 dated 2.4.2005.*

*2. That the Pr. CIT while withdrawing the registration has erred in failing to appreciate that since inception*

*appellant is carrying on the activity of providing education through the medical college run by the appellant which is a charitable activity as per the provisions of section 2(15) of the Act, and there is no change in the aforesaid activity and hence withdrawal of registration u/s 12AA(3) of the Act on the ground that the activities of the trust are not in accordance with the objects of the trust are wholly erroneous and unsustainable in law.*

*3. That the Pr. CIT erred on facts and in law in alleging that appellant trust was engaged in the nefarious activities for inducting of fresh batch of students for academic session without requisite infrastructure which is in violation of clause (ii) para 4 of the trust deed, simultaneously the same was in violation of section 2(15) of the Act which is factually incorrect and hence misconceived.*

*4. That various adverse findings recorded in the impugned order are factually incorrect, legally misconceived and untenable.*

*5. Without prejudice to the aforesaid grounds, that the Pr. CIT erred on facts and in law in withdrawing registration under section 12AA(3) of the Act since inception and same is without jurisdiction and contrary to the statutory provisions."*

3. The instant appeal filed by the assessee is directed against the order of the learned Pr. Commissioner of-Income Tax dated 27.10.2017, whereby learned Pr. CIT has passed an order u/s 12AA(3) r.w.s. 12A of the Act and cancelled the registration granted to the assessee u/s 12A of the Act by the CIT-XI, Chandigarh-II, Chandigarh vide F.No. CIT/CHD-II/Tech/3612 dated 02.04.2005. The facts in brief leading to the instant appeal are as under:

4. The assessee assessee is a charitable trust and was established in the year 2003. The assessee trust is running medical college i.e. educational institutions. Besides the educational institutions, the assessee

trust is also running a hospital at Banur, Punjab. Since, the objects of the assessee trust being charitable within the meaning of section 2(15) of the Income Tax Act, 1961 and hence the assessee trust was granted registration u/s 12AA of the Act on 02.04.2005 by the Commissioner of Income Tax vide an order CIT/CHD-II/Tech/3612. Apart from the registration, the assessee was also granted approval u/s 80G of the Act vide F. NO. CIT- II/CHD/80G/Tech/187-471 on 07.05.2007 by the Commissioner of Income Tax, Chandigarh. Since inception, the assessee trust was carrying out its charitable activities in accordance with the objects as provided in the trust deed and the receipts of the assessee trust has been applied towards its charitable objects. After the establishment of the assessee trust, it was regularly filing its return of total income by claiming exemption u/s 11/12 of the Act.

5. In the year 2007, the assessee trust established Gian Sagar Medical College and Hospital as per the minimum standard requirement for medical college for 100 admissions annually.

6. October-November 2009: Gian Sagar Medical College and Hospital applied for 3<sup>rd</sup> renewal to Medical Council of India (MCI) for permission into 4th year MBBS Course in accordance with Regulations of 1999.

7. 11/12.01.2010: The first inspection of Gian Sagar Medical College and Hospital was conducted in accordance with MCI Act and Regulations, and at the time of inspection 14 deficiencies including the deficiency of non availability of Auditorium cum examination hall with the seating capacity of 500 students were pointed out.

8. 05.02.2010: On the basis of the aforesaid inspection report, the permission for approval for 4th year MBBS Course was declined.

9. 27.02.2010: The Gian Sagar Medical College and Hospital submitted a compliance report by stating that all the deficiencies as pointed in the inspection have been removed. Further with regard to the deficiency of non availability of the auditorium, it was submitted that the auditorium is under construction and will be made available by the institution as per the phase wise requirement at the time of inspection of 4th renewal. Along with the compliance report, the evidences with regard to the construction of the auditorium was also submitted.

10. 22.03.2010: In view of the compliance report submitted by the assessee trust, a further inspection was carried out, and it was reported that all the deficiencies as pointed out at the time of first inspection have been removed.

11. The executive committee of the MCI on 05.04.2010 recommended for granting permission to the Gian Sagar Medical College and Hospital for admission in 4th year MBBS Course in the said medical college.

12. 22.04.2010: An FIR was lodged against Dr. Ketan Desai, President of MCI, Sh. J.P. Singh and Dr. Sukhwinder Singh, Vice-Chairman of Gian Sagar Medical College on the allegation that for permission for admission of 4th Batch of MBBS Students of Academic Year 2010-11, undue favours has been given to the assessee trust for money.

13. After 2 days of filing FIR, CBI had conducted physical inspection and did the videography of the entire college which was submitted in the CBI court along with the report filed on 16.09.2011. As per the submissions, in this videography all the deficiencies which were observed in the first inspection of MCI held on 11/12.01.2010 were found to be rectified. In this videography the auditorium is seen to be under construction. The CBI in its Chargesheet filed in the CBI court had stated that the only deficiency

found by them during the inspection conducted by CBI was of the auditorium.

14. 25.04.2010: After the lodging of the FIR, a letter was issued by the Ministry of Health & Family Welfare to constitute a three member fact finding team to inspect the medical college again to verify whether the recommendations made by the MCI on 05.04.2010 were in order or not.

15. 26.04.2010: Accordingly, a 3 member committee of following members was constituted by the Ministry of Health, Government of India:

i. Shri Keshav Desiraju, Additional Secretary, Ministry of Health and Family Welfare (Chairman)

ii. Dr. Rani Kumar, Dean, AIIMS, New Delhi

iii. Prof. A. K. Agrawal, Add. Director General Health Services, New Delhi

16. The terms of reference of the committee was to examine the validity/correctness of the recommendation made by the MCI on 05.04.2010 recommending renewal of permission for the admission of 4th batch of 100 MBBS students at Gian Sagar Medical College and Hospital, Patiala for the academic year 2010-11.

17. 03.05.2010: The said committee had conducted the inspection on 29.04.2010 and submitted its report wherein it was concluded as under:

"In Conclusion, the inquiry committee is of the view that the recommendations made by the Executive Committee of the MCI at its meeting on 05.04.2010 to grant permission for admission of 100 students in the year 2010-11 for the fourth batch of MBBS Students at the Gian Sagar Medical College & Hospital, Patiala was justified on the basis of the report of the Council of Inspectors and the compliance report of the Principal. The observations made in the first report have been rectified. Further the existing facilities and faculty at Gian Sagar Medical College & Hospital appear more than adequate to conduct

undergraduate medical teaching. However, there is scope for improvement of clinical and laboratory services within the existing infrastructure.”

18. 16/17.06.2010: On 15.05.2010, the MCI was superseded by issuing an amendment in the MCI act and replaced by Boards of Governors of 7 persons. As per this amendment the Board of Governor was to carry out the function as council. The Board of Governors had also conducted the inspection by team of 3 inspectors of the Gian Sagar Medical College & Hospital on 16/17.06.2010. In this report, it is stated that the auditorium is not available and is required at the time of admission of 5<sup>th</sup> batch.

19. 12.07.2010: The Board of Governors had after considering the said report decided to grant the permission to admit the 4th batch of 100 MBBS students in said college for the academic year 2010-11 and accordingly the permission letter was issued on 12.07.2010.

20. 2014: An assessment under section 143(3) of the Act was framed for the AY 2011-12, wherein on the aforesaid allegation of alleged payment of illegal gratification of Rs. 2 Cr. to Dr. Ketan Desai, an addition was made by treating the same as income earned from undisclosed sources in the hands of the assessee trust.

21. On 27.10.2017, the Id. Pr. CIT passed an order, wherein the registration granted u/s 12AA of the Act was cancelled **since inception** on the ground that assessee trust is allegedly involved in nefarious activities for inducting of fresh batch of students for academic session without requisite infrastructure. It was submitted that the order of the Id. Pr. CIT withdrawing the registration granted to the assessee u/s 12AA of the Act since inception is unsustainable in law for the reason that the solitary basis of the Id. Pr. CIT that assessee trust was trying to pay bribe of Rs. 2 crore to Dr. Ketan Desai, the then Chief of Medical Council of India for

getting permission for admission of fresh batch of students, is factually incorrect and is without any material and infact is based on the FIR and Chargesheet which infact is merely in the nature of allegation.

22. 12.02.2018: Since, Shri Ketan Desai was a public servant, as such, before proceeding against him, the CBI was required to obtain the sanction under Section 197 of the Code of Criminal Procedure, 1908, and/or under Section 19 of the Prevention of Corruption Act, 1988, and since no sanction was obtained against Shri. Ketan Desai, as such, the Hon'ble High Court of Delhi vide an order dated 12.02.2018, passed an order dropping the proceedings against Shri. Ketan Desai till sanction is received either under Section 197 Cr.P.C. or Section 19 of the Prevention of Corruption Act, 1988 (see page 30-32 of PB).

23. 18.08.2018: The order of the State of Gujarat declining sanction to prosecute Shri. Ketan Desai was shown to the Hon'ble Special Judge (PC Act), New Delhi and consequently, Shri Ketan Desai was discharged by the Hon'ble Court.

24. The Id. AR argued that the order of the Id. Pr. CIT passed u/s 12AA(3) of the Act is based on no material and learned Pr. CIT has proceeded to cancel the registration of the assessee trust allegedly based on the appraisal report of the DDIT (Inv), Chandigarh. It is submitted that aforesaid appraisal report was not prepared in the case of the assessee but was allegedly prepared in the case of PACL group of cases, and before relying on such material, aforesaid material was never confronted to the assessee. Infact, whole allegation of the CBI, and revenue proceeded on an assumption that for getting the permission for admission of students in fourth year, since the assessee was not having requisite infrastructure, as such, Dr. Ketan Desai entered into criminal conspiracy with Sh. J.P. Singh,

the New Delhi and consequently, Shri Ketan Desai was discharged by the Hon'ble Court.

25. It was argued that at time of first inspection on 11/12.01.2010, 14 deficiencies including the non availability of auditorium was pointed out, however, on 27.02.2010 when the Gian Sagar Medical College and Hospital submitted compliance report, all the deficiencies as pointed out earlier were removed, and in respect of the auditorium it was submitted that same is under construction and relevant documentary evidences with regard to the same was also furnished alongwith the compliance report. It was submitted that on the basis of the aforesaid compliance report, a further inspection was carried out on 22.03.2010 and accordingly on 05.04.2010, permission was granted to the Gian Sagar Medical College and Hospital for admission in 4th year MBBS Course in the said medical college. It was argued that, therefore, permission was granted to the Gian Sagar Medical College and Hospital purely on merits and as such, question of any quid pro quo does not arise at all. It was argued that after the allegation of alleged bribe, the CBI Team visited the premises of the trust several times, inspected its accounts and infrastructure which was video graphed also and then found no discrepancy and rather mentioned the institution having world class infrastructure and also could not found any deficiency in the books of accounts for the transaction of Rs. 2 crores which were never paid by the institution nor there was any evidence of such kind of transaction in its books of accounts. Therefore any allegation that any alleged bribe was paid for getting the permission for admission in fourth year is wholly misconceived and unsustainable in law as neither the assessee has paid any such bribe nor there was any occasion for it to pay any such alleged sum.



26. It was argued that it is not the allegation that assessee trust is not carrying out the activities as stated in its objects. It was also not the allegation that activities of the trust are not genuine. The registration has been cancelled on the sole ground that CBI Team has arrested Sh. Kamaljit Singh, CEO of M/s Gian Sagar Medical College & Hospital on the allegation that he has delivered an amount of Rs. 2 Cr to Sh. Ketan Desai, President of Executive Committee of MCI through middleman Mr. J.P. Singh and also on the same date Dr. Sukhwinder Singh, Vice Chairman of M/s Gian Sagar Medical College and Hospital was also chargesheeted by the CBI.

27. It was argued that the assessee is a charitable institution and is engaged in the charitable activities in accordance with the objects stated in the trust deed. It is submitted that after the allegation, the CBI had visited the premises of the assessee several times, and had also examined the books of account of the assessee trust, and no discrepancy whatsoever was found in the books of account so maintained by the assessee.

28. The assessee trust has been carrying out its activities in accordance with its objects and providing education and medical relief and same is not in dispute. The registration of the assessee has been cancelled purely on the basis of the allegation and no more. It was argued that the Id. Pr. CIT has completely failed to appreciate that even after the lodging of the FIR, inspection of the assessee premises was carried out twice, and on each occasion, it was found that assessee had requisite infrastructure for the approval and recommendations made by the Executive Committee of the MCI at its meeting on 05.04.2010 to grant permission for admission of 100 students in the year 2010-11 for the fourth batch of MBBS Students at the Gian Sagar Medical College & Hospital, Patiala was justified on the basis of the report of the Council of Inspectors. In such circumstances,

cancellation of the registration of the assessee trust by the Pr. CIT is wholly unsustainable in law. It was submitted that u/s 12AA(3) of the Act, registration can be cancelled only when the Principal Commissioner is satisfied that 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. In this case, the Id. AR argued that it would be seen that the learned Pr. CIT without any tangible material and purely on the basis of the allegation has held that assessee trust was involved in the nefarious activities which allegation is factually incorrect and without any material.

29. It was argued that exemption u/s 11/12 of the Act has been withdrawn on the reason that the learned Pr. CIT has withdrawn the registration granted to the assessee u/s 12AA of the Act by invoking section 12AA(3) of the Act with retrospective effect since inception. It is submitted that aforesaid action of the Id. Pr. CIT cancelling the registration granted to the assessee since inception is unsustainable in law. The Id. AR relied on the order of the the Hon'ble High Court of Allahabad in the case of ACIT vs. Agra Development Authority reported in [2018] 90 taxmann.com 282 (Allahabad) wherein their lordships have held as under:

*"49. In the context of the Income Tax Act, 1961 it is undisputed that the grant of registration is a onetime affair. The assessee is required to apply for registration under Section 12-A of the Act. Once the assessee has been registered under Section 12-A of the Act, by a specific order passed by the Commissioner, it stands established for the purpose of the Act that the activity being pursued by that assessee is for a "charitable purpose", under Section 2(15) of the Act.*

*50. Then, there is nothing in the language of Section 12AA(3) of the Act that may suggest registration of the assessee may be cancelled with retrospective effect. The use of the words 'or have obtained registration at any time under Section 12-A of the Act' added by amendment w.e.f. 01.06.2010 only indicate that the Commissioner was vested*

*with the power to cancel a registration that may have been granted to an assessee at any time prior to the aforesaid amendment itself. However, it does not indicate that thereby the Commissioner had been empowered to cancel the registration of the assessee with retrospective effect i.e. with effect from a date prior to the date of issuance of the order/notice to cancel the registration.*

*51. Clearly, the act of cancellation of registration has serious civil consequences. In absence of any legislative intent expressed to suggest that the legislature had empowered the Commissioner to cancel the assessee's registration under Section 12-A of the Act with retrospective effect, such power could not be deemed to exist or arise or be exercised to unsettle closed/part transactions especially because in this case the ground for cancellation has not arisen out of allegation of fraud, collusion or misrepresentation.*

*52. Therefore, we are of the view that the cancellation of the assessee's registration under Section 12-A of the Act, if at all, could be done only prospectively and not retrospectively as had been done by the Commissioner in this case. Thus, question no. 1 is answered in the negative that is in favour of the assessee and against the revenue."*

30. In view of the aforesaid facts and circumstances of the case, it was argued that order of the Id. Pr. CIT cancelling the registration be held unsustainable in law.

31. The Id. DR relied on the orders of the Id. PCIT. The order of the Id. PCIT is as under:

*"The assessee trust, M/s Gian Sagar Education & Charitable Trust (Regd.) is running a medical college & hospital under the name of M/s Gian Sagar Medical College & Hospital at Banur, Punjab and Mohali. The assessee trust was registered u/s 12A of the Income Tax Act, 1961 vide CIT-XI, Chandigarh-II, Chandigarh letter F.No. CIT/CHD-II/Tech/3612 dated 02.04.2005 and registered at S.No. 89. It is also eligible for tax relief u/s 80G of the I.T. Act, 1961 vide F.No. CIT-II/CHD/809/Tech 187/471 dated 07.05.2007.*

2. During the course of enquiry conducted by DDIT(Inv.), Patiala in the case of M/s PACL group of cases on 22.03.2010, it was brought on record that CBI had arrested Sh. Kamaljit Sing, CEO of M/s Gian Sagar Medical College & Hospital during his official duty on 22.04.2010 owing to the allegation that he has delivered of Rs.2 Crore to Dr. Ketan Desai, the then Chief of Medical Council of India through a middleman Sh. J.P. Singh. The same fact was mentioned in the Appraisal report of the DDIT(Inv.), Patiala.

3. On the basis of enquiry conducted by DDIT(Inv.), Patiala and CBI, the AO added the amount of Rs.2 crore as undisclosed income of the assessee for AY 201-12 which was subsequently confirmed by Ld. CIT(A)-30, New Delhi vide his order dated 20.01.2016 in ITA No. 16/14-15/1593.

4. In view of the facts & circumstances narrated above, after affording reasonable opportunity to the trust registration granted u/s 12A vide order dated 02.04.2005 to the assessee trust, was cancelled since inception, vide order dated 01.03.2016 by the Pr. CIT(Central)-3, New Delhi.

5. The assessee filed appeal against this order before the Hon'ble Income Tax Appellate Tribunal that no opportunity was given to the assessee before passing this order. After considering the appeal of the assessee, Hon'ble ITAT cancelled the order dated 01.03.2016 passed by the Pr. CIT(Central-3), New Delhi and set aside the issue in dispute to the file of Pr. CIT(Central-3), New Delhi with the direction to decide the issue in dispute afresh under the law after giving adequate opportunity of being heard to the assessee.

6. In compliance to the order of the Hon'ble ITAT giving adequate opportunity of being heard to the assessee. A fresh show cause notice dated 14.09.2017 as to why registration granted u/s 12AA may not be cancelled was served upon the assessee trust through speed post ED 569033214 IN and date of hearing was

*fixed on 23.08.2017. However, neither assessee nor its authorized representative appeared before the undersigned on fixed date of hearing. Again on 07.09.2017, market 'last and final' show cause notice was served upon assessee through speed post ED 787461373 IN and date of hearing was fixed on 14.09.2017. Again neither assessee nor its authorized representative appeared before undersigned on the stipulated date and time. After expiry of 7 days of stipulated date, Sh. Rohit Jain and Ms. Deepashree Rao, AR of the assessee trust appeared before the undersigned on 21.09.2017 and discussion was held on the submissions filed by the assessee on 23.02.2017.*

*7. After considering the submission of AR, material available on record, it is noticed that CBI team had arrested Sh. Kamaljit Singh, CEO of M/s Gian Sagar Medical College & Hospital while on his official duty on 22.04.2010 on the allegations that he has delivered an amount of Rs.2 crore to Sh. Ketan Desai, President of Executive Committee of MCI through a middleman Mr. J.P. Singh. And also on the same date, Dr. Sukhwinder Singh, Vice Chairmna of M/s Gian Sagar Medical College & Hospital was chargesheeted and arrested by CBI team. The assessee trust was engaged in the nefarious activities for inducting of fresh batch of students for academic session without the requisite infrastructure. It is clearly violation of (ii) of para 4 of trust deed, simultaneously, violating the provision of Section 2(15) of the I.T. Act while carrying out of its activity.*

*The society was established with the sole intention of helping charitable and philanthropic venture of running of medical college and thereby seeking to claim exemption on the income so generated under section 11 and 12 of the I.T. Act. It is further noted that due to nexus of corruption by way of bribe and criminal misconduct by the assessee trust, registration of the trust was cancelled since inception u/s 12AA(3) of the Income Tax Act, 1961.*

*A Charitable trust conduct must be at par with its provision of trust deed and as, per existing law. Its misconduct and desire to defy rules and norms have been exposed by virtue of the bribe activities. Such incidents cannot be classified as charitable by any reckoning. Such organizations which do not carry any charitable activity, cannot be granted registration. In these facts & circumstances, I am satisfied that the activities of the trust are not genuine and not being carried out in accordance with the objects of the trust. Accordingly, after affording reasonable opportunity to the trust, registration granted u/s 12A vide order dated 02.04.2005 to the assessee trust is cancelled since inception."*

32. Heard the arguments of both the parties and perused the material available on record.

33. We find that 14 discrepancies have been found by the Committee constituted by Additional Inspector Medical Council of India Dr. Suresh C Shah, Additional Inspector, Medical Council of India, Dr. Savitha, Professor of OBG, MBC Bangalore and Dr. S.S. Minhas, Professor of Surgery, IGMC Shimla vide their letter dated 20.03.2010. Subsequently, owing to the allegations, the Secretary of Health has been directed by the Minister of Health & Family Welfare has constituted a committee of fact finding team vide order dated 11.05.2010. The letter signed by Deputy Secretary under intimation to the Secretary and the Ministry of Health & Family Welfare. The committee constituted vide letter dated 26.04.2010 comprises 3 members namely, Sh. Keshav Desiraju, Additional Secretary, Ministry of Health & Family Welfare, Dr. Rani Kumar, Dean, AIIMS and Professor A.K. Agarwal, Additional DG/DGHS. The said committee submitted their report on 03.05.2010. It held as under:

*"In conclusion, the inquiry Committee is of the view that the recommendations made by the Executive Committee of the MCI at its meeting on 5.4.2010 to grant permission for admission of 100 students in the year 2010-11 for the fourth batch of MBBS students at the Gian Sagar Medical College & Hospital, Patiala was justified on the basis of the report of the Council Inspectors and the compliance report of the Principal. The observations made in the first report have been rectified. Further, the existing facilities and facility at Gian Sagar Medical College and Hospital appear more than adequate to conduct undergraduate medical teaching. However, there is scope for improvement of clinical and laboratory services within the existing infrastructure."*

34. Further, we also observe that the Board of Directors, MCI vide their letter No. MCI-NO-35(41)/2010-MED/682 has renewed permission for admission of fourth batch of 100 MBBS students for the academic year 2010-2011. The letter of granting approval is as under:

*BOARD OF GOVERNORS IN SUPER-SESSION OF MEDICAL  
COUNCIL OF INDIA*

*MCI-NO.35(41)/2010-MED./682*

*THE DEAN/PRINCIPAL  
Gian Sagar Medical College & Hospital,  
Ram Nagar, Banur, Distt. Patiala  
Punjab-140601  
Ph.01762-520006, 507741  
Fax: 01762-520007  
Email: principaloffice@giansagar.com*

*Sub: Gian Sagar Medical College Patiala- Renewal of permission for admission of 4th batch of students for the academic session 2010-2011.*

*Sir,*

*I am directed to convey the approval of Board of Governor of Medical Council of India for renewal of permission for*

*admission of 4<sup>th</sup> batch of 100 (one hundred) MBBS students for academic year 2010-2011 at Gian Sagar Medical College, Patiala. The Board of Governors has granted approval after consideration of the Assessment Report dated 16<sup>th</sup> & 17<sup>th</sup> June 2010 submitted to Board of Governors of MCI. The permission is however, subjected to the condition that the admission process may be completed as per time schedule prescribed in the regulation of Medical Council of India.*

*I am, further directed to inform that you and your institution are fully responsible to fulfill and maintain norms including that- infrastructure both, physical human resource; teaching faculty and clinical material etc. Throughout the academic year as stipulated in Medical Council of India in case false/wrong declaration or fabricated documents have been used for procuring permission of the Board of Governors and the said misconduct is brought to notice or comes to the knowledge of the MCI at stage during the current academic year, your institution is not liable to be considered for renewal of permission for the next academic year and this renewal of permission is also liable to be revoked for the current academic year, Besides, MCI is entitled to take all such measures against you and your college /institution as permissible under the law."*

35. Meanwhile, the Hon'ble High Court of Delhi in the case of Ketan Desai Vs CBI MC 2733/2018 vide order dated 12.02.2018 has dropped the proceeding initiated against Sh. Ketan Desai till sanction is received from the Government either u/s 197 CRPC or Section 19 of PC Act 1988. The Hon'ble Court held that on receipt of sanction from the Government, the trial would re-comments against the petitioner. We have specifically asked the representative of the revenue whether any proceedings have been re-instituted. The Id. DR vide letter dated 27.08.2020 has categorically mentioned that as per the records available with their office no prosecution matter is pending against the above mentioned assessee at any stage. For the sake of brevity and



ready reference, the order of the Hon'ble High Court of Delhi is reproduced below:

*"2. Learned senior counsel for the petitioners contends that charge was framed against the petitioners on 04.06.2012 for having allegedly committed the offence under Section 120-B IPC read with Section 7, 8, 12 & 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act.*

*3. Learned senior counsel for the petitioners submits that sanction was not granted to the prosecution to prosecute the sole public servant who was also charge sheeted on the same date. Learned senior counsel further submits that since the sole public servant, who was arrayed as an accused, is not being prosecuted, the charge as was framed, cannot stand.*

*4. Learned senior counsel, under instructions, seeks leave to withdraw the petition with liberty to approach the trial court for inter alia modification of the charge on the ground that the sole public servant is not being prosecuted as the sanction has not been granted for his prosecution.*

*5. In view of the above, the petition is dismissed as withdrawn with liberty to the petitioners, as prayed for. It is clarified that this court has neither considered nor expressed any opinion on the merits of the contentions of either of the parties.*

*6. The petition is disposed of in the above terms."*

36. At this juncture, we have specifically asked the representative of revenue about the ongoing case. The reply of the revenue is reproduced as under:

*"Respected Madam,*

*As per the records available with this office, no prosecution matter is pending against the above mentioned assessee at any stage."*

*Regards,*

*Piyush Kothari  
DCIT, CC 27, New Delhi*

37. We observe that, the Id. PCIT has revoked the approval u/s 12AA(3) holding that the assessee trust was engaged in the nefarious activities for inducting of fresh batch of students for the academic session without the requisite infrastructure. It was held that it is a clear violation of (ii) of para 4 of the trust deed, simultaneously, violating the provision of Section 2(15) of the Act while carrying out of its activity. The Id. PCIT also held that the society was established for a charitable purpose and since there was criminal misconduct by the assessee trust, registration of the trust was cancelled since inspection. For the sake of ready reference, the operative portion of the order of the Id. PCIT cancelling the registration u/s 12AA(3) is reproduced hereunder:

*"7. After considering the submission of AR, material available on record, it is noticed that CBI team had arrested Sh. Kamaljit Singh, CEO of M/s Gian Sagar Medical College & Hospital while on his official duty on 22.04.2010 on the allegations that he has delivered an amount of Rs.2 crore to Sh. Ketan Desai, President of Executive Committee of MCI through a middleman Mr. J.P. Singh. And also on the same date, Dr. Sukhwinder Singh, Vice Chairmna of M/s Gian Sagar Medical College & Hospital was chargesheeted and arrested by CBI team. The assessee trust was engaged in the nefarious activities for inducting of fresh batch of students for academic session without the requisite infrastructure. It is clearly violation of (ii) of para 4 of trust deed, simultaneously, violating the provision of Section 2(15) of the I.T. Act while carring out of its activity.*

*The society was established with the sole intention of helping charitable and philanthropic venture of running of medical college and thereby seeking to claim exemption on the income so generated under section 11 and 12 of the I.T. Act. It is further noted that due to nexus of corruption by way of bribe and*

*criminal misconduct by the assessee trust, registration of the trust was cancelled since inception u/s 12AA(3) of the Income Tax Act, 1961.*

*A Charitable trust conduct must be at par with its provision of trust deed and as, per existing law. Its misconduct and desire to defy rules and norms have been exposed by virtue of the bribe activities. Such incidents cannot be classified as charitable by any reckoning. Such organizations which do not carry any charitable activity, cannot be granted registration. In these facts & circumstances, I am satisfied that the activities of the trust are not genuine and not being carried out in accordance with the objects of the trust. Accordingly, after affording reasonable opportunity to the trust, registration granted u/s 12A vide order dated 02.04.2005 to the assessee trust is cancelled since inception."*

38. In the background of all these developments, the case of the assessee is being examined.

39. The aims & objects of the trust are as under:

*"i) To, establish, maintain, run, develop, improve, extend, undertake, promote, assist in all kind of research & development work to promote; assist or engage in setting up Educational institutions. Hospitals, Dispensaries, Clinics, laboratories, Medical Colleges for the welfare and uplift of the general public, particularly the socially backward group and award scholarship In India for study, research, training, apprenticeship for all or any of the above said*  
*ii) To arrange promotion of general health including sanitation and environment.*

*iii) To organize School health programs in coordination with local doctors including government doctors.*

*iv) To organize seminars or various education & health topics in schools, educational institutions.*

v) *To set up and run or assist the setting up and running of Adult education centers and coaching centers.*

vi) *To educate and train medical students, engineering students, nurses, midwives and hospital administrators and to grant such diplomas/degrees or recognition as the Trust may prescribe or deem fit from time to time.*

vii) *To grant stipend, scholarship or any other assistance or otherwise to deserving students or scholars in the field of education with special emphasis on the following specialties with an undertaking from them that they would support a similar scholarship when able, after their settlement in life:*

*Medicine, Dentistry, Pharmacy, Computer, Science, Engineering, Agriculture and banking. The trustees reserve the right to grant stipends or scholarships in any field of education that they deem fit in any part of India.*

viii) *To provide relief to poor students and poor patients free of cost or at minimum possible charges to others, without any profit motive whatsoever.*

ix) *To provide nutrition and education, specially, in cases like-*

- a) Anemia in girl child and*
- b) during pregnancy of women.*

x) *To promote small family norms through:*

- a) Population education*
- b) MCH (Maternal and Child Health) including immunization, safe delivery, identification of high risk pregnancies.*

xi) *To organize and promote literacy programmes particularly in Urban, slums and backward rural areas.*

xii) *To set up Counseling Centres for providing counseling and guidance to the educated youth for career and job opportunities and seek coordination and cooperation of educational institutions for the purpose.*

*xiii) To set up and run or assist the setting up and running of Adult education centres and coaching centers for moral upliftment, educational skills towards self reliance.*

*xiv) To grant stipend, scholarships or any other assistance or otherwise to deserving students or scholars in the field of education with special emphasis on the following specialties Medicine, Pharmacy, Computer Science, Engineering, Agriculture Environmental sciences and banking. The trustees reserve the right to grant stipends or scholarships in any field of Education that they deem fit in any part of India.*

*xv) To lift the poor from the curses of poverty, hunger, illiteracy and diseases by starting and carrying out concentrated and intensive programmes.*

*4. i) To borrow, raise loans from any person, bank or financial institution in such a manner as the Trustees shall think proper or convenient for the furtherance of objects of the Trust and for this purpose the Trustees may secure repayment of these loans. To reach this objective Trustees will always try to have a balanced budget, so that revenues and expenses balance and not produce losses. The objective of the operations of the Trust is not to create a losing operations, but to operate the minimum charges for the services rendered, so as not be forced to borrow from financial institutions.*

*ii) Trust shall not be involved in any activity which promotes violence, terrorism, fanaticism or political favouritism between the political party verses another. Trust's objective is strictly humanitarian with no political agenda of any sort whatsoever.*

*iii) To receive grants, or aid in the form of money or material for the fulfillment of the objects of the Trust from the Central Government, State Government, Social services organizations and individuals.*

*iv) To do all necessary things for and incidental or conducive for the attainment of the above objectives of the Trust.*

*v) The above objects shall be independent of each other."*

40. We have also examined the provisions of Section 12AA, reads as under:

**"[Procedure for registration.**

**12AA. (1)** *The [\*\*\*] [Principal Commissioner or] Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) of sub-section (1)] of [section 12A](#), shall—*

*(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and*

*(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—*

*(i) shall pass an order in writing registering the trust or institution;*

*(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant :*

**Provided** *that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.*

*[(1A) All applications, pending before the [Principal Chief Commissioner or] Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall*

*stand transferred on that day to the [Principal Commissioner or] Commissioner and the [Principal Commissioner or] Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.]*

*(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) [or clause (aa) of sub-section (1)] of [section 12A](#).]*

*[(3) 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 [Principal Commissioner or] Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:*

***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.]*

*[(4) Without prejudice to the provisions of sub-section (3), 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 it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of [sections 11](#) and [12](#) do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of [section 13](#), then, the Principal Commissioner or the Commissioner may by an order*

*in writing cancel the registration of such trust or institution:*

***Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.]”***

41. The Id. PCIT cancelled the registration basically on two premises,

- 1) There has been a violation of clause (ii) of the para 4 of the trust deed and
- 2) Violation of provision of Section 2(15) of the Act while carrying out the activity.

The two reasons given by the Id. PCIT are also being examined.

42. The clause (ii) of the para 4 of the trust deed reads “Trust shall not be involved in any activity which promotes violence, terrorism, fanaticism or political favouritism between the political party verses another. Trust's objective is strictly humanitarian with no political agenda of any sort whatsoever.”

On going through the above clause, and on going through the record before us, it cannot be said that the trust has involved in any activity which promoted violence, terrorism, fanaticism or political favouritism. Hence, the observation of the Id. PCIT can be said to be based on wrong facts.

43. Regarding the applicability of provisions of Section 2(15) as per the provisions charitable purpose includes education and since the assessee is in the activity of imparting education, the observation of the Id. PCIT is also cannot be held to be valid based on the provisions of the Act. For the sake of brevity and



ready reference, the provisions of Section 2(15) of the Act are reproduced 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 69object 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;]]"*

44. The Id. PCIT, did not have record of activities which are not in accordance with the objects of the trust. The entire order of the Id. PCIT is based on the appraisal report of DDIT(Inv.) only. We do not find mention of any material being referred by the Id. PCIT and its applicability to any of the provisions of Section 2(15) and/or Section 12AA(3) while revoking the registration. The Act envisages where a trust or an institution has been granted registration u/s 12AA(1)(b) or has been

obtained registration at any time u/s 12A. The Id. PCIT can cancel the registration if the conditions mentioned therein are not satisfied or the activities of the trust are not genuine or the activities are not carried out in accordance with the objects of the trust. We do not find that the Id. PCIT has brought out any of the conditions laid down as above.

45. Hence, keeping in view the entire facts of the case, that there have been deficiencies in the infrastructure as found by the first report which were found to have been rectified by the second committee comprising of Addl. Secretary, GoI Dean AIIMS, Addl. DG, DGHS, and keeping in view the fact that MCI has granted due permission for the academic session 2010-11, keeping in view the fact of non-sanction of prosecution of Sh. Ketan Desai, keeping in view the order of the Hon'ble High Court of Delhi, dropping the proceedings till sanction is received, keeping in view the submission of the revenue that no prosecution is pending against the assessee as on now, keeping in view the aims & objects of the trust are in consonance with the provisions of Section 2(15) of the Act, keeping in view that there has been no violation of clause (ii) para 4 of the trust deed as alleged by the Id. PCIT, we hereby hold that the order of the Id. PCIT dated 27.10.2017 cancelling the registration since inception, u/s 12AA(3) of the Act is legally not valid. Before departing, we hereby clarify that,

- 1) The order of the Id. PCIT cancelling the registration since inception is hereby revoked.
- 2) The order has been passed in accordance with the provisions of the Income Tax Act, 1961 and shall not impact the outcome

of any proceeding under any other Acts **promulgated** under Constitution of India.

3) The revenue shall be at liberty to approach the Tribunal for re-institution of the appeal on re-commencement of trial against Sh. Ketan Desai which has been since dropped.

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

Order Pronounced in the Open Court on 03/09/2020.

Sd/-

**(H. S. Sidhu)**  
**Judicial Member**

**Dated: 03/09/2020**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**