

आयकर अपीलीय अधिकरण, जोधपुर न्यायपीठ, जोधपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH 'DB' JODHPUR.

श्री भास्करन बीआर, लेखा सदस्य एवं श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: HON'BLE SHRI BASKARAN BR, AM & HON'BLE SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 04/JODH/2020
Assessment Year :

Pacific Academy of Higher Education and Research Society, Pacific Hills, Pratap Nagar, Udaipur.	बनाम Vs.	The Principal Commissioner of Income Tax (Central), 2 nd Floor, New Central Revenue Building (Annexe), Janpath, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AABTP 2862 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 05/JODH/2020
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निर्धारिती की ओर से / Assessee by : Shri PC Parwal (C.A)

राजस्व की ओर से / Revenue by : Smt. Alka Rajvanshi Jain, (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 03.11.2022.

घोषणा की तारीख / Date of Pronouncement : 25/01/2023.

आदेश / ORDER

PER SHRI SANDEEP GOSAIN, JM :

These are two appeals filed by the assessee against two separate orders of Id. PCIT (Central), Rajasthan, Jaipur dated 26.12.2019 passed under section 12AA(3) & 12AA(4) and 10(23C)(vi) of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal :-

ITA NO. 04/JODH/2020 :

1. *That on the fact and circumstances of the case as well as in law the Ld. Principal Commissioner of Income Tax (Central), Jaipur, by order dated 26th December 2019 cancelled the registration retrospectively by invoking provision of section 12AA(3) and invoking provision of section 12AA(4) of the Income Tax Act, 1961, with effect from 1st April 2009, which was granted to the Education Society by The Commissioner of Income Tax, Udaipur, as per order dated 10th October 2002, without providing adequate opportunity of being heard and further failed to appreciate that the cancellation so made is contrary to the law laid down under section 12AA(3) and 12AA(4) of the Income Tax Act, 1961 read with number of case laws. Hence the order so passed deserves to be quashed/annulled, so order accordingly.*

2. *That on the fact and circumstances of the case as well as in law the order so passed without providing of reasonable and adequate opportunity of being heard which is against the principle of natural justice and while withdrawing the registration the authority ignored the request letter dated 7 December 2019, which the authority should have taken into consideration in the interest of natural justice.*

- 3 & 3.1 *That on the fact and circumstances of the case as well as in law the Ld. Principal Commissioner of Income Tax (Central), Jaipur, had no jurisdiction to cancel the registration granted to the appellant Society (granted as per order dated 10th October 2002 by the Commissioner of Income Tax, Udaipur) by invoking provision of section 12AA(3) which is applicable with effect from 1st June 2010 according to which any registration granted prior to 1st October 2004 cannot be retrospectively withdrawn.*

That while refusing registration under section 12AA(3) of the Income Tax Act, 1961, the Ld. Principal Commissioner of Income Tax (Central), Jaipur, failed to bring on record two basic conditions namely, Activities of the Institute are not genuine or are not being carried out in accordance with the objects of the Society or Institution.

- 4 & 4.1 *That on the fact and circumstances of the case as well as in law the Ld. Principal Commissioner of Income Tax (Central), Jaipur, further grossly erred in withdrawing the registration under section 12AA(4) of the Income Tax Act, 1961, with effect from 1st April 2009 on the ground that activities of the Society are being carried out contrary to the provision of Section 11, 12 and sub-section 13(1) of the Income Tax Act, 1961, which is also bad in law.*

That as per the settled law the provision of section 12AA(4) cannot be invoked retrospectively as done in the present case and the point in issue is being settled so far in the State of Rajasthan in case of Indian Medical Trust Versus the Principal Commissioner of Income Tax (414 ITR 296), as per the decision of the Honorable High Court of Rajasthan.

- 5. That on the fact and circumstances of the case as well as in law the impugned order of withdrawal of registration passed under section 12AA(3) and 12AA(4) of the Income Tax Act, 1961, cannot terms to be a valid order in the eye of law in as much as it can be safely said that the order so passed by the Principal Commissioner of Income Tax (Central), Jaipur, in a cyclostyled manner adopting the various reasons which were almost picked up from the matter referred under section 142(2)A of the Income Tax Act, 1961, for Special Audit in the month of December 2017 ignoring the further vital fact that the said matter of 142(2)A is being Stayed by the Honorable High Court of Rajasthan, Jodhpur, and assessment of earlier years of such period is also being Stayed i.e. from Assessment Years 2010-11 to 2016-17.***
- 6. That on the fact and circumstances of the case as well as in law the impugned order so passed on the basis of some loose papers, documents and computer generated sheets found from the employee of the Society which is also the subject matter of pending assessment which is to be completed after the order of Honorable High Court of Rajasthan, Jodhpur, on Compulsory Audit matter.***
- 7. That on the fact and circumstances of the case as well as in law the Principal Commissioner of Income Tax (Central), Jaipur, at Page No. 52, Para No. 5, very conveniently for the withdrawal of registration mentioned that the Society is involved in earning of illegal or unaccounted income in the shape of Capitation Fees and income diverted for the benefit of person(s) referred to in Section 13 (3) of the Income Tax, 1961, which is purely based on assumption, presumption, arbitrary in nature and contrary to the fact of the case.***
- 8. That on the fact and circumstances of the case as well as in law the Principal Commissioner of Income Tax (Central), Jaipur, while withdrawing the benefit/approval under section 12AA(3) and 12AA(4) of the Income Tax Act, 1961, completely failed to appreciate that the education and research society exists for the purpose of imparting education since last more than 20 years in various disciplines having substantial investment in land and buildings and other infrastructures, team of learned faculties known in the State of Rajasthan and not meant for the purpose of earned of profit. This aspect remains to be considered by the Principal Commissioner of Income Tax (Central), Jaipur.***

ITA NO. 05/JODH/2020 :

1. That on the fact and circumstances of the case as well as in law the impugned order dated 26th December 2019 passed by the Principal Commissioner of Income Tax (Central), Jaipur, resulted into withdrawal of the approval granted under section 10(23C)(vi) of the Income Tax Act, 1961, with effect from 1st April, 2009 is bad in law, unjustified, based on assumption and presumption for want of adequate and reasonable opportunity of being heard.
2. That on the fact and circumstances of the case as well as in law the impugned order dated 26th December 2019 passed by the Principal Commissioner of Income Tax (Central), Jaipur, who assumed jurisdiction to initiate the proceeding as to withdraw approval under section 10(23C)(vi) of the Income Tax Act, 1961, cannot terms to be a prescribed authority in law in view of Notification No. SO. 676(E)[No. 20/2015 (F.No. 196/26/2014-ITAI) dated 5th March, 2015.
 - 2.1 That as per the decision of the Honorable High Court of Rajasthan in case of Indian Medical Trust versus the Principal Commissioner of Income Tax (414 ITR 296), the prescribed authority is not empowered to withdraw the benefit of approval under section 10(23C)(vi) of the Income Tax Act, 1961.
3. That on the fact and circumstances of the case as well as in law the Principal Commissioner of Income Tax (Central), Jaipur, under section 10(23C)(vi) of the Income Tax Act, 1961, by which the authority refused to grant the approval of exemption under section 10(23C)(vi) of the Income Tax Act, 1961, is totally against the fact of the case, material on record and order so passed is untenable in the eye of law.
4. That on the fact and circumstances of the case as well as in law the Principal Commissioner of Income Tax (Central), Jaipur, refused the registration on flimsy grounds based on assumption and presumption and the order passed in haste and hurry within an interval of 4 to 5 days without appreciating the fact of the case which was specially brought to the notice vide letter dated 7th December, 2019 i.e.
 - (i) Ignored the order of Honorable Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur, in appellant's own case, bearing No. 247/Jodh/2015 dated 6th July 2017 which is binding in nature.
 - (ii) By virtue of operation of search under section 153A from Assessment Years 2010-11 to 2016-17 for Compulsory Audit

proceeding initiated under section 142(2)A of the Income Tax Act, 1961, Stayed by the Honorable High Court of Rajasthan.

- (iii) The Principal Commissioner of Income Tax (Central), Jaipur, ignored the contention of letter dated 7th December, 2019. Had in fact the contention of the said letter taken into consideration, no occasion said to have been arises as to pass the order in such a fashion which has resulted into withdrawal of benefit of approval granted under section 10(23C)(vi) of the Income Tax Act, 1961.
5. That on the fact and circumstances of the case as well as in law the Principal Commissioner of Income Tax (Central), Jaipur, while withdrawing the benefit/approval under section 10(23C)(vi) of the Income Tax Act, 1961, completely failed to appreciate that the education and research society exists for the purpose of imparting education since last more than 20 years in various disciplines having substantial investment in land and buildings and other infrastructures, team of learned faculties known in the State of Rajasthan and not meant for the purpose of earned of profit. This aspect remains to be considered by the Principal Commissioner of Income Tax (Central), Jaipur.
6. That on the fact and circumstances of the case as well as in law the withdrawal of approval under section 10(23C)(vi) of the Income Tax Act, 1961 with effect from 1st April 2009 is also bad in law as the reason assigned by the Principal Commissioner of Income Tax (Central), Jaipur, in order so passed is exactly repetition of the fact which is also the subject matter/part of Writ filed before the Honorable High Court of Rajasthan in case of compulsory Audit under section 142(2)A of the Income Tax Act, 1961.
7. That on the fact and circumstances of the case as well as in law the Principal Commissioner of Income Tax (Central), Jaipur, to justify as to take action as to withdraw approval very conveniently mentioned that the research and education society is engaged as to receive Capitation Fees which is also purely based on assumption and presumption and contrary to the fact.
8. That the appellant craves, leave, to add, to amend, modify, rescind, supplement or alter any of the grounds of appeal stated hereinabove on or before or at the time of hearing of appeal.

2. The brief facts of the case are that Pacific Education Society, Udaipur is a society registered under Rajasthan Society Registration Act, 1958 vide Registration No.45/Udaipur/95-96 dated 17th October,1995(**PB 01-02**). The society changed its name to Pacific Academy of Higher Education and Research Society. Copy of the letter dated 12.03.2007 by Registrar Societies along with the Revised certificate dated 12.03.2007 regarding change of name is at (**PB 03**). The main object of the society is to impart education (**PB 04-14**). The society solely exists for charitable purposes and not for the purposes of profit. In pursuance to these objects, society is running various educational institutes where more than 10000 students are imparted education. Subsequently it was given the status of University by the State Government vide notification dated 29.04.2010. The society is having 20 constituent colleges imparting education in the diversified fields including Dental Sciences, Engineering, Management, Pharmacy, Hotel Management, Polytechnic, etc. The names of these institutes, courses offered and the approving authority of these colleges are as under:-

S. No.	Name of Constituent College of PAHER University	Approving Authority/ Affiliated to
1.	Pacific Dental College & Hospital	Dental Council of India, New Delhi Affiliation with Pacific Academy of Higher Education & Research University
2.	Pacific Institute of Management	AICTE, New Delhi, Affiliation with Pacific Academy of Higher Education & Research University
3.	Pacific Institute of Technology	AICTE, New Delhi, Affiliation with Pacific Academy of Higher Education & Research University
4.	Pacific College of Pharmacy	AICTE & PCI, New Delhi, Affiliation with Pacific Academy

		of Higher Education & Research University
5.	Pacific Institute of Hotel Management	AICTE, New Delhi Affiliation with Pacific Academy of Higher Education & Research University
6.	Pacific Institute of Business Studies	Affiliation with Pacific Academy of Higher Education & Research University
7.	Pacific Institute of Journalism & Mass Communication	Affiliation with Pacific Academy of Higher Education & Research University
8.	Pacific Institute of Law	Bar Council of India, New Delhi Affiliation with Pacific Academy of Higher Education & Research University
9.	Pacific Institute of Fire & Safety Management	Affiliation with Pacific Academy of Higher Education & Research University
10.	Pacific College of Social Science & Humanities	Affiliation with Pacific Academy of Higher Education & Research University
11.	Pacific School of Yoga	Affiliation with Pacific Academy of Higher Education & Research University
12.	Pacific College of Physical Education	NCTE, Affiliation with Pacific Academy of Higher Education & Research University
13.	Pacific College of Teachers Education	NCTE, Affiliation with Pacific Academy of Higher Education & Research University
14.	Pacific Institute of Computer Application	Affiliation with Pacific Academy of Higher Education & Research University
15.	Pacific College of Basic & Applied Sciences	Affiliation with Pacific Academy of Higher Education & Research University
16.	Pacific Polytechnic College	AICTE, New Delhi Affiliation with Pacific Academy of Higher Education & Research University
17.	Pacific Institute of Fashion Technology	Affiliation with Pacific Academy of Higher Education & Research University
18.	Pacific College of Agriculture	Affiliation with Pacific Academy of Higher Education & Research

		University
19.	Pacific Institute of Dairy Technology	Affiliation with Pacific Academy of Higher Education & Research University
20.	Pacific College of Gym Training & Management	Affiliation with Pacific Academy of Higher Education & Research University

2.1 The society was granted registration u/s 12AA of the Act by Ld. CIT, Udaipur vide letter no.CIT/Udaipur/Trust/12A(A)/552dt.10.10.2002(**PB 15**). It was also approved u/s 10(23C)(vi)vide letter F.No. CCIT/UDR/ITO(Tech.)/2007-08/677 dt.31.05.2007for AY 2005-06 & onwards(**PB 16-17**).

2.2 A search was conducted on the Pacific Group of Udaipur u/s 132(1) of the IT Act dated 26.08.2015. Warrant of authorization u/s 132(1) was also issued and duly executed in respect of the assessee trust being part of the Pacific Group. The Ld. PCIT at page 38-39 of the order at para 4 has observed that during the search at the residential premises of Sharad Kothari, Registrar of the assessee trust, some loose papers and three pen drives were seized. Statement of Rahul Agarwal, Secretary of the society was recorded wherein he confirmed that the documents seized relates to PAHER University and its college i.e. Pacific Dental College. The Ld. PCIT on the basis of these documents issued show cause notice dated 03.12.2019 (reproduced at Pg 06-24 of the order). The issues raised in the show cause notice are summarized as under:-

- (a) Certain pages contain details of admission along with the name of students and their packages in the first year of BDS course for academic year 2012-13, 2013-14 & 2014-15. The total amount of the respective years is Rs.1569.76 lakhs, 1920.60 lakhs, 1677.95 lakhs. The relevant pages are reproduced in the assessment order at Pg 40-47. As the same did not

- reconcile with the books of account, these amounts were considered as unaccounted capitation fees received by the society.
- (b) An excel sheet found containing the details of the fees of the 2nd, 3rd & 4th year of BDS from BDS batch 2007-08 and the same remained unexplained by the assessee. The same is reproduced at Pg 48 of the order.
- (c) From Pg.no.23 to 25 of annexure A Exhibit-1 and Pg.no. 72 to 74, 76 & 80 of annexure A Exhibit-3 it is noted that Rs.34 lakhs in AY 2012-13, Rs.22 lakhs in AY 2013-14 & Rs.45 lakhs in AY 2015-16 and Rs.20 lakhs in AY 2016-17 are in the nature of unaccounted capitation fees as the same remained unexplained. The relevant pages are reproduced at Pg 48-49 of the order.
- (d) From the pen drive seized it was found that it contained the names of students along with the amount totaling to Rs.540 lakhs from the branch of MDS courses during the academic year 2014-15. The same was considered as unaccounted capitation fees. The relevant pages are reproduced at page 49 of the order.
- (e) From the seized page no.88 of annexure A-3 it was observed that the same contain the details of some flats with the name of Kamal Propmart Pvt. Ltd along with amount of Rs.1,34,56,900/- and Rs.1,01,83,600/- and the difference of Rs.32,73,300/-. Further five cheques dated 31.03.2015 issued to Kamal Propmart was also found. It is inferred that the above amount is unaccounted investment of PAHER society.
- (f) The seized Pg 59 and 60 of annexure A Exhibit-3 is considered as the cash sheet of PAHER University but Sharad Kothari and B R Agarwal failed to verify this from the books of account of the assessee.
- (g) The imprest account of Sharad Kothari for the period 01.04.2014 to 31.03.2015 were furnished to the AO at the time of assessment proceedings which showed that cash of Rs.2 crore was provided on 16.06.2014, Rs.3.68 crore during the period 28th to 31st July and Rs.1 crore on 02.09.2014. No supporting documents and explanation were furnished with respect to these transactions.

- (h) During the assessment proceedings bank accounts of the trust were obtained. From the perusal of the bank account it is seen that there are voluminous transactions of debit and credits entered into with B.R Agarwal and his family members for which there is no justifiable reason or explanation given by the assessee trust.

In response to the said show cause notice and the observation made therein the assessee filed reply dated 07.12.2019 which is reproduced at Pg 28-34 of the assessment order. In this reply it was explained that the reasons assigned for withdrawal of registration are same as given in the order u/s 142(2A) dt.27.12.2017 **(PB 62-92)** for special audit but the Hon'ble Rajasthan High Court vide order dt.16.03.2018 **(PB 93-94)** has already stayed the implementation of the said order, the legible copy of the seized document/ statement referred in the show cause notice be provided, there is no limitation prescribed for withdrawal of registration and therefore the proceedings for withdrawal are premature which may be kept pending. The Ld. PCIT however vide order dated 26.12.2019 without providing the required documents and adequate opportunity of hearing has withdrawn the registration already granted u/s 12AA of the Act and the approval given u/s 10(23C)(vi) of the Act with retrospective effect from 01.04.2009 for the reasons stated in Para 3 above.

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

3. Ground No. 1 to 8 of the appeal are interrelated and interconnected and relates to challenging the order of the Id. Pr. CIT (Central), Rajasthan, Jaipur for

cancelling the registration of the assessee Trust under section 12AA(3) and 12AA(4) of the Act, 1961, Therefore, we have decided to adjudicate these grounds by this common order.

4. Before us, the Id. Counsel for the assessee submitted in his written submissions as under :

"1. At the outset it is submitted that the sole reason for cancelling the registration granted u/s 12A of the Act to the society is on the allegation that the (i) assessee trust is earning illegal/ unaccounted income in the garb of capitation fees thus involved in activities which are against public policy and (ii) income of the trust is applied for the benefit of the person referred in section 13(3) of the Act. In this connection it may be noted that sections 12AA(3) and 12AA(4) which gives power to CIT to withdraw/ cancel the registration apply only when any of the following condition mentioned therein is satisfied:-

- (i) The activities of the trust or institution are not genuine
- (ii) The activities are not carried out in accordance with its object
- (iii) There is operation of section 13(1) meaning thereby that income does not ensure for the benefit of general public or is for benefit of particular religious community or caste or the income or property is applied for benefit of specified persons or funds are invested in violation of section 11(5).

In the present case none of the conditions mentioned in section 12AA(3) /12AA(4) is violated as the only allegation of the Ld. PCIT is that the documents or pen drives found at the time of search mostly contain the name of students registered in different courses along with their packages or the

documents contain the investments made by the assessee trust in certain properties. There is no charge against the trust/ society that its activities are not being carried out for the charitable purposes or its activities are beyond the scope provided in the aims and objects of the trust. It is noteworthy to mention that the assessee society is running various hospitals and colleges namely "Pacific Dental College and Hospital", "Pacific Institute of Law", "Pacific Institute of Technology" etc. imparting education to around 10,000 students in 20 constituent colleges. There is no adverse finding of Ld. PCIT that the colleges and hospital run by the assessee are not imparting education. Therefore it cannot be held that the activities of the assessee are not genuine or are not carried out in accordance with its objects and thus there is no violation of any of the condition laid out u/s 12AA(3). Reliance in this connection is placed in the following case laws:

CIT vs. Islamic Academy of Education (2015) 229 Taxman 274 (Kar.) (HC)

The held part is as under:-

"In the instant case, the material on record shows that the Trust has established educational institution and imparting medical education. Every year, students are admitted. Huge investment is made for construction of buildings for housing the college, hostel and to provide other facilities to the students who are studying in the College. The College is recognized by the Medical Council of India, State of Karnataka and all other statutory authorities. Therefore, it cannot be said that the Trust is not genuine. Admittedly, the students are being admitted every year. Students are studying in all courses. Thus the object of the constitution of the Trust namely imparting of education is going on uninterruptedly. Therefore, it cannot be said that the activities of the Trust are not being carried out in accordance with the objects of the Trust. When the aforesaid two conditions are fully satisfied, on the ground that the trustees are misappropriating the funds of the Trust the registration of the

Trust cannot be cancelled. If the trustees are misappropriating the funds, if they are maintaining false accounts, it is open to the authorities to deny the benefit under section 11 of the Income Tax Act, but that is not a ground for cancellation of registration itself. That is precisely what the Tribunal has held. Therefore, the substantial question of law is answered in favour of the assessee and against the revenue. There is no merit in this appeal."

Tamil Nadu Cricket Association Vs. DIT (Exemptions) &Ors. (2014) 98 DTR 299 (Mad.) (HC)

For cancellation of registration u/s 12AA(3) all that it is insisted upon is the satisfaction as to whether the activities of the trust or institution are genuine or not and whether the activities are being carried on in accordance with the objects of the trust. If a particular activity of the institution appeared to be commercial in character and it is not dominant, then it is for the AO to consider the effect of sec. 11 in the matter of granting exemption on a particular head of the receipt and the mere fact that the said income does not fit in with sec. 11 would not by itself lead to the conclusion that the registration granted u/s 12AA is bad and hence, to be cancelled.

CIT vs. Red Rose School (2007) 163 Taxman 19 (All.HC) wherein it is observed that-

"CIT is entitled to see only the genuineness of objects and activities: It has been held that while refusing application under section 12A the Commissioner has to examine only two aspects, i.e., genuineness of the activities of the trust/institution and object of the trust/institution. Once there is no dispute about the genuineness of the activities; the Commissioner cannot take shelter of any other outer source for refusing registration under section 12A. The issue of registration under section 12A and the scope of enquiry at the stage of section 12AA was discussed, it was categorically held in the said decision that section 12AA does not speak anywhere that the CIT, while considering the application for registration, shall also see that the income derived by the trust or the institution is either not being spent for charitable purpose or such institution is earning profit. Profit earning or misuse of the income derived by charitable institution from its charitable activities may be a ground for refusing exemption only with respect to that part of the income but cannot be taken to be a synonym to the genuineness of the activities of the trust or the institution. While considering the registration under section 12AA, the scope of enquiry of the Commissioner would be limited to the aforesaid extent only."

Rajasthan Vikas Sansthan Vs. CIT 78 DTR 411 (Raj HC)

The registration can be cancelled on the ground that the activity of the trust are not genuine or are not being carried out in accordance with the object of the trust. In case there are violations as mentioned in s. 11 and 13 of the Act, the AO while making assessment can deny the exemption to the trust. For getting the exemption u/s 11, registration is pre-requisite. However, registration is not a guarantee for exemption. In case the Trust fails to comply with the requirements as mentioned in s. 11 and 13 of the Act then exemption can be denied. In respect of failure mentioned in s. 11 and 13 in a particular year, it cannot be said that registration is to be cancelled. Surplus in educational activities is not relevant for cancelling the registration. The education itself is charitable object and if the surplus is utilized for the purpose of charitable activities then it cannot be said that registration is to be disallowed. The ground on which the registration cannot be refused, cannot be considered as a ground for cancelling the registration.

2. So far as violation of condition mentioned in 12AA(4) is concerned the main allegation of is that the assessee has received capitation fees which is not recorded in books and has made unaccounted investment and done voluminous transaction with the trustees. These allegations are factually incorrect as explained here under:-

(i) It has been alleged that the papers found in the search contain details of admission along with the name of students and their packages in the first year of BDS course for academic year 2012-13, 2013-14 & 2014-15. The total amount of the respective years is Rs.1569.76 lakhs, 1920.60 lakhs, 1677.95 lakhs which is unaccounted capitation fees. This allegation is without basis. It is submitted that all these amounts are duly recorded in the books of accounts. In fact this list contains the total fees to be charged from the students for 4 years including the Hostel and Development fees. Accordingly the amount noted on these sheets is recorded in the books of the respective years as and when the amount is received. The reconciliation of the amount noted in these sheets vis-à-vis the amount recorded in the books is as under:-

(a) For Batch 2012-13 the total amount as per page 20 to 22 of annexure A-1 in respect of 109 students is Rs.1569.76 lakhs. However since total seats available is only 100 in number, 9 students out of this list were not given admission. The details of the 100 students who were given admission by whom amount of Rs.1448.75 lakhs was payable over four years and the details of 9 students who were not given admission by whom the amount payable was Rs.121 lakhs is given at **(PB 95-97)**. From the same it can be noted that the 100 students to whom admission was given, the total fees of 4 years after considering the scholarship given to 13 students works out to Rs.1432.95 lakhs against which the fees pertaining to FY 2012-13 including Tuition Fees, Development fees & Hostel fees is Rs.522 lakhs (190+218.35+113.65) **(PB 98-100)**. This fees is part of the total fees of various courses reflected in Sch.XVIII under the head Fees received from students **(PB 101)**. The remaining amount is received in subsequent years which is included in the Fees received from the students in the subsequent years as per the following table:-

Batch/FY	Tuition Income	Development Fees	Hostel Fees	Total
BDS Batch(2012-13) 2012-13	1,90,00,000(PB 98)	2,18,35,000(PB 99)	1,13,65,000(PB 100)	5,22,00,000
2013-14	1,90,00,000(PB 102)	-	1,13,65,000(PB 104)	3,03,65,000
2014-15	1,90,00,000(PB 105)	-	1,13,65,000(PB 106)	3,03,65,000
2015-16	1,90,00,000	-	1,13,65,000	3,03,65,000
Total	7,60,00,000/-	2,18,35,000/-	4,54,60,000/-	14,32,95,000/-

(b) For Batch 2013-14 the total amount as per page 16 to 19 of Annexure A Exhibit-1 in respect of 103 students is Rs.1920.60 lakhs. However since the seats available is only 100, therefore 3 students out of this list were not given admission. The details of the 100 students who

were given admission by whom amount of Rs.1794.60 lakhs was payable over four years and the details of 3 students who were not given admission by whom the amount payable was Rs.126 lakhs is given at **(PB 107-109)**. From the same it can be noted that the 100 students to whom admission was given, the total fees of 4 years after considering the scholarship given to students amounting to Rs.13.05 lakhs works out to Rs.1807.65 lakhs against which the fees pertaining to FY 2013-14 including Tuition Fees, Development fees & Hostel fees is Rs.484.90 lakhs (400+66.25+18.65) **(PB 102-104)**. The current year tuition income is Rs.400 lakhs but pending the decision in the Board Meeting as to the increase in the tuition fees only Rs.190 lakhs is recognized in the current year and the balance 210 lakhs is recognized in FY 2014-15 as prior period income **(PB 102)**. This is also clarified by Sharad Kothari in reply to Q.14 and 15 of his statement dt.08.12.2015 **(PB 129-140)**. This fees is part of the total fees of various courses reflected in Sch.XIX under the head Fees received **(PB 110-113)**. The remaining amount is received in subsequent years which is included in the Fees received from the students in the subsequent years as per the following table:-

Batch/FY	Tuition Income	Development Fees	Hostel Fees	Total
BDS Batch(2013-14) 2013-14	1,90,00,000	18,65,000	66,25,000	2,74,90,000
2014-15	4,00,00,000+ 2,10,00,000 (Prior period income of batch 13-14)	-	46,25,000	6,56,25,000
2015-16	4,00,00,000	-	17,50,000	4,17,50,000
2016-17	4,00,00,000	-	12,75,000	4,12,75,000
Total	16,00,00,000	18,65,000	1,42,75,000	19,71,40,000/-

From the above table it can be noted that as the books the total fees received from the students for Batch 2013-14 works out at Rs.19,71,40,000/- which is more than amount shown in the papers found during the search. Thus the assessee has fully accounted the fees received from the students and the allegation of the Ld. PCIT that the same is unaccounted capitation fees is incorrect and without any basis.

- (c) For Batch 2014-15 the total amount as per page 48 to 50 of annexure A Exhibit 3(**PB 114-116**) in respect of 101 students is Rs.1706.50 lakhs. However since the total seats available is only 100, one of the student was not given admission. It can be noted that the 100 students to whom admission was given, the total fees of 4 years after considering the scholarship of Rs.55.50 lakhs given to 48 students works out to Rs.1651 lakhs against which the fees pertaining to FY 2014-15 including Tuition Fees & Hostel fees is Rs.440.50 lakhs (400+40.50) (**PB 105-106**). This fees is part of the total fees of various courses reflected in Sch.XIX under the head Fees received (**PB 117-120**).The remaining amount is received in subsequent years which is included in the Fees received from the students in the subsequent years as per the following table:-

Batch/FY	Tuition Income	Hostel Fees	Total
BDS Batch(2014-15) 2014-15	40000000	40,50,000	4,40,50,000
2015-16	40000000	57,65,000	4,57,65,000
2016-17	40000000	45,85,000	4,45,85,000
2017-18	40000000	49,65,000	4,49,65,000
	16,00,00,000	1,93,65,000	17,93,65,000/-

From the above table it can be noted that as per books the total fees received from the students for Batch 2014-15 works out at Rs.17,93,65,000/- which is more than amount shown in the papers

found during the search. Thus the assessee has fully disclosed the fees received from the students in the books of account and the allegation of the Ld. PCIT that the same is unaccounted capitation fees is incorrect and without any basis.

- (ii) It is stated in Para 4.2 of the order that an excel containing details of the fees of 2nd 3rd and 4th year of BDS batch of 2007-08 was found from which it is seen that excess fees of Rs.852.24lakhs has been collected. From where this excel sheet is found is not specified. Further as per the table given in the order this excel sheet is not for BDS batch 2007-08 alone but it is for Batch 2007-08 to 2012-13. All the students who have been admitted in BDS course for batch 2007-08 to 2012-13, the package of fees is for 4 years and the amount received from the student in the respective years is duly recorded in the regular books of account as explained above. Therefore the allegation that the amount specified in this table remained unexplained by the assessee is without any basis.
- (iii) In Para 4.3 of the order the Ld. PCIT by referring to Page 23-25 of Annexure A-1 and page 70 to 74, 76 and 80 of Annexure A-3 has observed that these papers are in the nature of unaccounted capitation fees which remains unverified/ unexplained. The explanation of the assessee in respect of each paper is as under :-

Page No	Details mentioned on page	Assessee's explanation
23	Nitin Nakra, MDS 14-15 • Package 30 without hostel • Received 10 lacs on 20.09.2014 • Exam 5 lacs • 1 st year 5 lacs, 2 nd year 5lacs & 3 rd year 5lacs	The paper indicates the total package for 4 years for admission in MDS course for Batch 14-15 against which Rs.10lakhs was received on 20.09.2014. However the student did not took the admission and therefore the amount of Rs.10 lakhs received on 20.09.2014 was returned back on 09.10.2014 as is evident

		the ledger account placed at (PB 121-122) .
24	Sangeeta Gurjar <ul style="list-style-type: none"> • 33 plus Hostel • 21 plus Fees • 4+4+4+ Hostel 	No amount was received from her. She had only enquired about the fees structure which is noted on this paper.
25	Aadit B.Patel <ul style="list-style-type: none"> • MDS in Prosthodontics 2012 • 21+F+H 	No amount was received from him. He had only enquired about the course and its fees structure which is noted on this paper.
72	Shanu Patel <ul style="list-style-type: none"> • 30+H, Ortho/PDC • 1 cheque 20.11.2014 	The paper indicates the total package for 3 years for admission in Ortho/PDC course is Rs.30 lakhs i.e.10 lakhs per annum plus hostel fees. He has taken admission in 2015-16 and Rs.1 lakhs is received on 02.01.2016 through NEFT and the same is verifiable from the ledger copy which is enclosed at (PB 123-124) .
73	Priyanka Mehta <ul style="list-style-type: none"> • Endo PDC 2016 • 35+H (70,000) • 2 18.12.2014 • 3 • 6 exam time • (5+3)*3 fees 	The paper indicates that the total package for 3 years for admission in Endo PDC 2016 is Rs.35 lakhs i.e.(2+3+6+24=35) plus hostel fees of Rs.70,000/-. She has taken admission in 2016-17.
74	Sazid Husain <ul style="list-style-type: none"> • Endo • 30+Hostel • 10 on 5th Feb 2015 • 10 on Feb 2016 • 10 on Feb 2017 	The paper indicates the total package for 3 years for admission in Endo course is Rs.30 lakhs i.e.10 lakhs per annum plus hostel fees. He has taken admission in 2015-16
76	Narendra Kumar Gujar <ul style="list-style-type: none"> • 21+Hostel • 3 paid on 3rd Feb • 5 in 2012 	The paper indicates that he has taken admission in 2012-13 and the total package for the course is Rs.21 lakhs plus hostel

	<ul style="list-style-type: none"> • 5 in 2013 • 5 in 2014 	fees out of which Rs.5 lakhs is paid in 2012 and the same is verifiable from the ledger copy given at (PB 125-126) .
76	Umang Desai <ul style="list-style-type: none"> • Endo- Rs.38 lakhs • 3 paid • 5 in 2012 • 5 in 2013 • 5 in 2014 	The paper indicates that he has taken admission in 2012-13 and the total package for the course is Rs.38 lakhs out of which Rs.5 lakhs is paid in 2012 and the same is verifiable from the ledger copy given at (PB 127) .
80	Abhishek Norton <ul style="list-style-type: none"> • Endo PDC 2012-13 • 42+Hostel • Rec 2 lakhs on 29.12 • 3 lakhs on 07.01 • 25 before admission • 5 in 2013 • 5 in 2014 	The paper indicates that he has taken admission in 2012-13 and the total package for the course is Rs.42 lakhs plus hostel fees out of which Rs.5 lakhs is paid in 2012 and the same is verifiable from the ledger copy given at (PB 128) .

From the above facts it can be noted that on these papers the plan of payment by the student in the MDS course is noted. However the students who took the admission, the fees is duly recorded in the books of account and the student who paid some amount but did not take the admission was refunded back the amount paid by them. Thus the allegation that these are unaccounted capitation fees is incorrect rather the tuition fees paid by the student is duly recorded in the books of account.

- (iv) In Para 4.4 certain details stated to be taken from pen drive seized from the premises of Sharad Kothari in MDS course are noted. The noting mentioned therein is only about the enquiry made by the student in various branches of MDS course. These students have not taken any admission and there is also no indication that any of these students have made any payment. Hence no adverse inference on the basis of noting on this paper can be drawn against the assessee.

- (v) In Para 4.4 a reference is made to Q.No 16 to 19 of the statement of Sharad Kothari dt.08.12.2015. These questions have no relevance with the name of students mentioned at Page 49 of the order. In fact these questions are with reference to page 16-19 of Annexure A Exhibit-1 referred at page 42-45 of the order which has already been explained in para 2(1)(a) above. The receipt from the student as referred in Q.16 is duly recorded in the books of account. The students referred in Q.19 have not taken the admission as explained supra. Thus from this statement neither any indication nor any inference can be drawn that there is any unaccounted receipt taken from the students.
- (vi) In Para 4.5 the Ld. PCIT by referring to Page 88 of annexure A-3, observed that the same contains details of some flats with the name of M/s Kamal Propmart Pvt Ltd with the amount of Rs.1,34,56,900/- and Rs.1,01,83,600/-. Further reference was made to 5 cheques issued to M/s Kamal Propmart Pvt Ltd. seized during the search. The PCIT inferred that the same is unaccounted payment/investment made on account of purchase of 5 flats. It is submitted that assessee vide sale deed dt.20.01.2015(**PB 160-174**) purchased the said 5 flats for Rs.1,13,00,130/- as is evident from the copy of ledger account of Kamal Propmart Pvt. Ltd (**PB 158**). Thus these flats are duly recorded in the books of the society and reflected in the balance sheet(**PB 36&159**). Hence the observation of PCIT that these are unaccounted payment/investment is incorrect.
- (vii) In Para 4.6 the Ld. PCIT by referring to Pages 59-60 of annexure A Exhibit 3(**PB 175-176**), noted that the same is a cash book of PAHER society from 01.01.2015 to 29.01.2015 wherein opening cash balance of Rs.1,22,60,928/- and credits of Rs.1,08,30,670/- are recorded, and the same could not be verified from the regular books of accounts. In this connection it may be noted that this not the cash book of assessee. It is in the shape of ledger account of Pacific Dental college which is a rough

noting of cash transaction done by Mr. Madanwho is handling the cash transaction of PAHER group as such. Hence on the basis of this paper no adverse inference can be drawn against the assessee.

(viii) In Para 4.7 it is observed that as per imprest account of ShriSharad Kothari furnished before the AO during proceedings u/s 153A, he was provided substantial cash advances during the year, the purpose of which could not be explained satisfactorily. In this connection it is submitted that the same are not in the nature of cash advances. The assessee trusts collect cash from students/patients, and entrusts the same to ShriSharad Kothari for depositing it in the assessee's bank accounts. ShriSharad Kothari immediately deposits the amounts in the assessee's bank accounts, as can be seen from the imprest account. Sometimes cash given to ShriSharad Kothari is of Pacific Dental College and Hospital which is deposited with them. During the financial year 2014-15, cash of Rs.9,04,44,200/- was given to ShriSharad Kothari out of which Rs.2,29,38,700/- was transferred by him to Pacific Dental College and Hospital and Rs.6,75,05,500/- was deposited in the bank account of the assessee. This is evident from the ledger account itself **(PB 177-178)**. Hence on the basis of this ledger account it cannot be inferred that it is unexplained application of money.

(ix) In Para 4.8 the Ld. PCIT referred to the bank accounts of the assessee and observed that it contains voluminous transactions of debit and credits entered with Shri BR Agarwal and his family members. However no details are given. All the transactions in the bank account are duly incorporated in the books of accounts and therefore on the basis of these transactions no adverse inference can be drawn.

From the above it can be noted that the issues raised by the Ld. PCIT for invoking section 12AA(3) and 12AA(4) is on incorrect appreciation of facts and is in fact a repetition of the order u/s 142(2A) passed for special audit **(PB 62-92)**. Thus in fact the Ld. PCIT has not independently applied his

mind and therefore the registration u/s 12AA withdrawn by him is not as per law.

3. The Ld. PCIT has cancelled the registration u/s 12AA(3) with effect from 01.04.2009 on the allegation that assessee trust is earning unaccounted income in the garb of capitation fees. It is submitted that registration u/s 12AA(3) can be cancelled only when the commissioner is satisfied that activities of the trust are not genuine or are not being carried out in accordance with its objects. The only observation is that there are irregularities in the functioning of the assessee which has come to his notice from 01.04.2009 but the alleged irregularities nowhere lead to a conclusion that activities of the trust are not genuine or are not carried out as per its objects. Otherwise also the documents on the basis of which allegation of irregularities are made relate to AY 2014-15, AY 2015-16 and AY 2016-17. Hence the withdrawal of registration u/s 12AA(3) w.e.f. 01.04.2009 is bad in law. Reliance in this connection is placed on the following:-

Indian Medical Trust vs. PCIT &Anr. (2019) 414 ITR 296 (Raj HC)

"The provisions of s. 12AA(3), empower the CIT 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. Sec. 12AA(3) does not suggest or in any way contemplate that the registration of the assessee may be cancelled with retrospective effect. Cancellation of registration can only be prospective."

ACIT vs. Agra Development Authority(2018) 407 ITR 562 (All. HC)

"Then, there is nothing in the language of s. 12AA(3) 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 s. 12A added by amendment w.e.f. 1st June, 2010, only indicate that the CIT 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 CIT had been empowered to cancel the registration of the assessee with retrospective effect i.e., w.e.f. a date prior to the date of issuance of the order/notice to cancel the registration. 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 CIT to cancel the assessee's registration under s. 12A 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. Therefore, the cancellation of the assessee's registration under s. 12A if at all, could be done only prospectively and not retrospectively as had been done by the CIT in this case."

4. It is further submitted that the jurisdiction to grant/ withdraw exemption u/s 12AA lies with the CIT(E), Jaipur. The Pr. CIT (Central) Rajasthan, Jaipur has no jurisdiction to withdraw the exemption. This is because CBDT in pursuance to Sec. 120(3) vide Notification No. 52/2014 and 53/2014 both dated 22.10.2014 has given power to CIT (Exemption) Jaipur for the state of Rajasthan for all cases of persons in the territorial area specified in column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Income-tax Act, 1961 and assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October,

2014. Thus, from the 22 October 2014, CIT (Exemption) has been constituted separately for these class or type of cases. Hence, the case of the assessee falls in the jurisdiction of CIT (Exemption). Copy of Notification is enclosed **(PB 179-183)**.

The said notification do not provide that the CIT(E) can transfer its power or jurisdiction to other CIT or Pr. CIT. In the said notification the CBDT has authorized the CIT(E) to issue order in writing for the exercise of the powers and functions by the Add. CIT or JCIT or TRO who are subordinate to him, and has authorized the Add.CIT to issue order in writing for the exercise of the 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 Sec. 127 power of transfer of cases has been given and transfer of cases is given from one Assessing Officer to other Assessing officer not from CIT to CIT.

Hence the registration u/s 12A can be withdrawn only by the Prescribed Authority who is empowered to grant the same and by the Notification No 52/2014 and 53/2014 dt. 22.10.2014 the CIT(E) is empowered for the same. The Pr. CIT has no power to cancel and therefore order passed by him cancelling the registration is without jurisdiction and thus not sustainable. In this connection reliance is placed on the decision of ITAT Jaipur Bench in the case of **Wholesale Cloth Merchant Association vs. Pr. CIT (Central), Jaipur (Rajasthan) ITA No. 688/JP/2019 vide order dated 06/01/2021 (PB 184-240)** where the order passed

by Pr.CIT(Central), Jaipur withdrawing the registration u/s 12AA(3)/12AA(4) of the Act after detailed discussion in para 11 to 21 of its order, held that the Pr. CIT had no jurisdiction to pass order u/s 12AA(3) & 12AA(4) and accordingly quashed the order of cancellation.

In view of above the order of Ld. PCIT withdrawing the registration u/s 12AA of the Act is bad in law and the same be quashed.”

5. On the other hand, the Id. D/R has relied upon the order passed by the Id. Pr. CIT (Central) Rajasthan, Jaipur and also submitted that there were various evidences in possession of the department which indicated that the assessee was not working as per the objectives referred and therefore, the case of the assessee falls under section 12AA(3) and 12AA(4) of the Act. The Id. D/R further submitted that the Id. Pr. CIT (Central) was satisfied that activities of the assessee Trust are not being carried out according to the stated objectives. As such, the Id. Pr.CIT (Central) has cancelled the registration of the assessee Trust under section 12AA by invoking provisions of section 12AA(3). The Id. Pr.CIT (Central) has further observed that the activities of the assessee Trust are being carried out in a manner that provisions of section 11 & 12 do not apply to exclude the income of the assessee Trust due to operation of provisions of section 13(1). Accordingly, the registration of the assessee society u/s 12AA is hereby cancelled by invoking provisions of section 12AA(4) of the Act.

6. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the

orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From perusal of the record, we noticed that the assessee Society was registered under Rajasthan Society Registration Act, 1958 vide Registration No. 45/Udaipur/95-96 dated 17th October, 1995. The society changed its name to Pacific Academy of Higher Education and Research Society vide copy of letter dated 12.03.2007 of Registrar Societies and Revised certificate dated 12.03.2007 regarding change of name was issued. The society was granted registration u/s 12A of the Income Tax Act, 1961 vide order dated 10/10/2002. It was also approved under section 10(23C)(vi) vide letter dated 31.05.2007 for Assessment year 2005-06 and onwards.

6.1 As per facts, a search and seizure action was conducted on the Pacific Group of Udaipur under section 132(1) of the IT Act, 1961 on 26.08.2015. Warrant of authorization under section 132(1) was also issued and duly executed in respect of the assessee trust being part of the Pacific Group. In the search and survey proceedings, various incriminating documents were found and seized/impounded. During the course of search at the residential premises of Shri Sharad Kothari, Registrar of the assessee trust on 26.08.2015 some loose papers and three pen drives were seized. Statement of Shri Sharad Kothari was recorded under section 131 of the Act. Further, statement of Shri Rahul Agarwal, Secretary of the society was recorded under section 131 of the Act by the ADIT (Inv.) wherein he confirmed that the documents seized relates to PAHER University and its college i.e. Pacific Dental College. During the course of search and in the post search enquiries, it was found that the Trust is being run in contravention of the Trust's objectives and also

in contravention of the conditions, subject to which the Trust was notified. During search proceedings, it was also found that there were numerous accounts, in books of accounts of the Trust, to which huge advances were made. Debit balances in these accounts were carried forward from year to year. The Id. Pr. CIT, on the basis of these documents found and seized, issued show cause notice dated 03.012.2019 to the assessee trust which are summarized as under :-

- (a) Certain pages contain details of admission along with the name of students and their packages in the first year of BDS course for academic year 2012-13, 2013-14 & 2014-15. The total amount of the respective years is Rs.1569.76 lakhs, 1920.60 lakhs, 1677.95 lakhs. The relevant pages are reproduced in the assessment order at Pg 40-47. As the same did not reconcile with the books of account, these amounts were considered as unaccounted capitation fees received by the society.
- (b) An excel sheet found containing the details of the fees of the 2nd, 3rd & 4th year of BDS from BDS batch 2007-08 and the same remained unexplained by the assessee. The same is reproduced at Pg 48 of the order.
- (c) From Pg.no.23 to 25 of annexure A Exhibit-1 and Pg.no. 72 to 74, 76 & 80 of annexure A Exhibit-3 it is noted that Rs.34 lakhs in AY 2012-13, Rs.22 lakhs in AY 2013-14 & Rs.45 lakhs in AY 2015-16 and Rs.20 lakhs in AY 2016-17 are in the nature of unaccounted capitation fees as the same remained unexplained. The relevant pages are reproduced at Pg 48-49 of the order.
- (d) From the pen drive seized it was found that it contained the names of students along with the amount totaling to Rs.540 lakhs from the branch of MDS courses during the academic year 2014-15. The same was considered as unaccounted capitation fees. The relevant pages are reproduced at page 49 of the order.
- (e) From the seized page no.88 of annexure A-3 it was observed that the same contain the details of some flats with the name of Kamal Propmart Pvt. Ltd

- along with amount of Rs.1,34,56,900/- and Rs.1,01,83,600/- and the difference of Rs.32,73,300/-. Further five cheques dated 31.03.2015 issued to Kamal Propmart was also found. It is inferred that the above amount is unaccounted investment of PAHER society.
- (f) The seized Pg 59 and 60 of annexure A Exhibit-3 is considered as the cash sheet of PAHER University but Sharad Kothari and B R Agarwal failed to verify this from the books of account of the assessee.
- (g) The imprest account of Sharad Kothari for the period 01.04.2014 to 31.03.2015 were furnished to the AO at the time of assessment proceedings which showed that cash of Rs.2 crore was provided on 16.06.2014, Rs.3.68 crore during the period 28th to 31st July and Rs.1 crore on 02.09.2014. No supporting documents and explanation were furnished with respect to these transactions.
- (h) During the assessment proceedings bank accounts of the trust were obtained. From the perusal of the bank account it is seen that there are voluminous transactions of debit and credits entered into with B.R Agarwal and his family members for which there is no justifiable reason or explanation given by the assessee trust.

The Id. A/R of the assessee submitted that in response to the said show cause notice and the observation made therein, the assessee filed reply dated 07.12.2019. In this reply it was explained that the reasons assigned for withdrawal of registration are same as given in the order u/s 142(2A) dt.27.12.2017 (**PB 62-92**) for special audit but the Hon'ble Rajasthan High Court vide order dated 16.03.2018 (**PB 93-94**) has already stayed the implementation of the said order, the legible copy of the seized document/ statement referred in the show cause notice be provided, there is no limitation prescribed for withdrawal of registration and therefore the proceedings for withdrawal are premature which may be kept pending. The Ld. PCIT, however, vide

order dated 26.12.2019 without providing the required documents and adequate opportunity of hearing has withdrawn the registration already granted u/s 12A of the Act and the approval given u/s 10(23C)(vi) of the Act with retrospective effect from 01.04.2009.

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

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

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

Therefore, in furtherance of the said provisions, the CBDT vide notification Nos. 52/2014 and 53/2014 both dated 22/10/2014 had given powers to Id. CIT(Exemption) Jaipur for the State of Rajasthan for all cases of persons in the territorial area specified in column (4), claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Act and

assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014. Thus, in this way from Oct. 2014 Id.CIT(Exemption) has been constituted separately for these class or type of cases. Hence, the case of the assessee admittedly falls in the jurisdiction with the Id. CIT (Exemption).

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 CIT(E) to issue order in writing for the exercise of the powers and functions by the Addl.CIT or JCT or TRO who are "subordinate" to them and has authorised the Addl.CIT to issue order in writing for the exercise of the powers by the Assessing Officer who are the subordinate to them. In section 124 of the Act, the jurisdiction of Assessing Officer has been given and not 'Jurisdiction of Commissioner'.

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.

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

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

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 Kolhapur—These objections were however overruled and assessee's case was transferred—High Court quashed purported transfer u/s 127—Held, "Centralisation Committee" which took decision for transfer of jurisdiction, is not authority envisaged u/s 127(2)—Counter-affidavit filed on behalf of Revenue does not disclose that there was any agreement between authorities of equal rank, as a pre-condition for invoking powers u/s 127—"Absence of dissenting note" from officer of equal rank who has to agree to proposed transfer would not constitute agreement, envisaged u/s 123(2)(a)—Assessee's petition allowed.

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 para-meters. The subordinate legislation can be given with retrospective effect if a power in this behalf is contained in the principle Act. In the absence of such conferment of power the Government the delegated authority has no power to issue a notification with retrospective effect. Therefore, in the absence of any provision contained in legislative Act the delegatee cannot make a delegated legislation with retrospective effect. When no power has been conferred by the act on the competent authority to withdraw the approval retrospectively, then the withdraw of the approval u/s 10(23C)(vi) of the Act can only be prospective. Hence such of approval gentled under section 12A from back date are also not according to the law and facts of the case and at the worst after the year of notice it can be done if any."

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

996 (Rajasthan) it has been held that:

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

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

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

that:

16. In the instant case, the petitioner is a registered society, which was earlier granted registration under Section 12A on 1-4-1999. A survey was conducted at the business premises on 20-9-2002, from where documents were impounded. The registration was cancelled for the assessment years 2000-01 and 2001-02 for the reasons that the surplus was quite heavy. In the impugned order, it was mentioned by the CIT that there was an unusual huge margin and the petitioner was engaged in the commercial activities rather than charitable. As per the balance-sheet, huge amount from the student was charged. The profit margin embodied in the charges taken from the students are so huge and it proves the profit motive of the petitioner.

The funds were misused by the president and his family members of the petitioner.

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

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

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

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) 411 ITR 0308 (Mad) 20** wherein it was held as under:

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

21. On the third question of the effective date of operation of the cancellation order, it was held that the cancellation will take effect only from the date of the order/notice of cancellation of registration. Since the

*act of cancellation of registration has serious civil consequences and the amended provision is held to have only a prospective effect the effect of cancellation, in the event the pending Tax Appeal is decided in favour of the Revenue, will operate only from the date of the cancellation order, that is 30.12.2010. In other words, the exemption cannot be denied to the petitioner for and up to the Assessment Year 2010-11 on the sole ground of cancellation of the certificate of registration. Also refer **Indian Medical Trust v/s Pr. CIT & ors 182 DTR 252(Raj.)** is held that cancellation of registration with retrospective effect is invalid."*

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

6.10 We also noticed that the Id. Pr. CIT (Central) has stated that the assessee trustees involved in earning of illegal/unaccounted income in the garb of capitation fees which is against public policy and income of the trust has been applied for the benefit of the persons referred to in section 13(3) of the IT Act which cannot be covered within the meaning of charitable activities. Since we have quashed the order of the Ld. PCIT (Central), there is no necessity to adjudicate these issues.

7. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on 25/01/2023.

Sd/-

(भास्करन बीआर)
(BASKARAN B.R)
लेखा सदस्य / Accountant Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 25/01/2023.

Das/

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

1. अपीलार्थी / The Appellant-Pacific Academy of Higher Education & Research Society, Udaipur.
2. प्रत्यर्थी / The Respondent- PCIT (Central), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जोधपुर / DR, ITAT, Jodhpur.
6. गार्ड फाईल / Guard File {ITA No. 04 & 05/Jodh/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar