

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “A”: NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1308 /DEL/2023
U/s 12AA of the I.T. Act.

Aggarwal Vidya Pracharni Sabha,
Tigaon Road,
Aggarwal Vidya Pracharni Sabha,
Ballabgarh, Faridabad-121004

Vs Principal Commissioner of
Income Tax, Central Gurgaon.

PAN: AFZPG0134P

(APPELLANT)

(RESPONDENT)

Assessee represented by	: Sh. Kapil Goel, Adv.
Department represented by	: Sh. Dayainder Singh Sindhu, CIT(DR)
Date of hearing	: 11.10.2023
Date of pronouncement	: 08.01.2024

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the order dated 29.03.2023 passed by the Principal Commissioner of Income Tax (Central), Gurgaon (hereinafter referred to as ld. PCIT) U/s 12AB(4) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”), cancelling registration granted to the assessee u/s 12AA of the Act.

2. The relevant facts giving rise to this appeal are that the Appellant assessee known by name 'Aggarwal Vidya Pracharni Sabha' is a charitable and registered under the Society Registration Act (XXI of 1860). The assessee trust/society is registered under Section 12AA of the Act vide order dated 27.09.2002 of Ld. CIT, Faridabad. It comes up from the impugned order that the society has been created for charitable purposes especially to promote the cause of education specially Commercial and Industrial education by establishing school and colleges etc. Further, the assessee trust is not registered u/s 80G(5)(vi) of the Act.

2.1 A search and seizure operation u/s 132 of the Act was carried out on 19.02.2020 at various entities of Dev Wine Group including the assessee trust and as a part of this search, its key trustee/members and other related persons were also covered. During the course of search and post search proceedings, various incriminating documents/evidences regarding diversion of funds of M/s Aggarwal Vidya Pracharni Sabha to other entities controlled and managed by Sh. Devender Kumar Gupta were allegedly found and seized. It is also alleged by Revenue that funds of the assessee trust was misappropriated by Sh. Devender Kumar Gupta for his personal benefit. Consequent to the search and seizure action under section 132(1) of the Act, the case of "M/s Aggarwal Vidya Pracharni Sabha" was centralized with the ACIT/DCIT, Central Circle-2, Faridabad vide order F. No. CIT(E)/CHD/Tech/2019- 20/133 passed u/s 127 of the Act dated 26.10.2020 by

the CIT(E), Chandigarh. Subsequently, assessment proceedings u/s 153A of the Act were completed in this case for the block period from A.Y. 2014-15 to 2020-21.

2.2 As per the impugned order, consequent to the completion of assessment proceedings certain facts were communicated to the office of PCIT(Central) Gurgaon by the Assessing Officer pertaining to Assessment Years 2014-15 to 2020-21 vide his office letter dated 23.08.2022. Further, the assessment records for all the relevant A.Y.s were requisitioned by the PCIT(Central), Gurgaon. Thereafter, after the impugned order was passed by cancelling the registration of the assessee by invoking powers under Section 12AB(4) of the Act.

3. The assessee has raised following grounds of appeal.

“1. That PCIT (Central) Gurgaon vide impugned order dated 29.03.2023 has seriously erred in withdrawing registration granted under old law sec. 12AA of 1961 Act with retrospective effect from 01.04.2014 by arbitrarily and unlawfully invoking inapplicable provisions of sec. 12AB(4) of 1961 Act, which is fundamentally flawed and totally contrary to mandate of 1961 Act.

2. That PCIT (Central) Gurgaon vide impugned order dated 29.03.2023 has seriously erred in withdrawing registration granted under old law sec. 12AA of 1961 Act with retrospective effect from 01.04.2014 on basis of invalid and unlawful SCN u/s 12AB(4) dated 06.03.2023 which is totally flawed and without authority of law and totally contrary to mandate of 1961 Act as highlighted in reply dated 23.03.2023

3. That PCIT (Central) Gurgaon vide impugned order dated 29.03.2023 has seriously erred in withdrawing registration granted under old law sec. 12AA of 1961 Act with retrospective effect from 01.04.2014 by not following series of binding/ fully applicable judicial precedents of higher/constitutional courts which squarely covered the issue in hand in petitioner favour thereby acting in total judicial indiscipline which is evident from face of impugned order.

4. That PCIT (Central) Gurgaon vide impugned order dated 29.03.2023 has seriously erred in withdrawing registration granted under old law sec. 12AA of 1961 Act with retrospective effect from 01.04.2014 by not appreciating the legislative intent as narrated in binding CBDT Circular no. 23/2022 (dated 03.11.2022) which fully supported petitioner subject contention on total non applicability of subject provision of sec. 12AB(4) to instant case.

5. That the appellant craves leave to add/ alter any/all grounds of appeal before or at the time of hearing of the appeal.

3.1 Assessee has also raised following additional ground of appeal:

“That impugned order passed by PCIT-Central Gurgaon U/s 12AB(4) dated 29.03.2023 is void ab initio and is jurisdictionally flawed as said PCIT (Central) did not have valid jurisdiction under 1961 Act, to pass subject registration cancellation order, which power is only available with concerned CIT(Exemption) only here CIT-Exemption (Chandigarh)”

4. Heard and perused the record. The Ld. AR has argued on three legal issues and we consider it appropriate to deal with the same at first instance. The first ground contended is that the transfer of case u/s 127 of the Act was only with regard to the assessments and not for the purpose of cancellation of registration.

4.1. Secondly, that reference for cancelling the registration granted u/s 12AA

could only be made during the pendency of assessment proceedings w.e.f. 01.04.2022. However, the basic fact of this case was ignored that assessment proceedings in this case was completed during FY 2021-22. As such, the 2nd proviso to section 143(3) is not applicable to the instant case.

4.2 Third, that in any case cancellation of registration could not have been with retrospective effect.

5. In this context as we appreciate the impugned order it comes up that Ld. PCIT(Central) Gurgaon has found these contention of the assessee trust as not acceptable on merits and also not as per provisions of the Act. He observes in impugned order that as in this case, assessment was completed in September 2021 and it was noted by the AO that the assessee had applied its funds/income other than for the object of the trust. Subsequently, he submitted a proposal for cancellation of the registration of the assessee trust granted u/s 12AA of the Act vide his later dated 23.08.2022 through his Range Head and the perusal of aforesaid copy of first page reveals that subject of the letter has been written as proposal for cancellation and does mention not 'reference' under 2nd proviso of section 143(3) of the Act.

5.1 Ld. PCIT further held that second proviso of section for making reference

for cancellation of registration granted u/s 12AA was inserted w.e.f. 1.04.2022. Therefore, it was humanly impossible for the AO to make reference in accordance with the said proviso which was not in existence. As such, proposal of the AO cannot be termed as reference as per provisions of 2nd proviso of section 143(3) of the Act.

6. As with regard to questioning of jurisdiction of Ld. PCIT(Central) Gurgaon on territorial or subject basis, he concluded that in the instant case, assessment proceedings was completed by the AO by observing some adverse inference that the assessee trust diverted its funds to other entities and as such assessee had applied its funds/income other than for the object of the trust. The said fact was communicated by the AO to Ld. PCIT(Central) Gurgaon vide his office letter dated 23.08.2022. The proposal of the AO was “independently examined” by office of Ld. PCIT(Central) Gurgaon and which “noted” that the assessee trust had continuously diverted its funds to other entities controlled, associated and managed by Sh. Devender Kumar Gupta, Chairman of the assessee trust by conduit in contravention of the object of the trust. Ld. PCIT(Central) Gurgaon observes that it was on perusal of assessment records as well as proposal of the AO, it was ‘noticed’ that the assessee trust has committed one or more specified violation. Thereafter, information was called for, from the assessee trust vide letter dated 08.09.2022. Thus Ld. PCIT(Central) Gurgaon concluded that as such, the

contention of the assessee trust that the information was called for as per clause (b) of section 12AB, on reference of AO, is totally based upon the surmise and conjecture and is without any basis and the Ld. PCIT(Central) Gurgaon had exercised powers under clause (a) of section 12AB. Therefore, Ld. PCIT(Central) Gurgaon, held it had jurisdiction to proceed further.

6.1 As far as the contention by the assessee trust was concerned that jurisdiction cannot be assumed by relying/analyzing assessment records for previous years which was not the mandate of Finance Act 2022. The Ld. PCIT(Central) Gurgaon observed that at first, it can be seen that in the section 12AB(4) the word any previous year has been written meaning thereby specified violation committed by the assessee trust during any previous year which may be only one previous year or may be more than one previous year.

6.2 Further, Ld. PCIT(Central) Gurgaon relied sub clause (ii) of Section 12AB(4) and held that PCIT, after giving reasonable opportunity of being heard, can cancel the registration of such trust **in** all subsequent previous years.

6.3 Next with regard to the contention of the assessee that cancelation of the registration under section 12AB cannot be made with retrospective effect, provisions of sections 12AB(4) were relied and Ld. PCIT(Central) Gurgaon

concluded that power has been envisaged to the PCIT under the said statute to cancel the registration of the trust wherein even registration was granted as per clause (b) of sub-section (1) of section 12AA. Ld. PCIT(Central) Gurgaon further relied sub-section 5 of section 12AA, as per which '*nothing contained in this section shall apply on or after the first day of April 2021*' and held that it means that registration under the section i.e. section 12AA must have been granted prior to 01.04.2021 and such registration can be cancelled by invoking the provisions of section 12AB(4) of the Act. Thus, Ld. PCIT(Central) Gurgaon concluded that registration granted under section 12AA prior to 01.04.2021 can be cancelled by invoking the provisions of section 12AB of the Act.

6.4 Ld. PCIT(Central) Gurgaon dealing with the contention that registration u/s 12AB of the Act cannot be granted retrospectively and thus the cancellation cannot be made retrospectively observes that registration of a trust and its cancellation u/s 12AB are two different procedure/proceedings. Ld. PCIT(Central) Gurgaon held that Section 12AB itself states that registration granted under Section 12AA can also be cancelled by invoking provisions of Section 12AB. Therefore, contention of the assessee trust holding grant of registration and its cancellation at par is not correct interpretation of the Act.

7. Now before us, as with regard to the issue whether impugned order passed

u/s 12AB(4) cancelling registration u/s 12AA w.r.ef 1.04.2014 is valid in eyes of law? Ld. AR has relied coordinate bench decisions of Jaipur bench ITAT in case of Wholesale cloth merchant association dated 06.01.2021 ITAT ITA no. 688/JP/2019 and Jodhpur bench order in case of Pacific academy of higher education and research society dated 25.01.2023 ITA no. 04/JODH/2020

7.1 Further he contended that as per CBDT notification 52/2014 only competent authority who can pass order u/s 12AB (u/s 12AA) which is concerned CIT(E) Chandigarh only and not PCIT (Central) Gurgaon.

7.2 It was further submitted that it is settled law by Hon'ble Supreme Court that presumption is against retrospectivity and 367 ITR 466 Vatika Township case was relied.

7.3 It was contended that concept of "specified violation" and withdrawal of registration as "substituted" was introduced vide Finance Act 2022 and as per explanatory CBDT circular 23/2022 dated 15.11.2022 para 9.3.3, the same is applicable from 1.04.2022 and has to be only applicable from FY 22-23 and AY 23-24 and not prior to that so admittedly without any specified violation being there after 1.04.2022, entire impugned proceedings u/s 12AB cancelling registration w.e.f 1.4.2014 is totally unlawful and ultra vires to sec. 12AB of 1961 Act.

7.4 It was submitted that when impugned action is taken u/s 12AB (4) made effective from 1.04.2022 by legislature as per explanatory CBDT circular then invoking specified violation u/s 12AB(4) before 1.04.2022 from 1.04.2014 for alleged violation much prior to 1.04.2022 is itself against the clear legislative intent. He submitted that registration cancellation being draconian/punitive act cannot be given such retrospective effect. Ld. Counsel also submitted that even otherwise there is no specific/implied power given u/s 12AB for retrospective cancellation of registration as usurped by respondent/PCIT.

8. Ld. DR heavily relied the Explanation of word 'case' in section 127 of the Act to submit that the transfer of jurisdiction u/s 127 brings into effect the transfer of all the pending and prospective cases of the assessee and no distinction can be made on any basis. He submitted there is no error in the impugned order and no irregular exercise of jurisdiction and Ld. PCIT, Gurgaon has exercised powers by virtue of his own knowledge of the issue and not on reference by Ld. AO.

9. After giving thoughtful consideration to the facts and circumstances of the case and to the submissions, it comes up that the admitted case of the Revenue is that there was no specific order under any provisions of the Act other than the order dated 26.10.2020 passed u/s 127 of the Act centralizing the case of M/s Aggarwal Vidya Pracharni Sabha consequent to a search and seizure action u/s

132(1) of the Act to vest Ld. PCIT, Gurgaon the powers to pass the impugned order. The ld. DR has relied on the Explanation attached to section 127 of the Act to submit that the word, 'case' has been defined for the purpose of section 127 and consequent to the centralization of the assessment, the ld.PCIT, Gurgaon had got powers to commence proceedings u/s 12AB(4) of the Act for cancellation of registration of the assessee.

9.1 In this context, the ld. counsel for the assessee has heavily relied on the CBDT Notification No.52/2014 made available at page 2 to 6 of the paper book submitting that in regard to powers u/ss 11 and 12 of the Act, the CIT (Exemptions), Chandigarh had specific jurisdiction and which could not have been transferred. Relying on the order u/s 127 of 26.10.2020, it was submitted that the order specifically mentions the transfer of case for carrying out post search investigation and meaningful assessment and not for any other purpose like cancellation of the registration.

10. Now to decide the question of valid exercise of jurisdiction by ld.PCIT, Gurgaon, it will be first relevant to reproduce the section 127 of the Act as follows:-

“Power to transfer cases.

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.

10.1 Further, we consider it appropriate to reproduce relevant portion of Section 12AB and relevant part Rule 17A as under:-

“Section 12AB;

"12AB. *Procedure for fresh registration.*—(1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

- (a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;
- (b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—
 - (i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—
 - (A) the genuineness of activities of the trust or institution; and

- (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects; and
- (ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (i),—
 - (A) pass an order in writing registering the trust or institution for a period of five years;
 - (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;
- (c) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought,

and send a copy of such order to the trust or institution.

(2) All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be an application made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.

(3) The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.

(4) Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) 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 after affording a reasonable opportunity of being heard.

(5) Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that—

- (a) 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; or
- (b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,

then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution."

Rule 17A

"(5) On receipt of an application in Form No. 10A, the Principal Commissioner or Commissioner, authorised by the Board shall pass an order in writing granting registration under clause (a), or clause (c), of sub-section (1) of section 12AB read with sub-section (3) of the said section in Form No. 10AC and issue a sixteen digit alphanumeric Unique Registration Number (URN) to the applicants making application as per clause (i) of the sub-rule (1).

(6) If, at any point of time, it is noticed that Form No. 10A has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided under sub-rule (1) or (2) or by not complying with the requirements of sub-rule (3) or (4), the Principal Commissioner or Commissioner, as referred to in sub-rule (5), after giving an opportunity of being heard, may cancel the registration in Form No. 10AC and Unique Registration Number (URN), issued under sub-rule (5), and such registration or such Unique Registration Number (URN) shall be deemed to have never been granted or issued.

(7) In case of an application made under sub-clause (vi) of clause (ac) of sub-section (1) of ⁴section 12A as it stood immediately before its amendment vide the Finance Act, 2023,] during previous year beginning on 1st day of April, 2021, the provisional registration shall be effective from the assessment year beginning on 1st day of April, 2022.

(8) In case of an application made in Form No. 10AB under clause (ii) of the sub-rule (1), the order of registration or rejection or cancellation of registration under sub-clause (ii) of clause (b) of sub-section (1) of section 12AB shall be in Form No. 10AD and in case if the registration is granted, sixteen digit alphanumeric number Unique Registration Number (URN) shall be issued by the Principal Commissioner or Commissioner referred to in of sub-section (1) of section 12AB.

(9) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall:

(i) lay down the form, data structure, standards and procedure of , -

(a) furnishing and verification of Form No. 10A or 10AB ,as the case may be;

(b) passing the order under clause (a), sub-clause (ii) of clause (b) and clause (c) of sub-section (1) of section 12AB.

(ii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the said application made or order so passed as the case may be.]

11. Further, it will be appropriate to reproduce the order u/s 127(2) dated 26.10.2020 available at page No.1 of the paper book:-

“ Order u/s 127 (2) of the Income Tax Act, 1961

Consequent to the search & seizure operations u/s 132 of the I.T. Act, 1961 in Dev Wines Group (D.O.S 19.02.2020), the Pr. Commissioner of Income Tax (Central), Gurugram vide letter F.No. Pr.CIT(C)/GGM/Cent./Dev Wines/2020-21/969 dated 24.08.2020 has been given concurrence and requested for centralization of the following cases related M/s Dev Wines Group to DCIT, Central Circle-2, Faridabad for coordinated post search investigation & meaningful assessment.

Accordingly, in exercise of power conferred by sub-section (2) of Section 127 of the Income Tax Act, 1961 and under all other powers enabling me in this behalf, I, the Commissioner of Income Tax(Exemptions), Chandigarh hereby transfer the following case(s), particulars of which are mentioned hereunder in Columns (2) and (3) from the Assessing Officer mentioned in Column (4) therein, to the of the Assessing Officer mentioned in Column (5) -

SCHEDULE

<i>Sr. No.</i>	<i>Name and Address of the Assessee</i>	<i>PAN</i>	<i>From</i>	<i>To</i>
<i>1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>1.</i>	<i>M/s Aggarwal vidhya Pracharni Sabha (Aggarwal College, Ballabgarh)</i>	<i>AABTA3409Q</i>	<i>Circle-2(E), Chandigarh</i>	<i>DCIT, Central Circle-2, Faridabad DLC-CC-136-4</i>

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This order shall take effect from 26.10.2020.”

12. We also consider it appropriate to reproduce the relevant part of the Notification dated 22.10.2014 providing for the territorial jurisdiction of CIT(E) in furtherance of powers given to the Board u/s 120 (1) and (2) of the Act, made available at pages 2 to 5 of the paper book:-

“NOTIFICATION

New Delhi, the 22nd October, 2014

(Income-Tax)

S.O. 2754 (E).—In exercise of the powers conferred by sub-section (1) and (2) of section 120 of the Income-Tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India, Central Board of Direct Taxes number S.O.880(E), dated the 14th September, 2001, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (ii), dated the 14th September, 2001, except as respects things done or omitted to be done before such supersession, the Central Board of Direct Taxes hereby -

SCHEDULE

<i>S. No.</i>	<i>Designation</i>	<i>Headquarters</i>	<i>Territorial Area</i>	<i>Cases or classes of cases</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>1.</i>	<i>Commissioner of Income-tax (Exemption),</i>	<i>Ahmedabad</i>	<i>State of Gujarat, Union</i>	<i>All cases of persons in the territorial area specified in</i>

	<i>Ahmedabad</i>		<i>Territory of Daman and Diu, Union Territory of Dadra and Nagar Haveli</i>	<i>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 1 to 20 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014.</i>
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4.	<i>Commissioner of Income-tax (Exemption), Chandigarh</i>	<i>Chandigarh</i>	<i>States of Jammu and Kashmir, Himachal Pradesh, Punjab, Haryana and Union Territory of Chandigarh</i>	<i>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 50 to 68 specified in the notification of Government of India bearing number S.O. 2752 dated the 22nd October, 2014.</i>
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2. This notification shall come into force with effect from the 15th day of November, 2014.

[Notification No. 52 /2014/F. No. 187 /38 /2014 (ITA.I)]
DEEPSHIKHA SHARMA, Director”

12.1 A reference was made by Ld. AR about the circular no 11 of 2022 dated 3rd June 2022, giving clarification regarding Form no 10 AC till the date of this circular and it will be relevant to reproduce para 1 of this circular herebelow;

“Circular No. 11 of 2022

F. No.370142/4/2021-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated: 3rd June, 2022

Sub: Clarification regarding Form No 10AC issued till the date of this Circular - reg.

Finance Act, 2022 has inserted sub-section (4) in section 12AB of the Income-tax Act, 1961 (the Act) allowing the Principal Commissioner or Commissioner of Income-tax to examine if there is any “specified violation” by the trust or institution registered or provisionally registered under the relevant clauses of sub-section (1) of section 12AB or subsection (1) of section 12AA. Subsequent to examination by the Principal Commissioner or Commissioner of Income-tax, an order is required to be passed for either cancellation of the registration or refusal to cancel the registration. Similar provisions have also been introduced in clause (23C) of section 10 of the Act by substituting the

fifteenth proviso of the said clause with respect to fund or institution trust or institution or any university or other educational institution or any hospital or other medical institution referred under sub-clauses (iv), (v), (vi), (via) of this clause and which have been approved or provisionally approved under the second proviso to the said clause. These amendments are effective from 1st April, 2022. In addition to the specified violations referred above, the power of cancellation has also been granted under sub-rule (5) of rule 17A and sub-rule (5) of rule 2C of the Income-tax Rules, 1962 (the Rules) to the Principal Commissioner or Commissioner authorised by the Board. This Circular only relates to cancellation of registration/approval or provisional registration/approval in the case of “specified violation”.

13. Now, as we go through the impugned order passed u/s 12AB(4) of the Act, the ld. PCIT mentions that consequent to the completion of assessment proceedings, certain facts were communicated to his office by the AO pertaining to AY 2014-15 to 2020-21 vide his letter dated 23.08.2022. This letter dated 23.08.2022 has been reproduced at page No.32 of the impugned order and it shows that this letter was issued in supersession of earlier letter dated 11.04.2022. Further, the subject of the letter is as follows:-

“Sub: Proposal for cancellation of registration granted u/s 12AA/12AB of the Act as per provisions of Section 12AB(4) of the Act in the case of ‘Aggarwal Vidya Pracharni Sabha’ ” – Reg. -

13.1 Then what comes up is that the ld. PCIT has made out a case that the powers he had exercised u/s 12AB(4) are by virtue of clause (a) to sub-section (4) of section 12AB on the basis of ‘noticing’ occurrence of specified violation. The ld. PCIT has considered himself to be empowered by virtue of Explanation attached to

section 127, defining ‘case’, to commence proceedings under this Act u/s 12AB(4) after the order dated u/s 127 dated 16.10.2020.

14. Having considered the aforesaid, it comes up that the order of transfer u/s 127 dated 26.10.2020 is shown to be passed under sub-clause (a) to sub-section (2) of section 127 of the Act which gave powers to CIT(E) Chandigarh to pass order of transfer qua such ‘Assessing Officers’ who are subordinate to other the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Thus when we consider the definition of “Assessing officer” u/s 2(7A) of the Act, certainly PCIT, Gurgaon, who has passed the impugned order is not an ‘assessing officer’, and order passed dated 26.10.2020, under sub-clause (a) to sub-section (2) of section 127 of the Act only referred to transfer of jurisdiction of ‘assessing officer’ subordinate to CIT(E) Chandigarh to DCIT, Central Circle-2, Faridabad DLC-CC-136-4 as assessing officer and not original jurisdiction of CIT(E) Chandigarh with regard to the subject matter as stands vested by order of CBDT dated 22/10/2014.

14.1 Further, what is material is that by the Notification dated 22.10.2014 the Board, exercising powers under sub-section (1) and sub-section (2) of section 120 vested powers to perform all the functions in respect of class of cases referred in the column No.5 of the Schedule of this Notification and had created a specific

jurisdiction on territorial basis in regard to the provisions generally dealing with claim of exemptions u/ss 10,11,12, 13A and section 13B of the Act.

14.2 Thus as we refer to the Notification dated 22.10.2014, the clause (a) vested powers with Commissioners of Income-tax (Exemptions), for class or class of cases pertaining to section 10, section 11, section 12, section 13A and section 13B of the Act and clause (b), to issue orders in writing for the exercise of ‘their’ powers and perform all ‘their’ functions by Additional Commissioners of Income-tax or Joint Commissioners of Income-tax and Tax Recovery Officers who are subordinate to them and that signifies that again this delegation of powers by CIT(E), Chandigarh could have been qua officers subordinate to CIT(E), Chandigarh only and not, in any way, gave powers to CIT(E), Chandigarh to pass an order u/s 127(2)(b) of the Act to transfer powers vested by Board to any other Tax Authority.

14.3 Next, as we refer to Section 12 AB and Rule 17A which have come into effect from 01.04.2021, and read it with the Circular no. 11 dated 3rd June 2022, it comes up that section 12AB(2) of the Act provides that the pending applications under clause (b) of sub-section (1) of section 12AA before the date on which section 12AB came into force shall be deemed to be applications made under sub-

clause (4) of clause (ac) of sub-section (1) of section 12A on that date for grant of registration.

14.4 However, as far as provision of cancellation of the registration provided by sub-section (4) of section 12AA is concerned, sub-section (4) of section 12AB brings into place a completely new self-contained procedural code for conducting inquiry about 'specified violations', cancelling registration or refusing to cancel registration.

14.5 The Rule 17A, as clarified by Circular dated 3rd June 2022 provides that in addition to the 'specified violations', the power of cancellation has also been granted under sub-rule (5) of rule 17A and sub-rule (5) of rule 2C of the Income-tax Rules, 1962 to the Principal Commissioner or Commissioner authorised by the Board. The authorisation u/s 12AB or Rule 17A if have to be construed, by virtue of Board's Notification dated 22.10.2014, then we pointed out during the hearing, to ld. DR that this Notification dated 22.10.2014 does not mention specifically that the powers which can be exercised by ld. PCIT u/s 12AB(4) of the Act and which have come into effect from 01.04.2021 would also be exercised by virtue of this Notification dated 22.10.2014 or that further jurisdiction u/s 12AB of the Act could be transferred to other authorities as per this Notification. The query was left unsatisfied and no other Notification or Circular was brought to our notice.

15. Thus, at one end, in the absence of any specific reference of section 12AB in the Notification dated 22.10.2014 or there being subsequent authorisation by any Circular or Notification of the Board, we conclude that at the time of passing the order u/s 127 of the Act on 26.10.2020, CIT(E), Chandigarh did not have powers to as such transfer his jurisdiction u/s 127(2)(a) of the Act, for the purpose of Section 12AB has come into effect from 01.04.2021. Accordingly, under no circumstance while passing order u/s 127 of the Act on 26.10.2020, CIT(E), Chandigarh could have transferred his powers u/s 12AB of the Act to any other authority.

15.1 On the other hand, ld. PCIT, Gurgaon by virtue of the Explanation defining the scope of 'case' for the purpose of section 127, did not have power vested in him to cancel registration u/s 12AB(4). The 'case' refers to assessment initiated as a consequence of search or consequential proceedings to such assessments only and cannot be extended to special powers of ld. CIT(E), Chandigarh. Thus, the assumption of jurisdiction on the basis of the order dated 26.10.2020 of CIT(E), Chandigarh is completely illegal and that makes the whole exercise of ld. PCIT passing the impugned order liable to be quashed.

16. Furthermore, if examine the legality of the procedure followed by ld. PCIT, Gurgaon to pass order u/s 12AB(4), by recourse to exercise of powers by virtue of

clause (a) of sub-section (4) of section 12AB, it comes up that Id.PCIT, Gurgaon admits that a 'proposal' for cancellation of the registration of the assessee trust granted u/s 12AA of the Act was forwarded vide letter dated 23.08.2022 by the AO through the Range head. In this context, if we refer to second proviso to sub-section (3) of section 143 of the Act, the same provides that if the AO is satisfied about any specified violation provided in sub-section (4) of section 12AB, the AO shall send a 'reference' to the PCIT or Commissioner to withdraw the approval or registration, as the case may be, and clause (b) to this proviso provides that no order making an assessment of total income or loss of such institution or trust shall be made without giving effect to the order passed by PCIT or Commissioner. In the case in hand, the Id.PCIT, Gurgaon has reproduced the part of letter dated 23.08.2022 which has observed about a 'proposal' of cancellation of registration u/s 12AB(4) and based upon the same, the Id. PCIT had initiated action. The assessment by said assessing officer was completed in September, 2021, so, before the letter dated 23.08.2022 the assessment proceedings stood culminated. Thus, there was no occasion for concerned AO to invoke 'reference' powers under second proviso to sub-section (3) of section 143 of the Act. To that extent Ld. PCIT observations are correct.

16.1 However, what is relevant here is that in any case the 'reference' by jurisdictional AO was to be made not to the PCIT or Commissioner, to whom this

AO was subordinate but one authorised by board for the purpose of Section 12AB. The one who could grant or cancel the registration as per amended provisions which is not PCIT, Gurgaon, but, would be CIT(E), Chandigarh. Thus assumption of jurisdiction for cancellation of registration u/s 12AB(4) of the Act by virtue of aforesaid transfer of jurisdiction order u/s 127 of the Act is not conceivable.

17. At the same as we observed above that the assessment by said assessing officer was completed in September, 2021, thus, there was no occasion for concerned AO to invoke 'reference' powers under second proviso to sub-section (3) of section 143 of the Act. It appears that when confronted with the situation that the second proviso of section 143(3) having come into effect from 01.04.2022 is not applicable to the assessment initiated consequent to search and seizure operations u/s 132 of the Act carried out on 19.02.2020, the ld. PCIT, Gurgaon improved his case by claiming that he had exercised his powers by virtue of clause (a) of sub-section (4) of section 12AB, which entitles a Principal Commissioner or Commissioner to take cognizance on the basis of a 'specified violation' coming into his notice during any previous year. At the cost of repetition, we observe that reference in section 12AB is not to PCIT or Commissioner to whom the said Assessing Officer would be subordinate, but, the CIT(E) who has been given special power for grant and cancellation of the registration as original jurisdiction.

17.1 Furthermore, here in this case, the exercise of power u/s 12AB(4) of the Act seems to also not have been done in accordance with law. As what comes up further is that, if at all, PCIT, Gurgaon was acting under clause (a) to Section 12AB(4), then, before issuing the notice dated 08.09.2022, itself the Id. PCIT, Gurgaon should have first formed his opinion that the assessee had committed one or more of a 'specified violation'. However, as we go through the relevant part of the impugned order we find that the Id.PCIT has not mentioned as to which amongst the various specified violations mentioned in Explanation attached to sub-section (4) of section 12AB were attracted so as to show cause the assessee under sub-section (4) of section 12AB of the Act and ask for information by notice dated notice dated 08.09.2022.

17.2 Rather, in the opening paragraph at page 34 of the impugned order, the Id. PCIT mentions, *"it was noticed that the assessee trust has committed one or more specified violation. Thereafter, information was called for from the assessee trust by this letter dated 08.09.2022."* We are of the view that when Ld. PCIT was assuming jurisdiction under clause (a) to Section 12AB(4), then while calling for the documents or information under clause (i) of sub-section (4) of Section 12AB, the assessee should be notified as to for which of the 'specified violation' the Ld. PCIT is calling for the information or documents. The same is not coming from the impugned order that before issue of notice on 08/09/2022, calling for the

documents or information under clause (i) of sub-section (4) of Section 12AB, Ld. PCIT, Gurgaon had actually 'noticed' one or more of such 'specified violation.'

17.3 In this context further if the final show cause notice dated 14.03.2023 available at pages 7 to 37 of the paper book is considered, it shows in para 4.10 a reference is made to what sort of information was called by letter dated 08.09.2022:-

“4.10 In the light of above facts of the case, it appears that the assessee trust has made specified violation in terms of explanation to Section 12AB(4) of the Income Tax Act, 1961. As such, following information from the assessee trust was called for under Section 12AB of the Act vide this office letter dated 08.09.2022 to examine the activities of the Aggarwal Vidya Pracharni Sabha with a view to ascertain whether the same are covered under the clause of explanation to the provisions of Section 12AB(4) of the Act and other provisions of the Act. Details of information called for the relevant period i.e. AY 2014-15 to 2020-21 is as under:

- *Copy of registration u/s 12AA/12AB(1) of the Act.*
- *Coy of memorandum of association containing the objects for which the Aggarwal Vidya Pracharni Sabha was set up along with copy of registration with the relevant authorities.*
- *Details of capital expenditure and revenue expenditure incurred for various A.Ys. as mentioned above.*
- *Copies of Form 10 and Form 10B in respect of funds accumulated u/s 11(1)(a), 11(2) of the Act and year wise utilization of the same.*
- *Specify the activities of which the accumulated funds have been utilized.*
- *Copy of account of the Aggarwal Vidya Pracharni Sabha with M/s Tirupati Realbuild Pvt. Ltd. And M/s Radhey*

Krishna Infratech Pvt. Ltd. For the above AYs explaining the nature and purpose of transactions undertaken with the said entities including advance given for the purpose of construction along with supporting evidences in order to substantiate the genuineness of the same.

- *Relationship of the Aggarwal Vidya Pracharni Sabha and its members with the directors of M/s Tirupati Realbuild Pvt. Ltd. And M/s Radhey Krishna Infratech Pvt. Ltd.”*

17.4 Then in para 4.1.2 sub-clause (d), the ld. PCIT mentions of the earlier letter dated 08.09.2022 that:

“d) Further, vide this office letter dated 08.09.2022, the assessee was requested to furnish details of capital and revenue expenditure incurred for various assessment years. In response, the assessee only submitted copy of Form 10B which is not supported with the details of capital expenditure and copy of accounts and documentary evidence. Further, no activity was specified for which accumulated funds were utilized.”

18. Thus it appears that by this notice dated 14.03.2023, only the assessee for the first time was asked to show cause about the ‘specified violation’ of the nature reproduced below:-

"(a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution;"

19. Thus, if it was the case of the PCIT (Central), Gurgaon that he was exercising the powers u/s 12AB(4)(a) on his own cognizance of the ‘specified violation’, then, at first instance as he was not competent authority u/s 12AB(1) to

pass an order of registration of the Trust, then, he had no powers u/s 12AB(4) to call for to show cause an order of cancellation. In any case, the manner of exercise of jurisdiction without first making conclusive notice of the alleged 'specified violation' is not sustainable.

20. We have also taken into consideration the order of the Jaipur Bench of the in the case M/s Wholesale Cloth Merchant Association vs. Pr. CIT (Central), Jaipur in ITA No.688/JP/2019 where this issue of jurisdiction u/s 127 of the Act has been considered and the findings support out aforesaid view on the facts before us. It will be appropriate to reproduce the relevant paras No.14 and 15:-

"14. We found that the above facts and proceedings of power of transfer U/s 127 was only for a limited purpose of Co-Ordinate Assessment. Neither any search & Seizure action nor any notice u/s 153A or 153C of the Act or assessment u/s 153A or 153C of the Act in the case of assessee were initiated and there was only a survey u/s 133A of the Act in the case of assessee. The assessment has been completed u/s 148/143(3) of the act vide order dated 19.12.2018. As the assessment has been completed, the purpose of transfer u/s 127A has also been completed. Although No notices regarding the transfer of the cases u/s 127 have been sent to the assessee for the purpose of Co-ordinate assessment and the purpose of transfer was only Co-Ordinate Assessment as clearly mentioned in the transfer letter 19.08.2016. The assessment was completed u/s 148 r.w.s 143(3) 19.12.2018 and the proposal was sent to the Pr. CIT(C) which has been received on 31.12.2018 in the office of Pr. CIT(C) on 23.01.2019 after a lapse of more than one month.

15. Even otherwise, in the said notification, there is no mention where CIT(E) can transfer to other CIT or Pr.CIT. The said notification of CBDT has authorized the CIT(E) to issue order in writing for the exercise of the powers and functions by the Addl.CIT or JCT or TRO

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

20.1 The Jaipur Bench has dealt with this issue further in paras 18 to 21 as under:-

"18. We also observe that as per Sec. 120(6) of the Act, the CBDT by its Notification No. 52/2014 and 53/2014 dated 22.10.2014 has given power to CIT(Exemption) Jaipur for the State of Rajasthan for all cases of persons in the territorial area specified in column (4) claiming exemption under clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of section 10, section 11, section 12, section 13A and section 13B of the Act and assessed or assessable by an Income-tax authority at serial numbers 131 to 140 specified in the notification of Government of India bearing number S.O.2752 dated the 22nd October, 2014. Thus firstly as per above notification and provisions of Sec. 120 and 127 the Id. CIT(Exmp.) cannot transfer or hand over or given his work or power or duties to the other same rank of CIT at all to cancel the Registration u/s 12AA. However, in case, if it is necessary to do so then there has to be proper proceedings in writing. As there has to be some order in writing from higher authorities i.e. from Chief Commissioner of Income Tax (Exmp.) Delhi or CBDT in writing and an opportunity of being heard is to be given to the assessee before transferring the case whereas all these are absent in the present case and nothing has been demonstrated by the department.

19. We further observe that Sec. 127 of the Act empower to transfer cases among Assessing Officers but not to Commissioners of Income Tax as CIT is not an Assessing Officer. In our view, to pass an order u/s 12A for registration or cancellation is not within the jurisdiction or power of an Assessing Officer. Hence registration u/s. 12A can be withdrawn only by the 'Prescribed Authority' who has been empowered to grant the same and by the Notification dated 22.10.2014 the

ld.CIT(Exmp.) has empowered for the same, hence the Pr.CIT (Central) cannot cancelled the same.

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

“Transfer of jurisdiction--Power of competent officers--Centralization of case--Dissenting note--Assessee was issued notice enshrining proposal for transfer of his case from Kolhapur to Mumbai, so as to centralise cases relating to D.Y. Patil Group--Assessee objected that such notice did not referred to any agreement being reached by officers of equal rank at Mumbai and Kolhapur--These objections were however overruled and assessee's case was transferred--High Court quashed purported transfer u/s 127--Held, "Centralisation Committee" which took decision for transfer of jurisdiction, is not authority envisaged u/s 127(2)--Counter-affidavit filed on behalf of Revenue does not disclose that there was any agreement between authorities of equal rank,as a pre-condition for invoking powers u/s 127--"Absence of dissenting note" from officer of equal rank who has to agree to proposed transfer would not constitute agreement, envisaged u/s 123(2)(a)--Assessee's petition allowed.”

21. It was also been brought to our notice that the AR had inspected the records of the case but there was no agreement between both the CIT's regarding initiation of proceedings U/s 12A of the Act. The entire communication on record is with regard to limited purpose of Co-Ordinate assessments only. Even the Instruction No.

F.No.286/88/2008IT(Inv-II) dated 17.09.2008 has relied upon by the Revenue also relates to "search assessment" and was not with regard to proceedings U/s 12A or other proceedings. Even no agreement for initiation proceedings U/s 12AA of the Act has been found out on record. Even, the proposal for centralization was not sent within the statutory time of 30 days from the date of search as admittedly the search was conducted on 30.06.2016 and the proposal was sent on 19.08.2016 i.e. after 30 days of the search. In this respect, the ld AR has relied upon the decision in the case of Rentworks India (P) Ltd. vs. Pr.CIT & ANR.(2017) 100 CCH 0258 Mum HC wherein it has been held that:

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

of Ranchi and Delhi--Even going by case made out by revenue, no such agreement was spelt out.

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

9. In the present case, it is not even the case made out in the show cause notice that the agreement as contemplated by the first part of clause (a) of sub-section (2) of section 127 exists. The existence of such agreement between two jurisdictional Commissioners is a condition precedent for passing the order of transfer. Except for the request which came from the investigation office, Chennai of transferring the case, 38 ITA 688/JP/2019_ M/s Wholesale Cloth Merchant Association Vs Pr.CIT there is no reference whatsoever to any such agreement. Clause (b) of sub-section (2) of section 127 provides for consequences when there is no such agreement. When the jurisdiction to pass an order of transfer under clause (a) of sub-section (2) of Section 127 can be exercised only when there is such an agreement, the fact that such an agreement exists ought to have been stated in the show cause notice as the same is a jurisdictional fact. Apart from the failure to mention the same in the show cause notice, the only stand of the revenue is that there is an agreement by implication. This stand is completely contrary to paragraph 5 of the decision of the Apex Court in the case of Noorul Islam Educational Trust (supra). The decision in the case of Ramswaroop (supra) will also bind this Court for the reasons stated above.

10. Coming to the decision in the case of Jharkhand Mukti Morcha, relevant facts are in paragraph 12. In the said case, specific reliance was placed on a document dated 27th November 2016. It is on the basis of the written document that a

finding was recorded that there was an agreement between the Jurisdictional Commissioners of Ranchi and Delhi. In the present case, even going by the case made out by the respondent, no such agreement is spelt out. In absence of any such agreement, the first respondent had no jurisdiction to pass the order of transfer.

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

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

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

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

"The CBDT sent a notice to the appellants under s. 127 proposing to transfer their case files "for facility of investigation" from the respective ITO at Nellore to the ITO, B Ward, Special Circle II, Hyderabad. By this notice they were also asked to submit in writing if they had any objection to the proposed transfer within 15 days of receipt of the notice. The appellants made their representation objecting to the transfer and on 26th July, 1973, the Central Board passed the impugned order transferring the cases from Nellore to Hyderabad. The short question that arises for consideration is whether failure to record the reasons in the order which was communicated to the appellants is violative of the principles of natural justice for which the order should be held to be invalid.

Held :

The requirement of recording reasons under s. 127(1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file

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

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

Special Leave Petition--Transfer of case--Validity--High Court of Madras, Madurai Bench, upheld order of C.I.T.1, Madurai, Tamil Nadu, transferring file of assessee from Tamil Nadu to Kerala--Held, as Income-tax/assessment file of assessee has been transferred from one Assessing Officer in Tamil Nadu to another Assessing Officer in Kerala and two Assessing Officers are not subordinate to same Director General or Chief Commissioner or Commissioner of Income Tax, u/s 127(2) (a) an agreement between Director General, Chief Commissioner or Commissioner, as the case may be, of two jurisdictions is necessary-- Absence of disagreement cannot tantamount to agreement as visualized under Section 127(2) (a) which contemplates a positive state of mind of two jurisdictional Commissioners of Income Tax which is conspicuously absent-- Transfer of Income-tax/assessment file of assessee from Assessing Officer, Tamil Nadu to Assessing Officer, Kerala is not justified--High Court order set aside--Special appeal allowed.

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

21. In the light of the aforesaid discussion and the law cited before us, we are of the considered view that the impugned order has been passed by Ld. PCIT, Gurgaon, without jurisdiction in context to territorial powers and subject matter as well not in accordance with law and same is liable to be quashed. Accordingly, the additional ground raised by the assessee is allowed. Since the relief is granted to assessee by allowing additional ground itself, the adjudication of other grounds raised by the assessee become academic in nature and are left open. Resultantly, the appeal of the assessee is allowed and the impugned order is quashed.

Order pronounced in the open court on 08.01.2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated, 08th January, 2024.

MP/dk

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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