

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20698 of 2010

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Shri Mahavir Sthan Nyas Samiti, Mahavir Mandir, Patna Through Its
Secretary Kishore Kunal, Mahavir Mandir, Near Patna Junction, P.S.-
Kotwali, Distt.- Patna

.... Petitioner/s

Versus

1. The Union Of India Through Chief Commissioner Income Tax, Central Revenue Building, Patna-1
2. The Commisioner Of Income Tax-1, Central Revenue Building, First Floor, Birchand Patel Marg, Patna-1
3. The Commissioner Of Income Tax, (I.T.A.T), Central Revenue Building, First Floor, Birchand Patel Marg, Patna-1
4. The Bihar State Board Of Religious Trusts Through Its President, Vidyapati Marg, Patna-1
5. The State Of Bihar Through Chief Secretary, Bihar , Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 2634 of 2011

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Imarat Shariah Educational & Welfare Trust Office At Imarat Complex,
Phulwarisharif, P.O Phulwarisharif. P.S- Phulwarisharif, District- Patna
Through Its Secretay, Shri Anisur Rhaman Qasmi S/O Shri Abul Kalam
Resident Of New Millat Colony, Phase Ii, P.O- Phulwarisharif, P.S-
Phulwarisharif, District- Patna.

.... Petitioner/s

Versus

Commissioner Of Income Tax-1 Office At Central Revenue Building , 2nd
Floor, Birchand Patel Marg, Patna-800001.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 2468 of 2011

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Imarat Shariah Educational & Welfare Trust Having Its Office At Imarat
Complex, Phulwarisharif, P.O.- Phulwarisharif, P.S.- Phulwarisharif,
District- Patna, Through Its Secretary Shri Anisur Rahman Qasmi, S/O Shri
Abul Kalam, Village- New Millat Colony, Phase Ii, P.O.- Phulwarisharif,
P.S.- Phulwarisharif, District-Patna- 801505

.... Petitioner/s

Versus

Commissioner Of Income Tax -1 Having Its Office At Central Revenue
Building, 2nd Floor, Birchand Patel Marg, Patna-800001

.... Respondent/s

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Appearance :

(In CWJC No.20698 of 2010)

For the Petitioner : Mr. P.N. Mishra
Mr. Shekhar Singh
For the Income Tax : Mrs. Archana Sinha
For Bihar State Board of : Mr. Ganpati Trivedi
Religious Trust : Mr. Manoj Kumar

(In CWJC No.2634 of 2011)

For the Petitioner : Mr. D.V.Pathy
Mr. Abhi Sarkar
Mrs. Manju Jha
For the Respondents : Mr. Rishi Raj Sinha
Mrs. Archana Sinha

In CWJC No.2468 of 2011)

For the Petitioner : Mr. D.V.Pathy
Mr. Abhi Sarkar
Mrs. Manju Jha
For the Respondents : Mr. Rishi Raj Sinha
Mrs. Archana Sinha

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 23-11-2016

Heard learned counsels for the petitioners in all the three writ petitions and learned counsels for the Income-tax Department and for the Bihar State Board Of Religious Trust.

All the three writ applications raise several common issues and they have, accordingly, been heard together and are being disposed of by this common order.

In C.W.J.C. No.20698 of 2010, the petitioner-Shri Mahabir Sthan Nyas Samiti has sought quashing of the order of the Commissioner of Income Tax-1 dated 29.09.2010, by



which the application of the petitioner for renewal of grant of exemption under Section 80G of the Income-tax Act, 1961 (In short the “Act”) has been refused holding that the assessee-trust does not fulfil the condition laid down in sub-section 5 (iii) of Section 80G of the Act. The prayer is also to quash the notice dated 13.12.2010 issued by the CIT-1, Patna as to why the registration granted under Section 12AA of the Act to the Trust should not be cancelled. The further challenge is to the order dated 27.03.2014 passed by the CIT-1, Patna under Section 263 of the Income Tax Act holding that for the assessment year 2009-10, the Assessing Officer failed to make investigation/enquiry which he was legally bound to make during the course of assessment, making the order erroneous and prejudicial to the interest of revenue and accordingly set aside the assessment order under Section 143 (3) dated 28.11.2011 with a direction to pass an order afresh de novo in accordance with law after allowing opportunity to the assessee.

The other two writ applications have been filed by the petitioner-Imarat Shariah Educational and Welfare Trust. In C.W.J.C. No.2468 of 2011, the prayer is to quash the order dated 27.10.2010 passed by the CIT-1, Patna, by which he has refused to grant continuance of exemption under Section 80G

of the Act to the petitioner holding that the petitioner does not fulfil the conditions as laid down in clauses (ii) and (iii) of Section 80G (5) of the Act.

In C.W.J.C. No. 2634 of 2011, the challenge was initially to the notice dated 20.12.2010 issued by the CIT-1, Patna under Section 12 AA of the Act issuing show cause to the petitioner as to why the registration granted under Section 12AA to it should not be cancelled. The further challenge by a subsequent amendment is to the order dated 28.09.2011, by which the registration of the petitioner granted to it under Section 12AA of the Act bearing registration No.20 of 1996-97 dated 01.08.1996 was cancelled holding that the activities of the assessee-trust are not genuine and as such they are not being carried out in consonance with the declared objects of the trust.

The petitioner-Shri Mahavir Sthan Nyas Samiti (in short 'Nyas Samiti') is a temple trust registered under Section 12A of the Act. It was declared a public trust in 1958 by the judgment of a Division Bench of this Court, which approved a compromise between the Management Committee of the temple and the Bihar State Board of Religious Trust in 1958. Subsequently, it was registered by the Bihar State Board of Religious Trust, Patna under Registration No.657 dated

04.02.1958. It was registered under Section 12AA of the Income-tax Act, 1961 under registration No. 3592 dated 12.12.1991 and has continued to be so registered till this day. It is also granted the benefit of exemption under the provisions of Section 80G of the Act since the same period, on the basis of such exemption being granted from time to time. As per the Gazette Notification (Ordinary) No. 37 dated 16.03.1990 of the Bihar State Board of Religious Trust, the objectives for which the fund of the trust shall be applied are the following:-

(i) Worship, Raj bhog (food offering to the deity), Akhand Jyoti (continuous lighting of lamp before the deity) religious ceremonies, lectures, etc.

(ii) Conservation, beautification and development of the temple.

(iii) Establishment and development of educational institutions.

(iv) Propagation of Sanskrit and Indian culture.

(v) Training of the priests, religious teachers and propounders.

(vi) Establishment of library containing published books along with original

manuscript or its photo copy and micro-films.

(vii) Printing, publication and marketing of books and journals.

(viii) Progress and propagation of Hindu religion.

(ix) Establishment of hospitals, drug house and health institutions.

(x) Establishment of home for the handicapped, orphanage and home for the lepers and such other charitable institution.

(xi) Construction of dharmshala and home for the hermits.

(xii) Free boarding for the poor and service for the needy and saints.

(xiii) Honouring the scholars and saints and scholarship on the basis of merit-cum-poverty.

(xiv) Cattle homes, development of cattle and veterinary hospitals.

(xv) Supply of sufficient water and lighting arrangement.

(xvi) Acquisitions of land, construction of building and other essential

expenses for development of the temple and other institutions.

(xvii) Decoration of idols and pictures of deities in the temple with ornaments etc.

(xviii) Movement for social harmony and goodwill and cultural wakening.

(xix) Encouraging progressive activities like ideal marriage, prohibition of drugs, removing untouchability.

(xx) With the approval of the Board, renovation of other temples, establishment of idols and construction of mandpas to conduct rituals.

(xxi) Extend help to persons affected by natural calamities like flood, drought and earthquake.

(xxii) With the permission of the Board, to organize functions for Mahavir temple and likewise.

The Temple Trust Committee claimed to be in existence since 1956. The temple itself is stated to be in existence since times immemorial. On 25.03.2010, an application for renewal of exemption under Section 80G, which was valid till

31.03.2010, was made before the Income-tax Department. By order dated 29.09.2010, the CIT-1, Patna passed the impugned order refusing prayer for extension of exemption under Section 80G of the Act. The petitioner-Nyas Samiti thereafter filed an appeal before the Income Tax Appellate Tribunal on 28.10.2010 which was heard on 09.12.2010. The Bench observed that it was going to allow the appeal on the ground that the registration granted to the petitioner under Section 12AA of the Act had not been cancelled, which fact was communicated by the Commissioner of Income-tax (ITAT), Patna by telephonic talk to the CIT-1, Patna, who after mentioning the said fact by his letter No.3920 dated 09.12.2010 informed that the matter of cancelling the registration granted to the assessee-society was under active consideration and a show cause notice was going to be issued soon to the assessee-society for cancelling the registration granted to it and requested to take necessary action. The hearing according to the petitioner had been concluded, and prayer was made by CIT (ITAT) that it would not make any submission in the case and the hearing was closed. It is not in dispute that the petitioner's expenditure in the three preceding assessment years 2006-07, 2007-08 and 2008-09 were below the 5% ceiling permissible under the provisions of Section 80G (5B).

The said letter was handed over by the CIT (ITAT) to the ITAT Bench without supplying a copy to the petitioner. The said letter was officially obtained by the petitioner from the office of the ITAT on 15.12.2010. Thereafter, the Tribunal released the case.

It is stated by learned counsel for the petitioner and not denied by the respondents that there was no regular Bench of the ITAT in Patna and the Appellate Tribunal comes after several months either from Kolkata or Delhi for hearing the cases. The Bench in question itself had come after six months.

Subsequently the impugned notice for cancellation of Registration granted under Section 12 AA of the Act was issued by the CIT-1, Patna on 13.12.2010. Aggrieved by the same, the petitioner-Nyas Samiti filed the present writ application in which this Court by order dated 22.12.2010 after considering the aforesaid facts admitted the writ petition for hearing and in the meantime, the operation of the impugned order and show cause notice were directed to remain stayed. Thereafter, while the stay has still been in operation, the CIT-1, Patna has passed an order under Section 263 of the Act setting aside the assessment made under Section 263 dated 28.12.2011 for the assessment year 2009-10 made by the assessing officer which has also been challenged in the present writ application.

The case of petitioner-Imarat Shariah Educational and Welfare Trust is that it is an Educational Welfare Trust registered under the provisions of the Societies Registration Act, 1860. The main objects of the Trust as stated in its objects are as follows:-

“3.0 Object Clause

A. Main Object

3.01 To work for the advancement of educational Science and Health.

3.02 To establish run and maintain schools Technical Institutes Colleges, Madarsas and Research institutions and to obtain recognition from Government.

3.03 To establish maintain and run academics Training Centres and Guidance and Coaching Bureaus.

3.04 To establish run and maintain books banks libraries and reading rooms.

3.05 To establish run and maintain hostels to provide lodging facilities to the poor and needy students.

3.06 To establish run and maintain Medical and Engineering Colleges and to obtained recognition from Government.

3.07 To establish run and maintain agricultural technical and handicraft Training Centres as may be permissible by law.

3.08 To provide social service to rehabilitate and assist the handicapped and

crippled and to provide assistance to displaced persons.

3.09 To establish a Company Health and Hygiene programme.

3.10 To establish and provide facilities for dissemination of knowledge.

3.11 To provide financial assistance and scholarship stipend grants to students artisans disabled persons deaf dumb or mute orphans or to any other society trust or institutions or authority looking after the welfare of such persons as mentioned above.

3.12 To organize seminars, meets conferences and workshops and utilize media for dissemination of knowledge and information inculcation of an enlightened outlook and democratic values among the people of India.

3.13 To establish Hospitals Clinics Dispensaries Health Centre.

3.14 To establish orphanages, old people Homes and Rehabilitation Centres.

3.15 To print publish sell and distribute newspapers journals magazines periodicals books pamphlets circulars poster and other forms of literature.

3.16 To acquire by purchase lease exchange or otherwise or to take over a going concern one more printing press or a publication once and to conduct and run such press of presses or such concern for the

furtherance of the objects of the trust.

3.17 To impart training in journalism and public speaking.

3.18 To grant scholarship to deserving students of science, technology commerce business management and humanities.

3.19 To give loans to deserving persons to help them settle in life on such terms as the trustees may think expedient.

3.20 To establish liaison and development mutual areas or cooperation with different organizations international, national, state local whether voluntary or official and with specialized institutions groups and individual associations in furtherance of the aims and objects of the Trust to take steps for eradicating illiteracy and spreading education and hygiene; and

3.21 To carry on such further charitable objects of general public utility as are computable or in consonance with the objects of the Trust.

3.22 To pay to the Government or to any public authority rent rates taxes assessment dues, duties and outstanding that may from time to time be levied in respect of the Trust assets or any part thereof.

3.23 To defray out of the income of the creation maintenance management and administration of the Trust.

3.24 To undertake and carry or any

W
NO

lawful trade profession or business for augmenting the Trust Assets.

3.25 To accept donations (in cash or kind) either from the Indian national living in India or abroad as well as from trusts or other institutions operating outside India and even from foreign, national subscriptions grants presents and to collect dividends rents interest and other income of the trust fund etc. for being utilized to further the object thereof.

3.26 To invest the Trust assets in sound and profitable securities and ventures.

3.27 To open and maintain account or accounts of the Trust in a bank for the purpose of keeping the moneys of the trust and to operate the same or to authorize any one or move of them to operate them

3.28 To purchase or hire or to take the lease lands buildings and other immovable or movable properties in the name of the trust.

3.29 To invest dispose of transfer and otherwise deal with the subject matter of the Trust in such manner as the Trustees deem fit and proper to do in carrying out the objects of the Trust.

3.30 To raise or borrow money required for the purpose of the Trust on a mortgage or pledge of the Trust estate or any part thereof with and without any security and at such rate of interest and on such terms as the Trustees shall think fit.

3.31 To take over the management of any other public or charitable institution, project or branch or any such institution on such terms and conditions as the Trustees may deem fit and to manage such institutions.

3.32 To acquire by gift purchase exchange lease or hire or otherwise any lands buildings and any other property movable and/or immovable and any estate or interest or interests for the furtherance of all or any of the Trust.

3.33 To invest the funds of the Trust not immediately required to deposit with nationalized Bank or with undertakings or in any securities authorized under the Income Tax Act, 1961 or other applicable laws in force from time to time.

3.34 To create any reserved fund Sinking Fund, Insurance Fund, Provident Fund or any other special fund whether for depreciation or repairs improving extending or maintaining any of the properties on rights of the trust and/or for recoupment of wasting assets and/or for benefits of the employees and for any other purpose for which the Trust deems it expedient or proper to create or to maintain any such fund or funds.

3.35 To do all such other lawful acts deeds or other things either alone or in conjunction with other organization as are incidental or conclusive to the attainment of

any of the above objects.

3.36 To provide for the welfare of employees to the Trust.

3.37 To make Rules and Regulations for the conduct of the affairs of the Trust and to add, amend vary or rescind them from time to time

3.38 All activities financed from the fund shall be conducted in accordance with the ideals and objects as stated herein and no discrimination shall be permitted therein on grounds of religion, caste creed or sect provided that any donation earmarked and accepted for any specific purpose falling within the objects mentioned therein presents shall be used for such specific purposes.

3.39 To accept upon such terms as the Board of Trustees may think fit any grant donation or contribution in money kind or land or other property impressed with the Trust to carry out the objects referred to in sub-clause 3.01 to 3.38 of Clause-A.

Provided that the terms upon which such grants donations contributions shall be accepted shall not in anyway be inconsistent with or repugnant to the objects of the present.”

The petitioner had been issued a certificate of registration dated 02.11.2007 under Section 80G of the Act effective from 07.05.2007 till 31.03.2010. On 28.04.2010, the



petitioner applied for continuance of registration under Section 80G of the Act. However, in the case of this petitioner also, it was held that although from perusal of the object set out in the Deed of Declaration it was evident that they are charitable in nature but on perusal of the audited accounts of the assessee it was observed that in reality the funds of the assessee trust were also being utilized for religious purposes and activities and that too for the benefit of a particular religious community, i.e., muslims, the followers of the religion Islam, for which reference was made to the details in regard to the financial years ending 31.03.2007, 31.03.2008 and 31.03.2009, namely, construction/repair of places of worship, sacrifice of animals (Qurbani) on religious functions such as Id-ul-Zuha, printing and distribution of religious books, maintenance of priests and religious function and, therefore, the assessee-trust did not fulfil the conditions as laid down under clause (ii) and (iii) of Section 80G (5) of the Act and the grants of continuance of exemption under Section 80G was refused by the impugned order dated 27.10.2010 Aggrieved by the same, the impugned order has been challenged in CWJC No.2468 of 2011 in the case of Imarat Shariah Educational and Welfare Trust also.

A notice dated 20.12.2010 was, thereafter, issued under Section 12AA (3) for cancellation of registration under Section

12 AA of the Act and thereafter by the impugned order dated 20.08.2011 the registration has been cancelled holding that the activities of the assessee trust are not genuine as they are not being carried on as per the declared objects of the trust, in view of the provisions of Section 13 (b) of the Income Tax Act.

It is the admitted position that from the year 2002- 2003 and 2009-10 expenditure on religious activities of the trust in question were lower than 5% except for the assessment year 2008-09 wherein it was 6.4%.

Learned counsels for the petitioners submit that in view of the amendment to Section 80G (5) (vi) by omission of the proviso, there was no need for any application for renewal by the petitioners for the registration under Section 80G of the Act and it was to operate for perpetuity and thus the CIT-1 was denuded of his power to refuse such renewal even if wrongly the petitioners have filed their applications for renewal. Section 80G (1), (2) (a) (iv), (5) (iii) (vi), (5B) and Explanation 3 to the said Section is reproduced below:-

“80G. Deduction in respect of donations to certain funds, charitable institutions, etc.

(1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section,—

(i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified in sub-clause (i) or in sub-clause (iiia) or in sub-clause (iiiaa) or in sub-clause (iiiab) or in sub-clause (iiie) or in sub-clause (iiif) or in subclause (iiig) or in sub-clause (iiiga) or sub-clause (iiih) or

subclause

(iiiha) or sub-clause (iiihb) or sub-clause (iiihc) or sub-clause (iiihd) or sub-clause (iiihe) or sub-clause (iiihf) or sub-clause (iiihg) or sub-clause (iiihh) or sub-clause (iiihj) or in sub-clause (vii) of clause (a) or in clause (c) or in clause (d) thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature *plus* fifty per cent of the balance of such aggregate; and

(ii) in any other case, an amount equal to fifty per cent of the aggregate

of the sums specified in sub-section (2).

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) any sums paid by the assessee in the previous year as donations to—

(iv) any other fund or any institution to which this section applies; or.....

(5) This section applies to donations to any institution or fund referred to in sub clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;....

(vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Commissioner in accordance with the rules made in this behalf:..

(5B) Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply.

Explanation 3. In this section, “charitable purpose” does not include any purpose the whole or substantially the whole of which is of a religious nature.”

The proviso to Section 80G (5) (vi) which has been omitted by the Finance (2) Act, 2009 with effect from 01.10.2009, prior to its omission, read as follows:-

“Provided that any approval granted under this

clause shall have effect for such assessment years or years not exceeding five assessment year, as may be specified in the approval.”

It is asserted by learned counsels for the petitioners that in view of the omission of the aforesaid proviso, the registration which was earlier required to be under Section 80G in the form of approval by the Commissioner in accordance with the prescribed Rules and was being granted for varying periods not exceeding five assessment years has been done away and for any registration which was valid on 01.10.2009 there would be no necessity for any further extension of approval or registration by the Commissioner.

In support of the same, learned counsels also rely upon Circular No.05/10 dated 03.06.2010, paragraph Nos. 29.4, 29.5, 29.6 and 29.7 of which are quoted below:-

“29.4. Further, as per clause (vi) of sub-section (5) of section 80G of the Income-tax Act, 1961, the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax in accordance with the rules prescribed in rule 11AA of the Income-tax Rule, 1962. The proviso to this clause provides that any approval granted under this clause shall have effect for such assessment year or years, not exceeding five assessment years, as may be

specified in the approval. Due to this limitation imposed on the validity of such approvals, the approved institutions or funds have to bear the hardship of getting their approvals renewed from time to time. This is unduly burdensome for the bona fide institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner.

29.5 Therefore, the proviso to clause (vi) of sub-section (5) of section 80G has been omitted to provide that the approval once granted shall continue to be valid in perpetuity.

29.6 Further, the Commissioner will also have the power of withdraw the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund.

29.7 **Applicability-** This amendment has been made applicable with effect from Ist October, 2009. Accordingly, existing approvals expiring on or after Ist October, 2009 will be deemed to have been extended in perpetuity unless specifically withdrawn. However, in case of approvals expiring before Ist October, 2009, these will have to be renewed and once renewed these shall

continue to be valid in perpetuity, unless specifically withdrawn.”

Learned counsels also rely upon Circular No.7/210 dated 27.10.2010, in paragraph No.5 of which it has been stated as follows:-

“5. As regards approvals granted up to 1.10.2009 under Section 80G by the Commissioners of Income Tax/Directors of Income Tax, proviso to Section 80G (5) (vi) clarified that any approval shall have effect for such assessment year or years not exceeding five assessment years as may be specified in the approval. The above proviso was deleted by the Finance (No.2) Act, 2009. The intent behind the deletion of above proviso as explained in the explanatory memorandum to Finance (No.2) Bill, 2009 was as under:

“Further as per clause (vi) of sub-section (5) of Section 80G of the Income-tax Act, 1961, the institutions or funds to which the donations are made have to be approved

by the Commissioner of Income-tax in accordance with the rules prescribed in rule 11AA of the Income-tax Rule, 1962. The proviso to this clause provides that any approval granted under this clause shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval.

Due to this limitation imposed on the validity of such approvals, the approved institutions or funds have to bear the hardship of getting their approvals renewed from time to time. This is unduly burdensome for the bona fide institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner.

Therefore, it is proposed to omit the proviso to clause (vi) of sub-section (5) of section 80G to provide that the approval once granted shall continue to be valid in perpetuity. Further, the Commissioner will also have the power of withdraw the approval

if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund. This amendment will take effect from Ist day of October, 2009. Accordingly, existing approvals expiring on or after Ist October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn.”

It appears that some doubts still prevail about the period of validity of approval under Section 80G subsequent to 1.10.2009, especially in view of the fact that no corresponding change has been made in Rule 11A (4). To remove any doubts in this regard, it is reiterated that any approval under Section 80G (5) on or after 1.10.2009 would be a one time approval which would be valid till it is withdrawn.”

It is, thus, asserted by learned counsels that the aforesaid position is clearly accepted by the Department itself and there



was no question of applying for renewal nor such application ought to have been considered by the CIT-1, Patna and renewal refused, rather the CIT ought to have refused to enter into the matter on account of the said amendment, as was done by the Director of Income Tax (Exemptions), Delhi by his communication dated 09.09.2010 to Nikhil Bhartiya Teerth Vikas Samiti with respect to an application filed for renewal by the said institution on 17.03.2010. It is thus submitted that refusal to grant renewal by the impugned orders by CIT-1, Patna are non est in the eye of law and fit to be quashed. Since there was no requirement of applying for any such renewal, the order passed thereon is without jurisdiction.

Learned counsels for the Income Tax Department, on the other hand, submit that the writ application is, not maintainable as the impugned orders refusing to renew the registration under Section 80G of the Act are appealable under Section 253 before the Income-tax Tribunal. It is submitted that the petitioner Nyas Samiti had, in fact, approached the Income-tax Tribunal and its appeal was pending before it when it had approached this Court by filing the writ petition. Therefore, the writ application ought to have been thrown out on the ground of availability of statutory alternative remedy.

It is also submitted by learned counsels that since the



petitioner had itself approached the Commissioner for renewal of registration, the Commissioner could have passed an appropriate order thereon including refusal of renewal. Since the Commissioner did not compel the petitioners to apply for renewal, when they had filed he has rightly rejected the renewal on the ground stated above. Learned counsel also sought to defend the action of the CIT (ITAT), CIT-1 and the ITAT in the matter of appeal of Nyas Samiti stating that as per the rules the matter was released by the ITAT in view of the said circumstances.

So far as the plea of alternative remedy is concerned, this Court had at the stage of Admission considered the circumstances that after the hearing had concluded before the Tribunal and observations made, which are admitted in the CIT-1 letter brought on the record, that the Tribunal expressed intention to allow the appeal under Section 12AA of the Act, and considering the fact that there is no regular Bench of the Tribunal at Patna and that the Tribunal comes to Patna from time to time but after gap of many months (six months in the present matter), the petitioner Nyas Samiti was left with no option in the matter but to approach this Court for grant of appropriate relief, which on a consideration of the facts by this Court had been found to be sufficient and not only the appeal



has been admitted for hearing but also stay of the impugned order dated 29.09.2010 and also show cause notice dated 13.12.2010 was granted. In the given circumstances, the plea of availability of statutory remedy could be of no avail as it was sought to be defeated by the statutory authority itself by accepting communication from one of the parties behind the back of the other party, namely, the Nyas Samiti. Since the case of the petitioner-Nyas Samiti had been admitted for hearing by this Court along with the stay orders, the subsequent writ petitions filed by the petitioner Imarat Shariah Education and Welfare Trust was also admitted on the same ground and directed for hearing with the case of the petitioner Nyas Samiti. There can be little doubt that it was uncalled for action of the respondent authorities of the Income-tax Department, which unfortunately was given encouragement by the action of the Income-tax Appellate Tribunal by releasing the appeal on non est ground, that led to the filing of the first writ petition and subsequent writ petitions by the Imarat Shariah Educational and Welfare Trust. Hence, no such plea of availability of alternative statutory remedy is available to learned counsels for the Income-tax Department.

Even otherwise in view of the law laid down by the Apex Court in several decisions including that of Whirlpool

Corporation vs. Registrar of Trade marks, Mumbai and others: (1998) SCC 1, the plea of alternative remedy is not a complete bar to the jurisdiction of this Court in entertaining the writ petition.

In the present case moreover the writ petitions had been admitted long time back and the pleadings of the parties are complete and thus at the stage of hearing no such plea is permissible, as has also been held in a number of decisions of this Court.

For all the aforesaid reasons, the objections raised by learned counsels for the Income-tax Department regarding the maintainability of the writ petition on the ground of alternative remedy, is rejected.

It is also stated by learned counsel for the petitioner Nyas Samiti that on 10.07.2014, the petitioner has withdrawn its appeal before the ITAT.

Coming to the merits of the matter, it is evident that after the omission of the proviso to Section 80G (5) (vi) of the Act there is no requirement of any renewal of registration under Section 80G at all in case the registration was valid as on 01.10.2009, which evidently is the position in the case of both the petitioners since their registration under Section 80G was valid till 31.03.2010. The said position is even accepted by the

CBDT in its Circular issued from time to time.

The plea of learned counsel for the Income-tax Department that the petitioners having themselves approached the CIT for renewal of their registration and not compelled by the Department to do so, it was open to the Commissioner to have passed an order refusing renewal under Section 80G of the Act does not have any force. The statutory authorities have to exercise their power in terms of what has been given to them by the statute under which they have been created. If the power of renewal of registration has been taken away by the amendment from 01.10.2009, there was no occasion for the CIT to exercise his power merely on the ground that the petitioner had filed an application for renewal of registration, rather he ought to have acted in the same manner as the Director of Income-tax (Exemption), Delhi by his letter dated 09.09.2010, communicating that in view of the amendment to Section 80G (5) (vi) through Finance Act (No.2), 2009 there was no need to seek renewal of the certificate. It is evident from the legal position as obtained from 01.10.2009 that the registration granted under Section 80G would operate in perpetuity, unless specifically withdrawn. For the aforesaid reasons, we hold that the impugned orders dated 29.09.2010 and 27.10.2010 of the CIT-1, Patna are illegal and invalid and they are, accordingly,

quashed.

The next issue that remains with respect to the petitioner, Imarat Shariah Educational and Welfare Trust, is with regard to the expenditures of the Trust of 6.4 % for religious purposes in the year 2008-09 which is not in accord with the requirement of Section 80G (5 B) of the Act. The said issue, according to us, is a separate matter altogether to be dealt with as may be permissible under the law but the same does not affect the issue regarding renewal in terms of the provisions of the Act.

The next issue which arises is with regard to the show cause notice issued to the Nyas Samity for cancellation under Section 12AA (3) of its registration under Section 12AA. The show cause notice has been issued on the ground that the petitioner Trust is not eligible for exclusion from the total income of the previous year under Section 11 (1) of the Act in view of the provisions of Section 13 (1) (b) of the Act, which is reproduced herein below:-

“13 (1): Nothing contained in Section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof-

(b) In the case of a trust for charitable purposes or a charitable institution created or

established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste.”

The similar show cause notice and the subsequent cancellation order dated 28.11.2011 passed in the case of the petitioner Imarat Shariah Educational and Welfare Trust, is also issued under the same provision.

In this regard, the submission of learned counsels is that the bar of Section 13 (1) (b) of the Act only comes into play if the trust or institution is created or established for the benefit of any particular religious community or caste which is not the position with regard to either of the petitioners.

With regard to the Nyas Samiti, it is submitted that it has established in the last 20 years as many as four major Hospitals situated at Patna: (1) Mahabir Cancer Sansthan, Phulwarishatrif, (2) Mahabir Arogya Sansthan, (3) Mahabir Vatsalya Hospital and (4) Mahabir Super Speciality Hospital for the treatment of eye and for Eye. Besides them, a heart Hospital is also stated to be under construction. It is submitted that these Hospitals are open for members of all religions, castes and communities and not confined for the benefit of any

particular religion caste or community.

In addition, it is submitted that Nyas Samiti spends huge amount of money for charitable purposes. Every child up to the age of 12 years suffering from cancer gets immediate assistance of Rs.10,000/- from the Trust and subsequently it also takes care of its treatment expenses and the said facility has now been extended to children up to the age of 18 years.

It is also submitted that admittedly the expenditure of the trust for religious purpose has been much lower than 5% of its total budget and thus the religious activities of the Nyas Samiti are of minuscule as compared to its general charitable activities.

With regard to the petitioner Imarat Shariah Educational and Welfare Trust, it is submitted by learned counsel for the petitioner that it is evident from the objects clause, which fact has been admitted in the impugned order also that none of the objects of the trust is religious in nature. It is also stated that not only the trust deed makes a clear and unambiguous statement that the trust is created for the benefit of the community at large irrespective of caste and religion, but even the activities of the trust show that it has not been created or established for the benefit of a particular religious group and caste. The trust has spent practically its entire funds for

charitable activities including setting up a technical institution and hospital which is evident from the fact that the total income spent for religious purposes has been found less than 5% for all the years 2002-03 to 2009-10 except for the financial year 2008-09 in which it was a little above 6.4%. Even with regard to the same, it is submitted by learned counsel that as per the law laid down by the Courts the sacrifice of animals (Qurbani) on religious functions and donation for Tablighi Ijbama have been held as not to be religious activities, rather they are charitable in nature. The same would without doubt apply to the donation given by the trust to students, Artisans, disabled persons, deaf and dumb or mute orphans or to any other society, trust or institutions having similar objects. Similarly, the distribution of medicines and medical aid to the poor and the needy on various occasions are quite distinct from religious activities and are made available to the public at large irrespective of caste, creed and religion. It is also submitted that the distribution of religious books contains learning materials in the nature of books to educate children in particular the ABC of learning. The same are not religious books and further many of such books are sponsored under the literacy programme of the Central Government under Sarv Shaksha Abhiyan. It is further

submitted that the trust has undertaken relief and rehabilitation of the flood affected in Kosi region, health care centre, marriage of poor girls, health awareness camp for poor and the destitute, rehabilitation of poor widows, women empowerment and financial help to T.B. patients, etc. irrespective of any caste, creed or religion.

On the basis of the aforesaid conspectus of facts, learned counsels for both the petitioners submit that it cannot be said that they would be covered under the provisions of Section 13 (1) (b) of the Income-tax Act so as to deprive them of the benefit of exemption under Sections 11 and 12 of the Act and cancellation of their registration and the order of the CIT-1, Patna is fit to be quashed for the said reason.

In support of the aforesaid stand, learned counsels place reliance upon the decision of the Supreme Court in the case of Commissioner of Income-tax, Ujjain vs. M/s. Dawoodi Bohra Jamat : (2014) 364 ITR 31. In the said case interpretation of Section 13 (1) (b) of the Act was involved as the Income-tax Department had refused the prayer made for the registration of the appellant trust and the question was examined in detail by the Apex Court. Since the decision squarely applies to the facts of the case, it would be useful to quote the said judgment in detail, paragraph Nos. 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49

and 50 of which are as follows:-

“36. In certain cases, the activities of the trust may contain elements of both: religious and charitable and thus, both the purposes may be overlapping. More so when the religious activity carried on by a particular section of people would be a charitable activity for or towards other members of the community and also public at large. For example, the practice of optional charity in the form of Khairat or Sadaquah under Mohammadan Law would be covered under both charitable as well as religious purpose. Further, while providing food and fodder to animals especially cow is religious activity for Hindus, it would be charitable in respect to non-Hindus as well. Similarly, service of water to the thirsty would find mention as religious activity in sacred texts and at the same time would qualify as a charitable activity.

38. Unquestionably, objects (c) and (f) which provide for the activities completely



religious in nature and restricted to the other objects, in our view the fact that the said objects trace their source to the Holy Quran and resolve to abide by the path of holiness shown by Allah would not be sufficient to conclude that the entire purpose and activities of the trust would be purely religious in color. The objects reflect the intent of the trust as observance of the tenets of Islam, but do not restrict the activities of the trust to religious obligations only and for the benefit of the members of the community. The Privy Council in *Re The Tribute*, 7 ITR 415 has held that in judging whether a certain purpose is of public benefit or not, the Courts must in general apply the standards of customary law and common opinion amongst the community to which the parties interested belong to. Therefore, it is pertinent to analyse whether the customary law would restrict the charitable disposition of the intended activities in the objects.

39. The provision of food to the public

on religious days of the community as per object (a) (b), the establishment of Madarsa and organizations for dissemination of religious education under object (d) and rendering assistance to the needy and poor for religious activities under object (e) would reflect the essence of charity. The objects (a) and (b) provide for arrangement for nyaz and majlis (lunch and dinner) on the religious occasion of the birth anniversary and Urs Mubarak of Awliya-e-Quiram (SA) and the saints of the Dawoodi Bohra community and for arrangement of lunch and dinner on religious occasions and auspicious days of the Dawoodi Bohra community, respectively. Nyaz refers to the food a person makes and offers to others on any particular occasion on the occasion of the death of a saint and Majhlis implies a place of gathering or meeting. The activity of providing for food on certain specific occasions and other religious and auspicious events of the Dawoodi Bohra community do not restrict the benefit to the

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members of the community. Neither the religious tenets nor the objects as expressed limit the service of food on the said occasions only to the members of the specific community. Thus, the activity of Nyaz performed by the respondent-trust does not delineate a separate class but extends the benefit of free service of food to public at large irrespective of their religion, caste or sect and thereby qualifies as a charitable purpose which would entail general public utility.

40. Further, establishment of Madarsa or institutions to impart religious education to the masses would qualify as a charitable purpose qualifying under the head of education under the provisions of Section 2 (15) of the Act. The institutions established to spread religious awareness by means of education though established to promote and further religious thought could not be restricted to religious purposes. The House of Lords in *Barralet v. IR*, 54 TC 446, has

observed that “the study and dissemination of ethical principles and the cultivation of rational religious sentiment” would fall in the category of educational purposes. The Madarsa as a Mohammedan institution of teaching does not confine instruction to only dissipation of religious teachings but also contributes to the holistic education of an individual. Therefore, it cannot be said that the object (d) would embody a restrictive purpose of religious activities only. Similarly, assistance by the respondent-trust to the needy and poor for religious activities would not divest the trust of its altruist character.

41. Therefore, the objects of the trust exhibit the dual tenor of religious and charitable purposes and activities. Section 11 of the Act shelters such trust with composite objects to claim exemption from tax as a religious and charitable trust subject to provisions of Section 13. The activities of the trust under such objects would therefore be entitled to exemption accordingly.



42. We would now proceed to examine the objects under the provisions of Section 13 (1)(b) of the Act. It becomes amply clear from the language employed in the provisions that Section 13 is in the nature of an exemption from applicability of Sections 11 or 12 and the examination of its applicability would only arise at the stage of claim under Sections 11 or 12. Thus, where the income of a trust is eligible for exemption under section 11, the eligibility for claiming exemption ought to be tested on the touchstone of the provisions of section 13. In the instant case, it being established that the respondent-trust is a public charitable and religious trust eligible for claiming exemption under Section 11, it becomes relevant to test it on the anvil of Section 13.

43. Thus, the second issue which arises for our consideration and decision is, whether the respondent-trust is a charitable and religious trust only for the purposes of a particular community and therefore, not

eligible for exemption under Section 11 of the Act in view of provisions of Section 13 (1) (b) of the Act.

44. In the instant case, the Tribunal has found on facts after analyzing the objects of the trust that the respondent-trust is a public religious trust and its objects are solely religious in nature and being of the opinion that Section 13 (1) (b) is solely meant for charitable trust for particular community, negated the possibility of applicability of Section 13 (1) (b) of the Act at the outset. The High Court has also confirmed the aforesaid view in appeal and observed that Section 13 (1) (b) would only be applicable in case of income of the trust for charitable purpose established for benefit of a particular religious community. In our considered view, the said view may not be the correct interpretation of the provision.

45. From the phraseology in clause (b) of section 13 (1), it could be inferred that the Legislature intended to include only the trusts

established for charitable purposes. That however does not mean that if a trust is a composite one, that is one for both religious and charitable purposes, then it would not be covered by clause (b). What is intended to be excluded from being eligible for exemption under Section 11 is a trust for charitable purpose which is established for the benefit of any particular religious community or caste.

46. Such trust with composite objects would not be expelled out of the purview of Section 13 (1) (b) per se. The Section requires it to be established that such charitable purpose is not for the benefit of a particular religious community or caste. That is to say, it needs to be examined whether such religious-charitable activity carried on by the trust only benefits a certain particular religious community or class or serves across the communities and for society at large (Sole Trustee, Loka Shikshana Trust v. CIT, (1975) 101 IRT 234 (SC). The section of community sought to be benefited must be either

sufficiently defined or identifiable by a common quality of a public or impersonal nature. (CIT v. Andhra Chamber of Commerce, 55 ITR 722).

49. In the present case, the objects of the respondent-trust are based on religious tenets under Quran according to religious faith of Islam. We have already noticed that the perusal of the objects and purposes of the respondent-trust would clearly demonstrate that the activities of the trust though both charitable and religious are not exclusively meant for a particular religious community. The objects, as explained in the preceding paragraphs, do not channel the benefits to any community if not the Dawoodi Bohra Community and thus, would not fall under the provisions of Section 13 (1) (b) of the Act.

50. In that view of the matter, we are of the considered opinion that the respondent-trust is a charitable and religious trust which does not benefit any specific religious community and therefore, it cannot be held

that Section 13 (1) (b) of the Act would be attracted to the respondent-trust and thereby, it would be eligible to claim exemption under Section 11 of the Act.”

It is evident from the aforesaid decision that a trust may have both religious and charitable purposes and activities at the same time, which was the finding recorded by the Supreme Court with regard to the Daudi Bohra Jamat. On a consideration of the objects of the Nayas Samiti, it is evident that it also falls in the same category, exhibiting both religious and charitable purposes and activities and the same would not mean that it would be ineligible for the benefit of exemption under the provisions of Section 11 and 12 of the Act.

With regard to Imarat Shariah Educational and Welfare Trust although the objects of the trust do not indicate any religious purpose indicated therein but some of its actions are admittedly for religious purpose. However, admittedly, the expenditure for religious purpose during the last five years in question for that trust also with a single exception had been less than 5 percent. Moreover even the activities of the said trust cannot be said to be confined to the members of a particular religious community or caste as per the law laid down by the

Apex Court.

There is, therefore, nothing in the objects of the two trusts or even in the activities, by which it could be said that they have been established only for the benefit of any particular religion, community or caste.

Learned counsel for the respondents, on the other hand, submits that the show cause in the case of Nyas Samiti and the cancellation of registration under Section 12AA of the Act with regard to the Imarat Shariah Trust are justified in terms of Section 13 (1) (b) of the Act as they indulged in religious activities and therefore not entitled to the benefit of such registration which is available to a charitable trust. It is submitted that the decision in Dawoodi Bohra's case is not applicable to the facts of the present matter.

It is further submitted that even providing relief and rehabilitation of poor widows, women empowerment and also help of different types, is for the purpose of encouraging them to come to their religion and is not a purely charitable activity.

In our view the decision in Dawoodi Bohra's case squarely applies to the case of the petitioners, rather their case stands on a higher footing as they have established institutions which are created for the benefit of all sections of society and the religious activities carried out by them are minuscule in

comparison to their main activity. Even the rule of 5% would apply only with regard to exemption under Section 80G and not with regard to the registration under Section 12AA or the cancellation thereof.

This Court is, therefore, of the view that the order dated 28.11.2012 of the CIT-1, Patna cancelling the registration of Imarat Shariah Trust under Section 12AA is contrary to law.

With regard to the Nyas Samity, a further point has been raised by learned counsels that the provisions of Section 13 (1) (b) of the Act apply only in the case of such trust which have been created or established after the commencement of the Act. It is submitted that the Mahabir Mandir has been existing since times immemorial and at least from the date of the order of the High Court passed in 1958 in Misc. Appeal No.428 of 1956, it has to be held that the trust was in existence since then. Reference is made to the show cause notice dated 13.12.2010 of the CIT-1, Patna in which he has stated that the assessee trust came into existence on 20.10.1987. It is submitted that merely because a new trust deed may have been entered into subsequently does not mean that the trust has come into existence in 1987, rather it has to be held that the trust was in existence at least from the year 1958 in view of the order of this Court as also grant of registration by the Bihar State Religious

Trust Board pursuant to the said order in the year 1958 itself.

In support of the same, learned counsel relies upon the decision of a Division Bench of the Andhra Pradesh High Court in the case of Commissioner of Income-Tax vs. Arya Vysya Kalayana Nilaya Sangam : (1986) 159 ITR 324, at pages 328 and 329 of which, it has been held as follows:-

“ We are unable to accept the Revenue’s plea that a new trust has come into existence on December 5, 1967, when registration was made under the Societies Registration Act. It may be pointed out that there is no requirement under the law that a trust should be registered under the Societies Registration Act in order to be recognized as a charitable institution for the purpose of earning exemption under section 11 of the Act. The requirement for earning exemption under Section 11 of the Act is that there must be an institution in existence which may be in the nature of a trust or held under any legal obligation. The will dated October 20, 1918, executed by the Late K. China Venkata Subbaiah had undoubtedly brought into

existence a trust for the benefit of the Vysya community. Trustees were duly appointed under the will. Objects were specified and the manner in which the trust fund should be utilized was specified in the will. These requirements are sufficient to render the purpose as coming within the purview of a trust created under the will dated October 20, 1918. There is also a legal obligation imposed under the will to hold the properties for the purposes specified in the will. The Act does not lay down any requirement that in order to be recognized as a public charitable institution, there must be registration under the Societies Registration Act. It is obviously for a collateral purpose that registration has been sought in the present case under the Societies Registration Act and that fact does not militate against the claim that there has been in existence already an institution administered under the will dated October 20, 1918. There is also nothing inconsistent in law in an existing trust augmenting its

resources by securing more contributions with the specific purpose of utilizing all such contributions upon the objects specified in the trust already created. Indeed, there is no dispute in the present case that the objects for which the trust was created under the will dated October 20, 1918, or the objects subsequently added by the trustees were charitable in character. The only dispute is that although the objects were charitable in nature, the society having come into existence on December 5, 1967, could be governed by the provisions of section 13 (1) (b) of the Act. As already pointed out, there is already in existence an instrument evidencing the creation of a trust as far back as October 20, 1918, and what had happened on December 5, 1967, was merely registering the same document under the Societies Registration Act. We do not think that the Revenue is right in contending that a new trust came into existence and the provisions of section 13 (1) (b) of the Act hit the new trust. If the trust has

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come into existence prior to April 1, 1962, its income would qualify for exemption under section 11 of the Act even if it enured for a particular community. This proposition is not disputed before us by the learned standing counsel for the Revenue.

Learned counsel also relies upon the proposition of non-applicability of Section 13 (1) (b) of the Act in the decision of a Division Bench of the Karnataka High Court in the case of Commissioner of Income-Tax Karnataka-II, Bangalore vs. Saraswathi Poor Students Fund: (1984) 150 ITR 142, at page 145 of which it has been held as follows:-

“...Since it was registered for on September 3, 1946, the trust is excluded from the prohibition contained under s. 13 (1) (b) of the I.T. Act, 1961, although it has been created or established for the benefit of a particular religious community or caste...”

We are of the view that the Nyas Samiti has to be held to be a trust in existence at least since the year 1958 and in that view of the matter even if it had been created or established for the benefit of a particular community or caste, which is not factually so as held above, it would not be covered by the

exclusion provided under Section 13 (1) (b) of the Act from the benefit of the provisions of Section 11 or 12 of the Act.

Thus, for the aforesaid reasons, the show cause notice dated 13.12.2010 in the case of the petitioner, Nyas Samiti as also the show cause notice dated 20.12.2010 and the order of cancellation dated 20.08.2011 of the CIT in the case of Imarat Shariah Educational and Welfare Trust are all quashed.

The last issue remains with regard to the order dated 27/29.03.2014 passed by the CIT-1, Patna under Section 263 of the Act, by which he has set aside the assessment order under Section 143 (3) dated 28.12.2011 passed by the assessing officer with respect to the Nyas Samiti for the assessment year 2009-10.

The stand of learned counsel for the petitioner is that since the order of injunction was still in existence because of the stay granted by this Court, then without getting the stay vacated, the CIT ought not to have passed the order under Section 263 of the Act in the said matter. It is submitted by learned counsel that since the stay order was in existence, the assessing officer was bound to hold that the income of the petitioner Nyas Samity would be nil by virtue of the exemption certificate and therefore, the order of the assessing officer was neither erroneous nor prejudicial to the revenue. In the said

circumstances Section 263 of the Act could not have been invoked as the twin precondition has to be satisfied before exercising such power. It is thus submitted that the CIT did not approach the High Court and issued directions contrary to the High Court directions ignoring and overreaching the order of this Court which is a deliberate violation of the order of stay granted by this Court.

It is further urged by learned counsel for the Nyas Samiti that the CIT has failed to take into account the CBDT Circular No.11/2008 dated 19.12.2008 which is para 2.1 states that medical activities continue to be charitable even if commission is paid and are incidental to the main activity. It is also submitted that sale of Naivedyam and Prasadam have been held to be not a commercial activity by the Madras High Court in the case of Arulmigu Dhandayuthapani Swami v. Commercial Tax Officer, Palani: (1998) 108 STC (Mad), and also by the Allahabad High Court in the case of Managing Committee, Temple Sri Bankey Behari Ji v. Commissioner of Sales Tax, U.P., Lucknow: (1972) 29 STC 685 (All).

Learned counsel for the respondents submits that a consideration of the detailed order makes it clear that the order has been passed after considering the failure of the assessing officer to examine different aspects of the matter which are

required in an assessment order and only for the said reason that the assessment order has been set aside and the matter has been remanded. It is thus submitted that the same does not amount to any contumacious conduct.

It is true that while passing the order, the CIT has relied upon the previous orders renewing the continuance of exemption under Section 80G as also the show cause notice issued under Section 12AA (3) for cancellation in terms of Section 13 (1) (b) of the Act and stated that the assessing officer has failed to examine the said issue and also failed to make the enquiry required in the facts and circumstances of the case before making the assessment order but apart from the same he has also considered the fact that the assessment order has been passed in a summary manner without looking into the question whether the conditions prescribed for allowing exemption under Section 11 have been fulfilled in the case. Further, the CIT has observed that no examination has been made to ascertain whether the expenses debited to the income and expenditure have been genuinely incurred and that these were actually applied towards the aims and objects of the assessee trust and it was also needed to be ensured that none of these was covered under any of the exceptions provided in the Income Tax Act. The CIT has also noted that the assessee trust has claimed



various expenses as debited in its income and expenditure which needed to be examined/verified to ascertain genuineness before it could have been accepted that its claim was applied towards its objects; further separate Trading and income and expenditure accounts were filed along with the return of income in respect of sale of medicines in the Hospital Units in which various deductions towards cost of purchases and expenses have been claimed, but no details either of the receipts or the expenses have been asked for or examined by the assessing officer. It has also been noted that the assessing officer has not examined whether the income of the assessee trust has been applied to the extent stipulated and the accumulation has been done within the permissible limits and invested as per Rules.

For the aforesaid reasons, the CIT was of the view that the assessing officer failed to make any enquiry/investigation which he was legally bound to do during the course of assessment, which has resulted in making the assessment order erroneous and prejudicial to the interest of revenue for which he has relied upon a large number of decisions of different Courts. For the said reasons, the assessment order dated 28.12.2011 has been set aside with a direction to the assessing officer to pass a fresh order de novo in accordance with law after giving an opportunity to the assessee.

We do not find sufficient force in the submissions of learned counsel for the petitioner Nyas Samiti on this point.

On a consideration of the order of the CIT, while reference to the fact that the assessing officer has not considered the refusal of renewal of the exemption under Section 80G of the Act and the show cause notice for cancellation of registration under Section 12AA of the Act can be considered as an attempt to overreach and ignore the stay order granted by this Court but the same would not apply to the remaining part of the order where he has set aside the order of the assessing officer by pointing out the lacuna during the assessment process. This Court does not agree with the submission of learned counsel for the petitioner that merely because it has been granted exemption under Section 12AA of the Act, therefore, nothing is required to be done during the assessment proceeding except to accept the return.

For the aforesaid reasons, while the CIT-1, Patna is warned not to try to overreach the orders of this Court in the future, but at the same time it is not a fit case for setting aside the order dated 27/29.3.2014.

The assessing officer, however, while making assessment should keep in mind the fact that both the impugned order dated 28.09.2010 and the show cause notice dated 13.03.2010 have

been quashed by this Court and accordingly decide the matter in accordance with law keeping the same in view. It shall also be open to the petitioner to take such plea with regard to sale of medicines, commissions, Naivedya and Prasad as per the principles of law laid down by the Courts.

In view of the aforesaid findings, CWJC No.20698 of 2010 is partly allowed to the extent as indicated above. C.W.J.C. Nos. 2634 of 2011 and 2468 of 2011 are both allowed.

(Ramesh Kumar Datta, J)

V.P.Sinha

(Anjana Mishra, J)

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