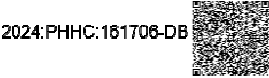


IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH



Reserved on : 20.11.2024
Date of Decision :04.12.2024

1.

ITA No. 271 of 2014 (O&M)

M/s Punjab Institute of Medical Sciences, Jalandhar ... Appellant

Versus

Commissioner of Income Tax, Jalandhar and another ... Respondents
2.

ITA No. 274 of 2014 (O&M)

M/s Punjab Institute of Medical Sciences, Jalandhar ... Appellant

Versus

Commissioner of Income Tax, Jalandhar and another ... Respondents
3.

ITA No. 52 of 2017 (O&M)

The Commissioner of Income Tax (Exemptions), Chandigarh ... Appellant

Versus

M/s Punjab Institute of Medical Sciences, Jalandhar ... Respondent
4.

ITA No. 164 of 2017 (O&M)

The Commissioner of Income Tax (Exemptions), Chandigarh ... Appellant

Versus

M/s Punjab Institute of Medical Sciences, Jalandhar ... Respondent
5.

ITA No. 48 of 2020 (O&M)

The Commissioner of Income Tax (Exemptions), Chandigarh ... Appellant

Versus

M/s Punjab Institute of Medical Sciences, Jalandhar ... Respondent
6.

ITA No. 61 of 2020 (O&M)

The Commissioner of Income Tax (Exemptions), Chandigarh ... Appellant

Versus

M/s Punjab Institute of Medical Sciences, Jalandhar ... Respondent
7.

ITA No. 33 of 2022 (O&M)

M/s Punjab Institute of Medical Sciences, Jalandhar ... Appellant

Versus

Commissioner of Income Tax, Jalandhar and another ... Respondents

8. ITA No. 196 of 2023 (O&M)

The Commissioner of Income Tax (Exemptions),
Chandigarh ... Appellant

Versus

M/s Punjab Institute of Medical Sciences, Jalandhar ... Respondent

9. ITA No. 197 of 2023 (O&M)

The Commissioner of Income Tax (Exemptions),
Chandigarh ... Appellant

Versus

M/s Punjab Institute of Medical Sciences, Jalandhar ... Respondent

10. ITA No. 199 of 2023 (O&M) **Reserved on 21.11.2024**

The Commissioner of Income Tax (Exemptions),
Chandigarh ... Appellant

Versus

M/s Punjab Institute of Medical Sciences, Jalandhar ... Respondent

11. ITA No. 200 of 2023 (O&M) **Reserved on 21.11.2024**

The Commissioner of Income Tax (Exemptions),
Chandigarh ... Appellant

Versus

M/s Punjab Institute of Medical Sciences, Jalandhar ... Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Alok Mittal, Advocate and
Mr. Shantanu Bansal, Advocate, for the Assessee.

Mr. Varun Issar, Senior Standing Counsel, for the Revenue.

SANJEEV PRAKASH SHARMA, J.

These are two sets of Income Tax Appeals. ITA Nos. 52, 164 of 2017; 48, 61 of 2020; 196, 197, 199; and 200 of 2023 have been filed by the Revenue, whereas ITA Nos. 271, 274 of 2014, 33 of 2022 have been filed by the Assessee – M/s Punjab Institute of Medical Sciences, Jalandhar (hereinafter to be referred as 'the assessee-society').

Appeals by the Assessee

ITA No. 271 of 2014 and ITA No. 274 of 2014 have been filed by the assessee arising out of order dated 31.12.2013 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter to be referred as the 'the ITAT') in cross appeals bearing ITA No.504/Asr/2009 and ITA No. 515/Asr/2009 for the assessment year 2006-2007 filed by the Assessee and the Revenue, respectively, vide which the assessee was disallowed to get benefit of Section 11 of the Income Tax Act, 1961 (for short, 'the Act').

ITA No. 33 of 2022 has been filed by the assessee arising out of order dated 12.11.2021 passed by the ITAT dismissing its ITA No.1426/Chd/2018 for the assessment year 2015-2016, upholding the order of the CIT (A) declaring the assessee not entitled to exemption under Section 11 of the Act.

Appeals filed by the Revenue

In **ITA No. 48 of 2020** the Revenue assails the order dated 21.06.2019 passed by the ITAT dismissing its appeal bearing ITA No. 463/Asr/2014 for the assessment year 2006-2007, for imposition of penalty and partly deletion of the penalty levied by the AO in terms of order dated 21.06.2019 passed in ITA No. 463/Asr/2017.

ITA No. 61 of 2020 has been filed by the Revenue against the order dated 21.06.2019 passed by the ITAT allowing ITA No. 465/Asr/2017 filed by the assessee, for the assessment year 2006-2007, vide which the penalty levied by the AO and affirmed by the CIT (A) was ordered to be deleted.

ITA No. 196 of 2023, ITA No. 197 of 2023, ITA No. 199 of 2023 and 200 of 2023 are directed against the common order dated 31.01.2023 passed by the ITAT, for the assessment years 2010-11, 2009-10, 2007-2008 and 2008-2009, respectively, vide which the assessee was held eligible to get benefit of Section 11 of the Act.

In **ITA No. 52 of 2017**, the Revenue assails the order dated 29.09.2015 passed by the ITAT in ITA No. 740/Asr/2013, vide which the power of cancellation of registration for assessment year 2004-2005 was held to be without jurisdiction.

In **ITA No. 164 of 2017**, the Revenue assails the order dated 18.03.2016 passed by the ITAT in ITA No. 485/Asr/2014, for the assessment year 2011-2012, vide which the assessee was held eligible for exemption under Section 11 of the Act.

1. Brief facts are being, therefore, taken from ITA No. 52 of 2017 for the purpose of adjudication.

2. The Commissioner of Income Tax-II, Jalandhar (for short, 'the CIT') vide its order dated 24.10.2013 exercised powers under Section 12AA (3) of the Income Tax Act, 1961 (for short, 'the Act') and cancelled the registration granted to the assessee-society under Section 12A of the Act holding that it was not working for the objects for which it was created. The registration was cancelled with effect from 2004-2005.

3. The assessee-society filed an appeal against the said order stating that it had been granted registration under Section 12A of the Act vide order dated 20.05.1994 with effect from 06.04.1994. The main objects of the society were:

- (a) to establish and carry on the administration and management of Punjab Institute of Medical Sciences, Jalandhar; and
- (b) to set up, establish, promote, manage or associate with any other Institution or Centre in the State of Punjab devoted to education, training, research and related infrastructure in various branches of health sciences and working for the

advancement of scientific knowledge aimed at enhancing the quality of patient care. (Added in October, 2009).

4. The proposal to set up the Society - M/s Punjab Institute of Medical Sciences, Jalandhar, was made in the year 1993 by the State Government. Lands and funds were also arranged by the State Government by transferring 1.65 acres of land from Punjab Agriculture University, Ludhiana to PIMS-Society, Jalandhar. The Governing Council was formed headed by Chief Minister. A Director was appointed by the State Government. The society was registered in 1994. The State Government granted a sum of ₹ 3 crores in the year 1994-95. In 1996, an Architect was appointed to prepare master plan. In 1997, the Hon'ble Prime Minister announced additional central assistance of ₹ 25 crores under the 100% centrally sponsored Five Years Plan. The part amount was received on 23.10.1998 of ₹ 7.5 crores. Second installment was received on 05.05.2000 of ₹ 7.5 crores and the balance 10.33 crores was received on 10.03.2006. In 1997, 67.77 acres of land was purchased by the PIMS Society for a sum of ₹ 3 crores to establish Medical College and Hospital. The plan was prepared by entering into an agreement with a contractor. In 1999, a master plan of ₹80 crores was approved. A 1000 beds hospital was planned to be constructed in a phased manner. With the said objects, the PIMS Society had been set up and it was granted the aforesaid registration. In October 2011, it decided to have the main sources of funding through development of 104 acres of land, which was purchased by the PIMS Society for a sum of ₹ 15 crores from the Punjab Agriculture University.

5. It is stated that in the year 2001, L&T was the main contractor for the main building. The construction was started in February 2002. The supervision of the project was awarded to the Punjab Health Sciences

Corporation, a State Government Enterprises by the PIMS Society. Another tripartite agreement was entered between the State Government, PUDA and PIMS Society, Jalandhar. During 2003-2004 several other works were taken up. In 2005-2006, the Society as per the decision of the Governing Body entered into a public private partnership mode for operating and managing of the Medical Institute. The same was finally achieved in August 2009. The balance sheet as on 31.03.2006 reflects that ₹ 28 crores were received by the Society till 31.03.2006. ₹ 121 crores were received as sale proceeds of land upto 31.03.2006 which included ₹ 15 crores which were received in 2006-2007. ₹ 85 crores out of ₹ 110.70 crores have been utilized on construction of building.

6. The ITAT examined the order passed by the CIT dated 04.06.2013 and noticed that the Society has undertaken to construct and develop Government Hospitals, Medical Universities and Colleges as per its objects at various places in the State of Punjab. The commencement and functioning of the hospital was with effect from 04.06.2010 and RPF document was also prepared in July 2008 with a minimum reserve price of ₹ 120 crores and a suitable private partner M/s NRI Academic Sciences was accepted and a consortium was later on formed by the name of PIMS Medical Educational Charitable Society having upfront of ₹ 131.00 crores and annual concession fee of 5% from the 8th year from the proposal acceptance date. The concession agreement was signed by the parties on 28.08.2009.

7. Apart from factual findings, it also examined the question regarding the power of cancellation of registration with CIT, which had been introduced with effect from 01.06.2010 whereby Sub-section (3) was added to Section 12AA of the Act and found that the said provision added in the

statute book is only prospective. Having noticed the aforesaid facts from ITA No. 52 of 2017 arising out of ITA No. 740/Asr/2013, we now proceed to note down the submissions raised by learned counsel for the parties.

Submissions of the Revenue

8. Learned counsel appearing for the Revenue submitted that the ITAT has not given any findings contrary to the reasons of cancellation as mentioned by the CIT in its impugned order dated 24.10.2013. The assessee had not challenged the said findings in the appeal before this Court and, therefore, the same had attained finality. The ITAT only examined the cancellation made with effect from 2004-2005 on the issue relating to retrospectively. He submits that the judgment of Delhi High Court relied upon by the ld. ITAT in **Director of Income Tax (Exemption) vs Mool Chand Khairati Ram Trust** (2011) 339 ITR 622 (Delhi) was erroneous and the facts of the said case were different from the facts of the present case. It is submitted that in that case the power under Section 12AA (3) of the Act was exercised before the amendment was incorporated i.e. on 30.06.2009 while the amendment was incorporated with effect from 01.06.2010. Therefore, he submits that the reliance on the said judgment vitiates the entire case since in the present case the orders were passed on 24.10.2013 after coming into force of the amendment with effect from 01.06.2010. The power was, therefore, available with the Commissioner of Income Tax, who has rightly exercised the power.

9. Learned counsel also relies on the view expressed by the Bombay High Court in **Sinhagad Technical Education Society vs Commissioner of Income-Tax (Central)** (2012) 343 ITR 23 (Bombay) and submits that the Constitutional validity of Section 12AA (3) of the Act as it stood under the Finance Act of 2010 has been upheld. The amendment made

in Section 12AA cannot be understood to the taking away vested right retrospectively. It is further submitted that the amendment has to be read as an enabling provision empowering the Commissioner to cancel the registration which was granted earlier and the cancellation power was already inherent under the Act. Learned counsel has, therefore, relied on the said judgment to submit that the respondent cannot be allowed to have its registration restored.

Submission of the Assessee in ITA No. 52 of 2017

10. Per contra learned counsel appearing for the Assessee-PIMS Society submitted that since the power under Section 12AA(3) of the Act has been specifically introduced with effect from 01.06.2010, the same could not be made retrospectively for 2004-2005. He submits that for the assessment year 2004-2005, the power being not available with the Commissioner, he could not have even examined whether the registration can be cancelled. He further submits that the Society is a Government Society with the sole object to conduct charitable activity of providing good health to its citizens and would fall within the definition of 'charitable work' as defined under the Act.

Submission of the Assessee in ITA No. 271 and 274 of 2014

11. Learned counsel for the assessee submits that the construction of building for the year 10.10.1994 to 31.03.2006 of the medical institution is a requirement for carrying out the education and medical relief. Thus, it is a pre-condition that there has to be a building for medical care and the assessee could not be allowed to deny registration in terms of Section 12A of the Act merely because it took time to construct the building. Therefore, the exemption was required to be given. It is not the case of the Revenue that

funds were diverted for any other activity than for the purpose of related activities.

12. It is admitted position that from 10.10.1994 to 31.03.2006, the building was being constructed. The purpose of construction of the building is to carry out charitable activity and provide medical help. He, therefore, submits that the order dated 30.12.2008 passed by the Assessing Officer disallowing exemption under Section 11 of the Act, was wholly unjustified. He submits that the Revenue has failed to take notice and import of the tripartite agreement executed between the State Government, PIMS and PUDA. All funds of the Society are actually Government funds as has been pointed hereinabove and, therefore, it is argued that the concerned officer has failed to take notice for the purpose of granting exemption and wrongly disallowed the said exemption.

13. Learned counsel for the assessee submits that the order of the ITAT dated 31.12.2013 whereby the appeal of the assessee was rejected and appeal of the Revenue was accepted, deserves to be quashed; and the appeal of the Assessee deserves to be allowed and that of the Revenue deserves to be dismissed.

14. Learned counsel for the Assessee has taken us to the objectives of the PIMS Society, which were further amended in October, 2009. In these circumstances, he submits that there was no occasion to cancel the registration of the Assessee and disallow the exemption.

15. We have considered the submissions.

Discussion

16. Section 2 (15) of the Act defines charitable purpose. The word 'charitable purpose' and 'legislative changes' have been discussed at length

by the Larger Bench of the Supreme Court in **Assistant Commissioner of Income Tax (Exemptions) vs Ahmedabad Urban Development Authority** 2022 (17) SCALE 648. It is a widely worded define term to mean and includes relief of the poor, education, medical relief, yoga, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility. The proviso added substituting the first and second proviso with effect from 01.04.2016 lays down a caveat as under:-

Definitions.

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

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

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

Sections 12, 12A, 12AA(3) and Section 12AA (4) of the Act are quoted as under for ready reference:-

Income of trusts or institutions from contributions.

"12. [(1)] "Any voluntary contributions" received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.]

[(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income- tax notwithstanding the provisions of sub-section (1) of section 11.

Explanation. For the purposes of this sub-section, the expression "value" shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13.]

"[(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (a) of sub-section (2) of section 80G [in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that

clause, or] which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, shall be deemed to be the income of the previous year and shall according be charged to tax.

“[Conditions for applicability of sections 11 and 12]

12A. (1) *The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-*

- (a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to [Principal Commissioner or] Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, [whichever is later and such trust or institution is registered under section 12-AA]:*

[Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,-

- (i) from the date of the creation of the trust or the establishment of the institution if the Principal Commissioner or Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons; [Substituted by Act 49 of 1991, Section 7, for the proviso (w.e.f. 1.10.1991).]*
- (ii) from the 1st day of the financial year in which the application is made, if the] Certain words omitted by Act 27 of 1999, Section 8 (w.e.f. 1.6.1999).]*

[Commissioner is not so satisfied:] [Substituted by Act 49 of 1991, Section 7, for the proviso (w.e.f. 1.10.1991).]

[Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;]

(aa) [the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the [Principal Commissioner or] Commissioner and such trust or institution is registered under section 12AA;]

(ab) the person in receipt of the income has made an application for registration of the trust or institution, in a case where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)], and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;

(ac) notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,—

(i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA [as it stood

immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020)], within three months from the first day of April, 2021;

- (ii) where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;*
- (iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;*
- (iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;*
- (v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;*
- (vi) in any other case, where activities of the trust or institution have-*
 - (A) not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought;*

(B) commenced and no income or part thereof of the said trusts or institution has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, or section 11 or section 12, for any previous year ending on or before the date of such application, at any time after the commencement of such activities.]

- [and such trust or institution is regulated under Section 12AB]

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year,—

(i) the books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed; and

(ii) the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed;

(ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.

(2) *Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:*

[Provided that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under—

- (a) sub-clause (i) of clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration;*
- (b) sub-clause (iii) of clause (ac) of sub-section (1), from the first of the assessment year for which it was provisionally registered.”*

“12AA. [Procedure for registration.]

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3. Where a trust or an institution has been granted registration under clause (b) of sub-section (1)[or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]] and subsequently the [Principal Commissioner or] Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

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

(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration

at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that-

- (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 sub-clause (ii) of clause (a) 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, cancel the registration of such trust or institution:]

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

(5) Nothing contained in this section shall apply on or after the 1st day of April, 2021.”

17. The present institute, as established by the Government of Punjab, admittedly was formed with the purposes as have already noticed hereinabove. The added object, as mentioned in clause (c) of the objects, has to be considered as part of charitable purpose for achieving a general public utility object.

Taking into consideration the aforesaid, the assessee society was granted registration in terms of Section 12 of the Act. From perusal of the aforesaid, it is apparent that an institution, which is formed or created wholly for charitable purposes, like the assessee society, would be entitled

for registration under the said Act. As per Section 12AA(3) of the Act, which was inserted vide Finance Act 2004 with effect from 01.10.2004, wherein the registration granted under Section 12A of the Act, as it stood before the Finance Act of 1996 and subsequently empowered the Commissioner to cancel such a registration. Thus, the Principal Commissioner, if satisfied, that activities of such an institution are not genuine or/are not being carried out in accordance with the objects of the trust/ institution, he can cancel the registration. The express power has been provided by the Finance Act 2010 with effect from 01.06.2010. The concerned Commissioner was empowered with effect from 01.10.2014 to cancel the registration of such trust or institution.

18. Hon'ble the Supreme Court in **M/s New Noble Educational Society vs The Chief Commissioner of Income Tax 1 and another** 2022 (15) Scale 302 was examining the import of provisions of Section 10(23C) (vi) of the Act whereby word 'solely' was explained and it concluded as under:-

“76. The conclusions of this court are summarized as follows:

a. It is held that the requirement of the charitable institution, society or trust etc., to 'solely' engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust etc., must relate to imparting education or be in relation to educational activities.

b. Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10 (23C) of the Income Tax Act. At the same time, where surplus accrues in a given year

or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities.

c. The seventh proviso to Section 10(23C), as well as Section 11 (4A) refer to profits which may be ‘incidentally’ generated or earned by the charitable institution. In the present case, the same is applicable only to those institutions which impart education or are engaged in activities connected to education.

d. The reference to ‘business’ and ‘profits’ in the seventh proviso to Section 10 (23C) and Section 11 (4A) merely means that the profits of business which is ‘incidental’ to educational activity – as explained in the earlier part of the judgment i.e., relating to education such as sale of text books, providing school bus facilities, hostel facilities, etc.

e. The reasoning and conclusions in American Hotel (supra) and Queen’s Education Society (supra) so far as they pertain to the interpretation of expression ‘solely’ are hereby disapproved. The judgments are accordingly overruled to that extent.

f. While considering applications for approval under Section 10(23C), the Commissioner or the concerned authority as the case may be under the second proviso is not bound to examine only the objects of the institution. To ascertain the genuineness of the institution and the manner of its functioning, the Commissioner or other authority is free to call for the audited accounts or other such documents for recording satisfaction where the society, trust or institution genuinely seeks to achieve the objects which it professes. The observations made in American Hotel (supra) suggest that the Commissioner could not call for the records and that the examination of such accounts would be at the stage of assessment. Whilst that reasoning undoubtedly applies to newly set

up charities, trusts etc. the proviso under Section 10(23C) is not confined to newly set up trusts – it also applies to existing ones. The Commissioner or other authority is not in any manner constrained from examining accounts and other related documents to see the pattern of income and expenditure.

g. It is held that wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc. seeking approval under Section 10(23C) should also comply with provisions of such state laws. This would enable the Commissioner or concerned authority to ascertain the genuineness of the trust, society etc. This reasoning is reinforced by the recent insertion of another proviso of Section 10(23C) with effect from April 1, 2021.”

19. In **Ahmedabad Urban Development Authority**'s case (supra), the Supreme Court examined the scope and amplitude of definition of 'charitable purpose' and after examining the various judgments passed by the Apex Court from time to time, summarized as under:-

“190. In light of the above discussion, this court is of the opinion that:

(i) The fact that bodies which carry on statutory functions whose income was eligible to be considered for exemption under Section 10(20A) ceased to enjoy that benefit after deletion of that provision w.e.f. 01.04.2003, does not ipso facto preclude their claim for consideration for benefit as GPU category charities, under Section 11 read with Section 2(15) of the Act.

(ii) Statutory Corporations, Boards, Authorities, Commissions, etc. (by whatsoever names called) in the housing development, town planning, industrial development sectors are involved in the advancement of

objects of general public utility, therefore are entitled to be considered as charities in the GPU categories.

(iii) Such statutory corporations, boards, trusts authorities, etc. may be involved in promoting public objects and also in the course of their pursuing their objects, involved or engaged in activities in the nature of trade, commerce or business.

(iv) The determinative tests to consider when determining whether such statutory bodies, boards, authorities, corporations, autonomous or self- governing government sponsored bodies, are GPU category charities:

(a) Does the state or central law, or the memorandum of association, constitution, etc. advance any GPU object, such as development of housing, town planning, development of industrial areas, or regulation of any activity in the general public interest, supply of essential goods or services - such as water supply, sewage service, distributing medicines, of food grains (PDS entities), etc.;

(b) While carrying on of such activities to achieve such objects (which are to be discerned from the objects and policy of the enactment; or in terms of the controlling instrument, such as memorandum of association etc.), the purpose for which such public GPU charity, is set-up - whether for furthering the development or a charitable object or for carrying on trade, business or commerce or service in relation to such trade, etc.;

(c) Rendition of service or providing any article or goods, by such boards, authority, corporation, etc., on cost or nominal mark-up basis would ipso facto not be activities in the nature of business, trade or commerce or service in relation to such business, trade or commerce;

(d) where the controlling instrument, particularly a statute imposes certain responsibilities or duties upon the

concerned body, such as fixation of rates on pre-determined statutory basis, or based on formulae regulated by law, or rules having the force of law, setting apart amenities for the purposes of development, charging fixed rates towards supply of water, providing sewage services, providing food-grains, medicines, and/or retaining monies in deposits or government securities and drawing interest therefrom or charging lease rent, ground rent, etc., per se, recovery of such charges, fee, interest, etc. cannot be characterized as “fee, cess or other consideration” for engaging in activities in the nature of trade, commerce, or business, or for providing service in relation thereto;

(e) Does the statute or controlling instrument set out the policy or scheme, for how the goods and services are to be distributed; in what proportion the surpluses, or profits, can be permissively garnered; are there are limits within which plots, rates or costs are to be worked out; whether the function in which the body is engaged in, is normally something a government or state is expected to engage in, having regard to provisions of the Constitution and the enacted laws, and the observations of this court in NDMC; whether in case surplus or gains accrue, the corporation, body or authority is permitted to distribute it, and if so, only to the government or state; the extent to which the state or its instrumentalities have control over the corporation or its bodies, and whether it is subject to directions by the concerned government, etc.;

(f) As long as the concerned statutory body, corporation, authority, etc. while actually furthering a GPU object, carries out activities that entail some trade, commerce or business, which generates profit (i.e., amounts that are significantly higher than the cost), and the quantum of such receipts are within the prescribed

limit (20% as mandated by the second proviso to Section 2(15)) – the concerned statutory or government organisations can be characterized as GPU charities. It goes without saying that the other conditions imposed by the seventh proviso to Section 10(23C) and by Section 11 have to necessarily be fulfilled.

(v) As a consequence, it is necessary in each case, having regard to the first proviso and seventeenth proviso (the latter introduced in 2012, w.r.e.f 01.04.2009) to Section 10(23C), that the authority considering granting exemption, takes into account the objects of the enactment or instrument concerned, its underlying policy, and the nature of the functions, and activities, of the entity claiming to be a GPU charity. If in the course of its functioning it collects fees, or any consideration that merely cover its expenditure (including administrative and other costs plus a small proportion for provision) - such amounts are not consideration towards trade, commerce or business, or service in relation thereto. However, amounts which are significantly higher than recovery of costs, have to be treated as receipts from trade, commerce or business. It is for those amounts, that the quantitative limit in proviso (ii) to Section 2(15) applies, and for which separate books of account will have to be maintained under other provisions of the IT Act.”

It further considered the said aspect with reference to the Institute of Chartered Accountants of India and thereafter lays down the conclusion, for the present, we notice the general test under para A and para D which are extracted as under:-

“IV. Summation of conclusions

253. In view of the foregoing discussion and analysis, the following conclusions are recorded regarding the interpretation of the changed definition of “charitable

purpose” (w.e.f. 01.04.2009), as well as the later amendments, and other related provisions of the IT Act.

A. General test under Section 2(15)

A.1. It is clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration (“cess, or fee, or any other consideration”);

A.2. However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that (i) the activities of trade, commerce or business are connected (“actual carrying out...” inserted w.e.f. 01.04.2016) to the achievement of its objects of GPU; and (ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (₹ 10 lakhs w.e.f. 01.04.2009; then ₹ 25 lakhs w.e.f. 01.04.2012; and now 20% of total receipts of the previous year, w.e.f. 01.04.2016);

A.3. Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be “trade, commerce, or business” or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of “cess, or fee, or any other consideration” towards “trade, commerce or business”. In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.

A.4. Section 11(4A) must be interpreted harmoniously with Section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in Section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to Section 2(15), has not been breached. Similarly, the insertion of Section 13(8), seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all w.r.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions.

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D. Trade promotion bodies Bodies involved in trade promotion (such as AEPC), or set up with the objects of purely advocating for, coordinating and assisting trading organisations, can be said to be involved in advancement of objects of general public utility. However, if such organisations provide additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc. then income or receipts from such activities, would be business or commercial in nature. In that event, the claim for tax exemption would have to be again subjected to the rigors of the proviso to Section 2(15) of the IT Act.”

20. This Court in ITA No. 21 of 2011 **The Commissioner of Income-Tax, Patiala vs Young Scholar’s Educational Society, Barnala,** decided on 08.05.2024 (authored by one of us), held the Institutions entitled for being considered to be performing charitable purpose and dismissed the appeals filed by the Revenue.

21. In ITA No. 54 of 2020 **Commissioner of Income Tax (Exemptions), Chandigarh vs M/s Unique Educational Society**, decided on 17.09.2024, we considered the judgment passed in **M/s New Noble Educational Society**'s case (supra) and differ from the judgment passed by the Kerala High Court in **Commissioner of Income Tax, Kottayam vs M/s Annadan Trust** (2018) 258 Taxman 54 (Kerala) and held as under:-

“14. In view of above, the law as laid down by the Supreme Court requires to be applied and the view expressed by the Kerala High Court cannot be accepted to be the correct interpretation. We are also of firm view that vocational education is a form of education which is necessary for the development of an individual for the purpose of earning his living. Vocational training has been now recognized to be as important as any other field of education, and it is for this reason that National Council for Vocational Training has been established to streamline and lay down a systematic pattern of providing education. As the institute is duly approved by the NCVT, it cannot be said that the institute is not imparting education.”

22. The order passed by the CIT is also found to be without jurisdiction as the amendment of Section 12AA(3) of the Act was brought into force with effect from the date amendment was carried out i.e. from 10.01.2010.

23. The CIT, therefore, had no jurisdiction to exercise the power as in the year 2004-2005 for cancelling the registration with effect from 2004-2005. The facts and circumstances as in the year 2004-2005 were to be examined but the CIT was not empowered in the said assessment year. The action, therefore, cancelling the registration from 2004-2005 by the order

dated 24.10.2013 is found to be illegal and unjustified and the same deserves to be set aside in ITA Nos. 271, 274 of 2017 and 33 of 2022.

24. We also noticed that the assessee had set apart funds for the advancement of the purposes and its objects. If the said funds have been utilized for establishment of hospital in various districts of Punjab, the same cannot be said to be a ground for treating the action to be beyond the purposes and objects of the assessee society. The cancellation of registration of the society on such premise is, therefore, found to be unlawful. We also notice that such setting apart funds is in accordance with the provisions of Section 11(2) of the Act. Further, we find that it is a Government organization and the observations of the Supreme Court in **Ahmedabad Urban Development Authority**'s case (supra), would have direct application to the facts of the present case. Cancellation of registration under Section 12A of the Act was on facts too only unjustified and illegal.

25. The reliance of the Revenue with reference to judgment of the Bombay High Court in **Sinhagad Technical Education Society** (supra) is found to be without basis. More so, in view of the subsequent pronouncements of the Supreme Court, the Bombay High Court judgment would have no application, except to the extent that it has upheld the amendment whereby Section 12AA(3) of the Act was added. Since we are not examining the validity of Section 12AA (3) of the Act, the judgment would have relevance to the present case.

26. In the present case, as per the object, the order passed by the ITAT in ITA No. 52/2017 takes into consideration the new clause of objects of the PIMS Society and also takes into consideration that the assessee had complied with the provisions of Section 11(2) of the Act and had set apart 'funds' in furtherance of its objects within the stipulated time and has

proceeded to notice that the order of cancellation passed under Section 12AA (3) of the Act has been made with retrospective effect from 2004-2005. Thus, the CIT, who was given the jurisdiction only by an amendment made under the Finance Act 2010, has exercised the power as in the year 2004-2005. Retrospective jurisdiction cannot be given in cases where the right is already vested with any of the person. As in the year 2004-2005, the jurisdiction was not available to cancel the registration granted under Section 12A of the Act. We also find after considering all the aspects, as above, and the record that the assessee which is a Government organization cannot be said to be engaged in other activity.

27. In the present case, the argument advanced by learned counsel for the Revenue that the construction of the building and the process of establishment of the College and Hospital cannot be said to be a charitable activity, is misconceived. If for advancement and furtherance of charitable activity other activities are done, which are incidental and necessary, and funds are invested for the said purpose, it cannot be said that the purpose for granting registration under Section 12A was wrongful or unjustified. The cancellation, therefore, is found to be without basis and is not based on sound principles, deserves to be set aside even prospectively.

28. While the ITAT has set aside the order of cancellation dated 24.10.2013 on the ground that the power was not available retrospectively, having noticed all the facts as above, we find that even as on 24.10.2013 prospectively too the registration could not have been cancelled.

29. The contention of the Assessee that the funds have been transferred to another society and for establishment of hospital in various other districts and for the said purpose the funds had been utilized and not

for the same society, cannot be a ground to cancel the registration of the society.

30. It, thus, clearly means that the cancellation of registration can only be in prospective and not retrospective. The Bombay High Court, therefore, upheld the amendment made in the Finance Act 2010. In the present case, we are not examining the validity of the amendment made in Section 12AA of the Act but are only examining two aspects. Firstly, the cancellation can be done with effect from the earlier year; and Secondly whether in the fact of the present case the said cancellation was warranted. We also note the judgment passed by the ITAT Bangalore Bench 'C' in **Sri Vidyaranya Seva Sangha vs Commissioner of Income-Tax, Hubli** (2016) 71 taxman.com 152 (Bangalore-Trib) which proceeded on a wrong interpretation of Bombay High Court judgment (supra) and upheld the registration being cancelled with retrospective effect. However, such power being not available, the judgment is erroneous and cannot be relied upon.

31. We find that the Revenue by passing the order dated 24.10.2013 failed to take note of the aims and objects, which were added by the Assessee in October 2009. The order passed by the ITAT, therefore, does not warrant any interference. ITA No. 52 of 2017 filed by the Revenue is dismissed.

ITA Nos. 48 and 61 of 2020

32. Since we have reached to the conclusion as above, the provisions of Section 271 (C) of the Act relating to imposition of penalty would have no application. ITA Nos. 48 and 61 of 2020 filed by the revenue are dismissed accordingly.

ITA Nos. 271 and 274 of 2014

33. The Revenue has submitted that the assessee had not given explanation why it had not taken any step for eight years from 10.10.1994 to 2002 to achieve the objects of the assessee Society and had not given any explanation regarding any charitable activity done by the assessee during this period, except spending time in construction of building and medical institutes. He, therefore, submits that the exemption under Section 11 of the Act was rightly disallowed.

34. We find that in terms of Section 11 of the Act, the assessee – society had set a part of funds solely with the purpose of construction, development and establishment of the Punjab Institute of Medical Sciences. If the time has been taken to establish the Institute, on the basis of the funds as received from time to time, as noted above, the benefit cannot be denied to it under Section 11 of the Act, as admittedly, the funds which were received, were being utilized for the ultimate goal of establishment of the Medical College and Hospital. ITA Nos. 271 and 274 of 2014 for the assessment year 2006-2007 filed by the Assessee deserve to be allowed and accordingly allowed.

ITA No. 33 of 2022

35. As regards ITA No.33 of 2022 is concerned, we find the entire basis of denial of the benefits in the appeal for the assessment year 2015-2016 is based on the commercial consideration clause entered in the MOU dated 24.05.2011 with the Baba Farid University of Health Sciences, Faridkot. We find that the MOUs are between the two State organizations. The share of the increase in revenue is also being utilized for the purpose of promoting health activities. As per Section 2(15) of the Act, charitable purpose is defined as under:-

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

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

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

Keeping in view of the above definition, the purposes as mentioned by the Society in its objects which have been noticed while deciding appeal no. 52 of 2017 (supra), we find that the activities of the Society in construction of building and medical institute are incidental activities with the sole charitable purpose to provide medical relief. Similarly, incidental activities of the Society like entering into MOUs with another State Medical University for development of the institute to provide medical relief and aid to the general public at large, would have to be treated as for advancement of the objects of the Society. The assessee-society, therefore, would be entitled to claim exemption in terms of Section 11 of the Act. The order dated

12.11.2021 passed by the ITAT, therefore, are set aside. ITA No. 33 of 2022 is allowed.

ITA No. 164 of 2017

36. Since the appeal bearing ITA No. 52 of 2017 preferred by the CIT (E) challenging the setting aside of the cancellation of registration vide order dated 24.10.2013 has been dismissed by us, in the preceding paras, ITA No. 164 of 2017 against the order of the ITAT which relied on its earlier order setting aside the cancelling order of registration dated 24.10.2013, is also dismissed.

37. Accordingly, ITA Nos. 271, 274 of 2014, 33 of 2022 filed by the assessee-Society are allowed and ITA Nos. 52, 164 of 2017, 48, 61 of 2020, 196, 197, 199 and 200 of 2023 filed by the Revenue, are dismissed. Consequences to follow.

38. All pending applications shall stand disposed of.

39. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

04.12.2024
VS

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes