IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.518/PUN/2023

1. Poona Obstetrics and Gynaecological Society, 302/303, Dr. Neety Mandke IMA House, Tilak Road, Shukrawar Peth, Pune 411 002, Maharashtra PAN : AAATP1435C	Vs.	Pr.CIT (Central), Pune
Appellant		Respondent

आयकर अपील सं. / ITA No.522/PUN/2023

2. The Mumbai Obstetrics and Gynaecological Society, C-114, Ist Floor, D-wing Entrance, Trade World, Kamala City, Senapati Bapat Marg, Low Parel (W), Mumbai-400 013 Maharashtra PAN : AAATT4562C	Vs.	Pr.CIT (Central), Pune
Appellant		Respondent

आयकर अपील सं. / ITA No.549/PUN/2023

3. Agra Obstetrical and Gynaecological Society, 84, M.G. Road, Agra 282 010, Uttar Pradesh PAN : AABTA6327K	Vs.	Pr.CIT (Central), Pune
Appellant		Respondent

आयकर अपील सं. / ITA No.417/PUN/2023

4. AIDS Society of India, Ground Floor, Maharukh Mandsion, Alibhai Premji Marg, Grant Road (E), Mumbai 400 007 Maharashtra PAN : AABTA4129R	Vs.	Principal Commissioner of Income-tax (Central), Pune
Appellant		Respondent

Assessee(s) by	:	Sl.No.1 to 3 - Shri Kishor B. Phadke Sl.No.4 –Shri Rajiv Khandelwal
Revenue by	:	Shri Ajay Kumar Keshari
Date of hearing	:	08.01.2025
Date of pronouncement	:	26.03.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

These appeals at the instance of different assessees' are directed against the separate orders all evenly dated 06.03.2023 framed by PCIT (Central), Pune u/s.12AB(4) of the Income-tax Act, 1961 (in short 'the Act').

2. As all the parties have admitted that most of the issues involved in these appeals are common, we proceed to dispose of the same by this consolidated order for the sake of convenience and brevity.

3. In ITA No.518/PUN/2024 in the case of Poona Obstetrics and Gynaecological Society (in short 'POGS'), assessee has raised following grounds of appeal :

> *"1. Learned PCIT-Central Circle, Pune erred in law and on facts in cancelling registration u/s.12A of ITA, 1961, by referring and relying upon powers u/s.12AB(4) of the ITA, 1961. Learned PCIT-Central Circle, Pune erred in treating Appellant Trust as a facilitator/conduit in tax evasion pursuit deployed by "EMCURE group" of companies.*
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> *2. Learned PCIT-Central Circle, Pune erred in law and on facts in holding that, activities of the Appellant are not genuine. Learned PCIT-Central Circle ought to have appreciated that, Appellant is a public charitable trust registered under Maharashtra Charitable Trust Act, 1950 and that, Appellant's activities of organising seminars/ symposiums /conferences, etc. is not an activity against any public policy.*
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> *3. Learned PCIT-Central Circle, Pune erred in law and on facts in equating Appellant trust to the corporate companies and/or individual medical practitioners, who may benefit from freebies/gifts, etc. in violation of norms laid down by Indian Medical Council. Appellant*

contends that, such an analogy is incorrect considering the absence of possibility of any benefits being reaped / enjoyed by Appellant, being a public charitable trust.

4. Learned PCIT-Central Circle, Pune erred in law and on facts in revoking registration u/s.12A of ITA, 1961 from AY 2014-15 without appreciating that, the alleged incriminating evidences seized from "EMCURE Pharma" group relates to AY 2017-18 and onwards.

5. Appellant craves leave to add/modify/ amend /delete all / any of the grounds of appeal."

Additional Ground :

On facts and circumstances of the case and in law, the learned Principal Commissioner of Income Tax, Central Circle, Pune has erred in passing an order u/s.12AB(4) of the ITA, 1961 thereby cancelling the registration of the appellant trust without jurisdiction. As such, cancellation is bad in law.

4. In ITA No.522/PUN/2023 in the case of The Mumbai Obstetrics and Gynaecological Society (in short MOGS), assessee has raised following grounds of appeal :

"The following grounds are taken without prejudice to each other -

On facts and in law,

1] The learned Pr. CIT erred in cancelling the registration u/s 12AB(4) w.e.f. A.Y. 2015-16 which was granted to the assessee society u/s 12A by wrongly holding that the activities of the appellant society are neither genuine nor are being carried out in accordance with its objects.

21 The learned Pr. CIT failed to appreciate that --

a. The appellant society accepted the grants from the pharma companies for the educational programs and not for giving any freebies to the delegates for the conferences and thus, it had not violated the Indian Medical Council Regulations.

b. The activities of the society like conducting medical camps, medical conferences, etc. were conducted as per the trust deed and there was no illegal activity of the society in any of these years.

C. Indian Medical Council had never held that the appellant society had violated any of its rules and regulations in conducting its activities over the years.

d. Arranging the travel, lodging, etc. for the faculties for the medical conferences and offering them some mementoes did not amount to

offering freebies to them as it is a general norm that the organisers have to bear such expenditure for selected faculty.

e. The appellant society had not carried out any activity conflicting with its objects and which is not genuine.

f. By accepting the grants from the pharma company for its educational programs, the appellant had not acted as a conduit of that company for distributing freebies to the medical practitioners /doctors and accordingly, withdrawing registration of the society u/s 12AB(4) was not justified.

4] The learned Pr. CIT was not justified in holding that the appellant society was a conduit between Emcure Pharma Companies and the medical practitioners for the purposes of providing freebies by those companies to the medical practitioners.

5] The learned Pr. CIT erred in ignoring the fact that the grants received from the pharma companies were utilised properly for the objects of the society like organising the conferences on medical subjects, medical camps, etc. etc. and therefore, the society had not violated any of the rules / regulations of Indian Medical Council and hence, the withdrawal of registration u/s 12AB(4) is not justified.

6] Without prejudice, the learned Pr. CIT was not justified in withdrawing the registration w.e.f. A. Y. 2015 16 u/s 12AB(4) by relying on explanation (e and f) thereof when such explanation was introduced by Finance Act, 2022 only and it was not on the statute in the earlier years.

7] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.

Additional Ground :

On facts and circumstances of the case and in law, the learned Principal Commissioner of Income Tax, Central Circle, Pune has erred in passing an order u/s.12AB(4) of the ITA, 1961 thereby cancelling the registration of the appellant trust without jurisdiction. As such, cancellation is bad in law.

5. In ITA No.549/PUN/2023 in the case of Agra Obstetrical and Gynaecological Society (in short AOGS), assessee has raised following grounds of appeal :

"1. The Learned Pr. Commissioner of Income Tax has erred in law and on facts initiating proceedings under section 12AB(4) on the reference made by the Ld. AO even when the alleged issue were not subject matter of the proceedings before him.

2. The learned Pr. Commissioner of Income Tax has erred in law and on facts in withdrawing our registration u/s 12AB, without there being any specified violation as contemplated in section 12AB(4).

3. The learned Pr. Commissioner of Income Tax has erred in law and on facts to ascertain that the appellant has carried out the charitable activity prescribed u/s 2(15) of the Act and that the activities of the society are genuine.

4. The learned Pr. Commissioner of Income Tax has erred in law and on facts in passing the order without giving proper opportunity of being heard.

5. The learned Pr. Commissioner of Income Tax has erred in law and on facts to pass the order without taking proper cognizance of the reply submitted by the appellant against the notice issued u/s 12AB(4).

6. The learned Pr. Commissioner of Income Tax has erred in law and on facts without cognizance of the Income and Expenditure account of the trust wherein the trust has run the activity as no profit and no loss basis.

7. The learned Pr. Commissioner of Income Tax has erred in law and on facts to reject the application merely based on presumption, conjecture and on surmises basis.

8. That the order passed by the learned Pr. Commissioner of Income Tax is bad in law and against the facts of the case.

9. That any other relief or reliefs deemed fit in the facts and circumstances of the case may be granted.

10. The appellant craves leave to add, alter or vary the grounds of appeal before or at the time of hearing."

Additional Ground :

On facts and circumstances of the case and in law, the learned Principal Commissioner of Income Tax, Central Circle, Pune has erred in passing an order u/s.12AB(4) of the ITA, 1961 thereby cancelling the registration of the appellant trust without jurisdiction. As such, cancellation is bad in law.

6. In ITA No.417/PUN/2023 in the case of AIDS Society of India (in short 'AIDS Society'), the assessee has raised following grounds of appeal :

"The Principal Commissioner of Income-tax (Central), Pune (hereinafter referred to as the Pr CIT) erred in framing an order under section 12AB(4) of the Act and cancelling the registration granted to the appellants under section 12AA the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the Pr CIT ought not to have framed the order under section 12AB(4) and cancelled the registration under section 12AA inasmuch as he has not appreciated the facts of the case in its entirety and hence, the action of the Pr CIT is bad in law and the impugned order needs to be quashed.

The appellants further, contend that the Pr CIT has not brought any evidence on record to prove that specified violation as defined in Explanation to section 12AB(4) has occurred and hence, the action of the Pr CIT in framing the impugned order is bad in law and needs to be reversed.

The appellants crave leave to add to, alter or amend the aforestated ground of appeal."

7. Ld. Counsel for the assessee Mr. Kishor B. Phadke submitted that additional ground of appeal raised in the appeals relating to POGS, MOGS and AOGS is purely legal in nature and does not require any fresh investigation of facts and therefore the same should be admitted for adjudication. He relied on the ratio laid down by the Hon'ble Supreme Court in the case of *National Thermal Power Company Ltd. Vs CIT (1998) 229 ITR 383 (SC)* wherein it was held that where adjudication of additional ground does not require any fresh investigation of facts and involves pure legal issue, additional ground is to be admitted for adjudication.

8. Ld. Counsel for the assessee Shri Rajiv Khandelwal appearing for the assessee trust mentioned at Sl.No.4 –submitted that as the facts and issues raised in these appeals are similar, he would concur with the arguments putforth by Shri Kishor B. Phadke.

9. After hearing the parties and the fact that additional ground raised by the assessee(s) trusts does not require any fresh investigation of facts and purely legal in nature, we allow the additional ground raised by the assessee(s) trusts in the appeals relating to POGS, MOGS and AOGS are admitted for adjudication by virtue of decision in the case of *National Thermal Power Company Ltd. Vs CIT (supra).*

10. From perusal of the above grounds, we notice that legal issued have been raised in the additional grounds challenging the powers vested with the ld.PCIT for cancelling the registration u/s.12A/12AA/12AB(4) of the Act. Two-fold contentions were raised by the ld. Counsel for the assessee firstly stating that power of cancellation is vested with ld. CIT(Exemption) and not with ld. PCIT and secondly no powers are bestowed in section 12AB of the Act for cancellation of registration granted u/s.12A (old regime). However, during the course of hearing itself, ld. Counsel for the assessee requesting for not pressing the first fold of contention that the order of cancellation of registration u/s.12A/12AA/12AB can only be ordered by ld.CIT(Exemption). This contention has not been pressed before us. We are dispensing of with mentioning all the arguments made by both the sides during the course of hearing carried out on earlier occasions. Thus, the only one legal issue which remains to be adjudicated is as to whether powers are provided u/s.12AB of the Act to cancel the registration granted u/s.12A of the Act under the old regime.

11. Ld. Counsel for the assessee(s) mentioned at Sl.No.1 to 3 of the cause title, Mr. Kishor B. Phadke stated that in the case of the assessees namely Poona Obstetrics and Gynaecological Society

and The Mumbai Obstetrics and Gynaecological Society (in short 'POGS and MOGS'), the registration under the old regime were granted u/s.12A of the Act on 04.12.1982 and 16.12.1976 respectively. So far as the other two assessees are concerned namely AOGS and AIDS society registrations have been granted u/s.12AA of the Act.

12. As regards the merits of the case are concerned, it has been admitted by both the counsels namely Shri Kishor B. Phadke and Shri Rajiv Khandelwal representing these cases that all issues raised in the appeals are common and therefore we would take up ITA No.518/PUN/2023 in the case of POGS as the lead case and our decision on merits of the case shall apply *mutatis mutandis* to all the remaining cases.

13. Brief facts of the case are that the assessee is a charitable trust registered under the Maharashtra Public Trust Act, 1950. It was formed on 27.01.1977 and firstly it was granted registered under the regulatory law on 30.09.1977 and thereafter registration under the old regime was granted u/s.12A on 04.12.1982. Main objects of POGS from its Memorandum of Association are to promote (i) professional Fellowship amongst the members; (ii) to encourage research in Obstetrics and Gynaecology; and (iii) to extend Educational interest. The assessee trust is governed by Maharashtra Medical Council constituted under the Maharashtra Medical Council Act, 1965. The assessee filed the return of income for the A.Y. 2021-22 on 18.02.2022 in the status of Association of Persons. During the course of assessment proceedings for the A.Y. 2021-22, reference under second proviso to section 143(3) of the Act was made by the Assessing Officer for cancellation of registration u/s.12AB(4) of

the Act. On the basis of said reference, ld. PCIT proceeded to examine the records of the assessee. In the said reference, there was mention about the search and seizure action u/s.132 of the Act carried out on 16.12.2020 in Emcure Group of cases and the assessee trust was identified as beneficiary of sponsorship of its activities by Emcure Pharmaceuticals Private Limited (in short EPL). A survey u/s.133A of the Act was simultaneously conducted in the case of assessee trust on 16.12.2020 and various documents/digital evidences of allegedly providing freebies in various forms to Doctors/Medical Practitioners were found.

14. It was also observed that there is violation of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and to assess the impact of the above violation to the regulations of Indian Medical Council, show cause notice was issued and proceedings were initiated. Ld. PCIT firstly referred to the sources of receipts of the trust and also from various donors who are also the sponsors to various conferences organised by the trust on various topics in Medical field which are for the updation of the knowledge of the Doctors. The receipts of the trust are mainly from Annual and Life Membership received from New and Existing Members, sponsorship receipts for various programmes and conferences received from Pharmaceutical Companies are also the source is from Education Grants received from Pharmaceutical Companies for specific Education projects and activities. Ld. PCIT noticed that the list of sponsors include many companies including the company namely Emcure Pharmaceuticals Private Limited and amounts received by assessee trust during F.Y. 2016-17 to 2019-20 are Rs.66.7 lakh, 71.5 lakh, 15.5 lakh, 7.5 lakh respectively. Thereafter, ld. PCIT

examined the expenditure made for the doctors which mainly included the booking of hotels for organising conferences, air tickets for the speakers, accommodation provided to the doctors. It was also observed that one of the sponsors namely EPL has given the list of doctors who were to participate in conferences. It was observed that name of delegates and doctors who would attend the conferences are decided by the sponsoring Pharmaceutical Company and the list thereof is sent to the doctors and the Trust do not interfere in selection of the delegates for the conference.

15. Thereafter, ld. PCIT gave reference to the judgment of Hon'ble Apex Court in the case of *M/s. Apex Laboratories Pvt. Ltd. vs. DCIT 135 Taxmann.com 286 (SC)* where the Hon'ble Court has conclusively held that since acceptance of freebies by Medical Practitioners are punishable as per Circular issued by Medical Council of India under Medical Council Regulations, 2002, Gifting of such freebies by Pharmaceutical Companies to Medical Practitioners is also prohibited by law and thus expenditure incurred in distribution of such freebies would not be allowed as deduction in terms of Explanation 1 to section 37(1) of the Act. Giving reference to the judgment of Hon'ble Apex Court, ld. PCIT noticed that in the instant case the Pharmaceutical Company EPL has given the freebies to the doctors through the assessee trust in the garb of organising conferences with hidden priorities of providing freebies to the Doctors/Medical Practitioners. By adopting this route, sponsorship companies claims the otherwise inadmissible expenses and avoid rigours of taxation. He further observed that the assessee trust has violated condition (q) of the Certificate dated 24.09.2021 registering the new registration rules provided u/s.12A of the Act. Thereafter, ld. PCIT discussed the

provisions of section 12AB(4) and the specified violation referred therein. He also referred to clause 6.8 of the Indian Medical Council Regulations 2002 applicable to Pharmaceutical and allied Health sector industries. Ld. PCIT concluded the proceedings by cancelling the registration granted u/s.12A(a) of the Act on 14.12.1982 from A.Y. 2014-15 onwards and also cancelled the registration granted u/s.12A(1)(ac)(i) issued on 08.02.2022 to be cancelled from A.Y. 2022-23 onwards observing as follows :

> *"11. In the survey proceedings in the case of the assessee trust certain documents impounded contain correspondence regarding list of doctors nominated by Emcure Pharma. Some of the documents viz. Pages 8-11 in. Bundle No 06 and Pages 36-38 of Bundle No 05 have been reproduced in reference of the Assessing Officer. These documents contain a list of the doctors who were nominated by Emcure Pharma and the nominations were accepted by the assessee trust. Arrangements for accommodation of the nominated doctors are also found to be made.*
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> *From the aforesaid factual background it is clear that the prohibitions contained in Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 were circumvented by the pharmaceutical company with the help of the assessee trust. In doing so the pharmaceutical company has also avoided disallowance of expenditure in violation of the MCI Regulations which come in the ambit of Explanation to section 37(1) of the Act and CBDT Circular No 05/2012. This clearly shows that the averments of the Assessing Officer in his reference are proved.*
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> *12. At this stage, it is relevant to refer to the judgment of the Hon'ble Apex Court in the case of Apex Laboratories (P.) Ltd. v. Deputy Commissioner of Income-tax reported in [2022] 442 ITR 1 (SC). In the aforesaid judgment, the Hon'ble Court has held that acceptance of freebies by medical practitioners was punishable as per Circular issued by Medical Council of India under MCI Regulations, 2002, as such gifting of such freebies by pharmaceutical company to medical practitioners would also be prohibited by law. In the aforesaid judgment, the Hon'ble Court has rejected the contention that MCI Regulations, 2002 is applicable only to the doctors and is not applicable to the pharmaceutical companies. The Hon'ble Supreme Court has held that when acceptance of freebies is punishable by the MCI Regulations then pharmaceutical companies cannot be granted the tax benefit for providing such freebies, and thereby (actively and with full knowledge) enabling the commission of the act which attracts such opprobrium.*

12.1 Similar is the situation in the case of the assessee trust, as assessee trust is constituted by the doctors/medical practitioners who are governed by MCI Regulations, 2002. The assessee trust has admitted that pharma companies had nominated their delegates for the conference, and in respect of the nominated doctors/delegates, the assessee trust has incurred expenses towards travel facilities, lodging & boarding, registration fee etc. on such doctors on behalf of the pharma companies, which is clearly in contravention of the MCI Regulations, 2002. In this context the following observations of the Hon'ble ITAT Mumbai in the case of Deputy Commissioner of Income-tax, Central Circle-2(4), Mumbai Macleods Pharmaceuticals Ltd.[2021] 131 taxmann.com 154 (Mumbai Trib.) are found relevant:

19. In view of the above discussions, it is clear that the regulations prohibiting the acceptance of freebies by the medical professionals provide, under section 20A of the Indian Medical Council Act 1956 read with rule 6.8 of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, as amended from time to time, that such freebies cannot be lawfully accepted by medical professionals, and, therefore, any expenditure incurred for extending these freebies to the medical professionals is for a "purpose which is prohibited by law". On these facts, therefore, Explanation to Section 37(1) is clearly attracted.

20. It is an open secret, secret if it is, that all these freebies extended by the pharmaceutical companies to the medical professionals, more often than not, come with strings attached, and that is what makes the expenditure in question for a purpose which is, as discussed earlier, prohibited by law". The plea of the learned counsel that these regulations do not bind pharmaceutical companies, and, therefore, extending these freebies to medical professionals cannot be treated as prohibited by law" is thus wholly irrelevant in the present context. What is material is that the expenditure in question is incurred for the purposes which are prohibited in law, and that is what disqualifies the expenditure in question from deduction under section 37(1) by virtue of Explanation thereto. The freebies from pharmaceutical companies cannot, under section 20A of the Indian Medical Council Act 1956 read with rule 6.8 of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, as amended from time to time, be lawfully accepted by medical professionals and, therefore, an extension of such freebies is for a purpose, prohibited by law". The stand of the Assessing Officer cannot, therefore, be faulted.

21. In any case, the ill effects of this not so holy nexus between some unscrupulous medical professionals and some greedy pharmaceutical companies have played havoc with the reputation of one of the noblest professions in the world, and this pampering of the medical professionals is perceived as at the cost of the helpless end consumer, ie. the patients seeking medical help- overwhelmingly from the most underprivileged sections of the fellow citizenry. Hon'ble Prime Minister echoed these feelings when, on 19th April 2018, he explained how the use of generic medicines, through Jan Aushadhalya, has brought down medicine cost by almost 85%, and subtly hinted towards this not so holy nexus between medical professionals and pharmaceutical companies by

observing that "In the same way.....the person who writes the medicine also gets something. You must know that the doctors' conference is sometimes in Singapore, sometimes it is in Dubai. It is not because someone is sick there; it is so because it is necessary for the pharmaceutical companies" (https://www.narendramodi.in/ preliminary- text-of-pm-s-interaction-in-bharat-ki-baat-sabke-saath-programme-at-london--539744). If Government can bring down the effective cost of medicine by 85% by selling the same medicine by its generic name, one can imagine how end users have been taken for a ride all along-and these freebies have played a critical role in those maneuverings. Not only it is wholly illegal that medical professionals are extended freebies by the pharmaceutical companies, but such gratifications are also clearly opposed to public policy as well as is recognized by Hon'ble Punjab & Haryana High Court in the case of Kap Scan's case(supra).

12.2 The assessee trust failed to show that it was not facilitating the process of providing freebies by the pharmaceutical companies to the medical practitioners/ doctors. Furthermore, the activities of the assessee Trust have resulted in violations of Indian Medical Council Regulations and are not conducive to public policy. While assisting the pharmaceutical company in marketing of its products may be an unintended fallout, the same cannot be said about being instrumental in providing freebies to the doctors in support of the marketing strategy of a pharmaceutical company In Commissioner of Income-Tax v. Kap Scan and Diagnostic Centre P. Ltd., a Division Bench of the Punjab and Haryana High Court disallowed the benefit of the exemption for commission provided to doctors engaged in private practice for referring their patients to the assessee's diagnostic centre, holding that:

> *"It, thus, emerges that an assessee would not be entitled to deduction of payments made in contravention of law. Similarly, payments which are opposed to public policy being in the nature of unlawful consideration cannot equally be recognized. It cannot be held that businessmen are entitled to conduct their business even contrary to law and claim deductions of payments as business expenditure, notwithstanding that such payments are illegal or opposed to public policy or have pernicious consequences to the society as a whole."*
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> *"If demanding of such commission was bad, paying it was equally bad. Both were privies to a wrong. Therefore, such commission paid to private doctors was opposed to public policy and should be discouraged. The payment of commission by the assessee for referring patients to it cannot by any stretch of imagination be accepted to be legal or as per public policy. Undoubtedly, it is not a fair practice and has to be termed as against the public policy."*

12.3 It is seen from the guiding principles of the aforesaid judgments that acceptance and payment of freebies are both recognized to be against public policy and violative of the Indian Medical Council Regulations. The argument that the prohibitions apply to doctors only, has expressly been rejected. Any activity opposed to public policy will

render the activities of the assessee trust as non-genuine. Hence, the assessee is found to have done a 'specified violation" in so far as the assessee is found to be carrying out activity of organizing conferences which involves providing facility to pharmaceutical company to give freebies to doctors. This act of facilitating the act of providing freebies is not being carried out in accordance with any of the conditions subject to which it was registered nor such activity is in accordance with the objects of the assessee trust. Thus, specified violation under clause (e) of Explanation below section 12AB(4) of the Act is found to have taken place in the case of the assessee trust.

12.4 Undisputedly, a party cannot be permitted to carry out an activity on behalf of some other person who himself is not permitted to carry out such activity. The arrangement between the assessee and pharma companies is such that by providing free of cost travel, accommodation and waiver of registration fee to the doctors nominated by pharma companies, the assessee trust has provided freebies to the doctors on behalf of and at the instruction of the pharma companies, which are not permitted to undertake such activities by themselves. It is settled law that what cannot be done directly cannot be permitted to be done indirectly. That the Hon'ble Supreme Court in the aforesaid judgment in the case of Apex Laboratories (P.) Ltd (supra) has further held that 'It is also a settled principle of law that no court will lend its aid to a party that roots its cause of action in an immoral or illegal act (ex dolomalo non oritur action) meaning that none should be allowed to profit from any wrongdoing coupled with the fact that statutory regimes should be coherent and not self-defeating."

13. It is also seen that activities of the assessee trust as stated hereinabove are not an activity recognized under the registration granted under Section 12A of the Act. The aforesaid finding coupled with the inference that in guise of making expenditure on its objects, the trust is facilitating the receipt of freebies by the doctors which is in contravention of Medical Council of India Regulations. This is clearly against public policy and amounts to misuse of the registration granted to the trust u/s 12A of the Act. In this regard reference is made to the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income-tax (Exemptions), Kolkata v. Batanagar Education And Research Trust [2021] 129 taxmann.com 30 (SC) wherein the Hon'ble Apex Court has upheld the cancellation of registration u/s 12AA of the Act with the following observations:

> *"An entity which is misusing the status conferred upon it by section 12AA of the Act is not entitled to retain and enjoy said status. The authorities were therefore, right and justified in cancelling the registration under sections 12AA and 80G of the Act."*

Similarly, the Hon'ble Allahabad High Court in the case of Dr. Bhim Rao Ambedkar Educational Society vs. Commissioner of Income-tax, (Exemptions) [2017] 88 taxmann.com 524 (Allahabad) has held that withdrawal of registration granted to assessee-Society under section

12AA was justified where its activities were neither genuine nor was it run as per objective set out in memorandum.

14. It is further relevant to refer that prior to the insertion of section 12AB of the Act by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, w.e.f. 01/04/2021, provisions of section 12AA of the Act was applicable for cancellation of registration. Sub section (3) of section 12AA provides that where a trust or an institution has been granted registration under clause (b) of section 12AA(1) and subsequently the Principal 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, he shall pass an order in writing cancelling the registration of such trust or institution. Further section 12AA(4) of the Act (as applicable from 01/10/2014), provides that where a trust or an institution has been granted registration under clause (b) of section 12AA(1) and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust. Sub clause (ii) of Clause (c) of section 13(1) provides that in the case of a trust for charitable purposes, if any income thereof during the previous year is used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3) then the provisions of sections 1land 12 do not apply to exclude either whole or any part of the income of such trust or institution. Further subsection (3) of section 13 provides the category of persons for whose benefit the income of the trust cannot be used or applied, directly or indirectly. The clause (b) of subsection (3) of section 13 refers to any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees. Since in the case of the assessee trust, Emcure Pharma has made a contribution exceeding Rs. 50,000/- and undisputedly the assessee trust has incurred expenses on travel and accommodation of the doctors as per the list provided by Emcure Pharma, as such, it can be concluded that it has provided benefit to Emcure Pharma, and hence its income is not liable to be excluded under the provisions of section 11 and 12 of the Act and hence even as per subsection (4) of section 12AA of the Act, registration granted to the assessee trust is liable to be cancelled.

15. With regard to the cancellation of registration of trust, the Hon'ble Supreme Court in the case of CIT vs. Jagannath Gupta Family Trust reported in [2019] 411 ITR 235 (SC) has held that even one instance of violation is sufficient to cancel the registration. Further, the Delhi Bench of the Hon'ble Tribunal in the case of Young Indian vs. Commissioner of Income Tax (Exemption) reported in [2019] 111 taxmann.com 235 (Delhi - Trib.) has held that Registration granted under section 12A can be cancelled from date when registration had been granted if assessee has not carried out any activity in line with its objects or activities carried out are not genuine. The relevant finding of the Tribunal is reproduced hereunder:

> *"121. One of the key contentions raised by the Id. counsel before us is that the Id. CIT(E) does not have the power to cancel the registration from retrospective date and any such cancellation can only be prospective, i.e., from the date of passing of the order and in support of which certain decisions have also been relied upon. From a bare reading of Section 12AA (3) it is seen that, section provides that where a trust or an institution has been granted registration and if subsequently, Pr. CIT or CIT is satisfied that the activities of the trust are not genuine or are not carried out in accordance with the objects of the trust, he may cancel the registration by way of an order in writing. Consequently, if there is violation of any such conditions, then the registration so granted can be cancelled by the CIT. Nowhere, the Statute envisages that the cancellation cannot be retrospective or it has to be necessarily prospective. What it provides that the Commissioner has statutory powers to cancel the registration u/s. 12A/12AA if he finds reason to believe that the activities of the assessee are not in line with its objects or the activities carried out by the assessee are not genuine in nature. If from the date when registration has been granted, the assessee has not carried out any activity in line with its objects or the activities carried out are not genuine, then from that date itself, the registration can be cancelled because it is only when the knowledge of such breach come to the notice of the Commissioner, then he has the power to cancel the registration from the date he notices the infringement. The cancellation of registration, whether with retrospective effect or prospective, depends upon the facts and circumstances of the case and the Commissioner has power to cancel the registration from the time when such breach has occurred. Suppose, if the assessee after grant of registration carries out its activities in accordance with its objects and the activities are also genuine then the assessee is entitled for benefits of section 12AA; and if from a particular period or year, the activities are found to be either non-genuine or not carried out in accordance with its stated objects, then the Commissioner can cancel the registration from the date or period when such non genuineness is found. Hon'ble Madras High Court in the case of Prathyusha Educational Trust (supra) have clearly reiterated this proposition, relevant text of which has been already incorporated above, wherein their Lordships have held it a misnomer to state that the order is retrospective or retroactive and the order of the cancellation of registration even passed on subsequent date would take effect from the year when cause of action arose".*

16. The reference made by the Assessing Officer has discussed facts elaborately leading to the finding of "specified violations" by the trust. In these proceedings, the assessee trust has failed to disprove the averments made against it due to its abstinence from making any submission in response to the notices by this office.

17. I am, therefore, of the considered opinion that the aforesaid activities of the assessee trust are not in accordance with the objects of the assessee trust. Therefore, activities of the assessee trust cannot be held genuine. In fact, clause (a) of Explanation below section 12AB(4) provides that if any income of the trust, has been applied, other than for the objects of the trust or institution, same will come under the ambit of specified violation. Further, if any activity of the trust or institution is not genuine or is not being carried out in accordance with all or any of the conditions subject to which it was registered, then same would also be covered under the specified violation as provided under clause (e) of Explanation below section 12AB(4) of the Act. And lastly clause (1) of Explanation below section 12AB(4) of the Act provides that if the trust or institution has not complied with the requirement of any other law, then same would also be a specified violation under the said clause. Since in this case, the assessee trust by acting as a conduit of the pharmaceutical companies has provided freebies to the doctors/medical practitioners nominated by such pharmaceutical companies, as such, it has violated the MCI Regulations, 2002 and the decision of the Hon'ble Apex Court in the case of Apex Laboratories (P.) Ltd. v. Deputy Commissioner of Income-tax reported in [2022] 442 ITR 1 (SC) which has become law of land. This act of violation of 'other law' by the assessee trust falls under the specified violation in clause (f) of Explanation below section 12AB(4) of the Act.

18. Hence, it can be conclusively said that the activities of the trust are neither genuine nor being carried out in accordance with the objects of the trust. The assessee trust has violated other law while carrying out its activities for the purpose of achieving its objects. These violations are in the nature of "specified violations" as specified in clause (e) &clause (f) of Explanation below section 12AB(4) of the Act. I, therefore, in exercise of the powers vested in me under sub-section (4) of section 12AB of the Act, hereby withdraw and cancel the registration granted to Poona Obstetric & Gynaecological Society u/s.12A(a) of the Act with effect from F.Y. 2013-14 (as the evidence and material discussed in detail in this order reflect violation having existed right from F.Y.2013-14 onwards) and subsequent registration granted u/s 12A(1)(ac)(i) of the Act. On the basis of the aforesaid finding of specified violations by the assessee trust under clause (e) & (1) of Explanation below section 12AB(4) of the Act, the registration of the assessee trust u/s 12A(a) of the Act granted on 04/12/1982 is cancelled from A.Y. 2014-15 onwards and subsequent registration granted u/s 12A(1)(ac)(i) of the Act on 08/02/2022 to the assessee trust is cancelled from A.Y. 2022-23 onwards."

16. Aggrieved assessee is now in appeal before this Tribunal and has raised the legal issue by raising additional ground stating that there is no mechanism provided u/s.12AB of the Act to cancel the registration granted u/s.12A under the old regime. Further, ld. Counsel for the assessee took us through various documents

available in the paper book to demonstrate that the assessee trust(s) has carried out its activities as per the objects and the funds received from various companies as sponsorship fees along with the Membership fee received from its members have been applied only for the purpose of charitable objects for which they are registered. The synopsis filed by the ld. Counsel for the assessee read as under :

"1. Facts of the present case:

1.1 Appellant's status and main objects–Appellant, i.e. POGS, is a charitable trust registered under the Maharashtra Public Trust Act, 1950; and has been engaged in regulatory / educational / research activity relating to Obstetrics &Gynecology since last over 40 years. POGS's main objects, as per the Memorandum of Association (i.e. MoA)are -

- *to promote professional fellowship amongst the members,*
- *to encourage research in obstetrics & gynecology,*
- *to extend educational interests, etc.*

A copy of the MoA is enclosed herewith and marked as Annexure-1.

1.2 Seminars / Conferences - For conducting various research and educational programs, Appellant is required to host conferences at various places in each year. Costs of holding these mass conferences are quite exorbitant. For such conferences, POGS receives sponsorship grants from various pharma companies as a cost mitigation exercise. Summary of Income & Expenditure and Balance Sheet for FY 2017-18 to 2021-22 is enclosed herewith and marked as Annexure-2.

1.3 Old registration u/s 12A–Appellant has availed 12A registration on 4/12/1982. Copy of the 12A registration certificate is given at Page 2 of Paper-Book-I. Since then, Appellant's 12A registration (old regime) has never been disturbed by I-T officials.

1.4 New registration u/s 12AB – Appellant has also availed registration u/s 12AB (new regime) from 1/4/2021 onwards. Appellant was granted registration u/s 12A(1)(ac)(i) on 8/2/22. Copy of the new regime registration certificate is given at Page 19 of Paper-Book-I.

1.5 Allegation against Appellant - Key issue alleged by learned PCIT-CC is that, Appellant has committed violation of norms / standards of Indian Medical Council on account of extending freebies to doctors / professional received from various Pharma Companies through their sponsorships. Appellant refutes the said allegation on various accounts, for which, separate grounds of appeal are raised.

1.6 Cancellation of registrations – For various reasons stated in the rejection order dated 6/3/23, learned PCIT-CC has cancelled the registration u/s 12A as well as u/s 12AB. It is the contention of Appellant that all charges levied by learned PCIT-CC are, mere conjectures and suspicions, and unfortunately so formed, without considering facts of the case and relevant applicable legal provisions.

1.7 Challenge to cancellation - The key issue involved in the appeal is objection to the cancellation of registration u/s 12A and u/s 12AB of the ITA, 1961. The registrations have been cancelled by the learned PCIT (Central Circle) considering some emails / documents seized during search u/s 132 in case of M/s EMCURE PHARMA LIMITED and survey u/s 133A in case of Appellant herein. Objections are raised through various grounds of appeal. These grounds could be segregated into three main parts as under –

a) Grounds relating to jurisdiction assumed by learned PCIT (not pressed)
b) Grounds relating to powers available in section 12AB
c) Grounds relating to merits of the Appeal

2. Powers u/s 12AB(4)
[Key points / issues related to powers available u/s 12AB(4) are summarized as below]

Sr. No.	*Particulars*	*Reference in 12AB(4) order*	*Paper-Book reference*
2.1	*Summary chart of original position of sections related to charitable trust, and changes in these sections from time to time, is enclosed herewith and marked as Annexure-3.*	-	-
2.2	*Earlier to the new regime, Registration was granted u/s 12A (old regime).* *W.e.f. 1/4/2021, Registrations is granted only u/s 12AB.* *In the new section 12AB(4), no any direct / indirect power is available for cancelling registration u/s 12A. As such, disturbing registration u/s 12A, by using powers u/s 12AB, is non-permissible. Learned PCIT has used such powers which are not bestowed upon him by the law.* *(Similar situation arose in section 12AA, where, prior to year 2010, there was no power to cancel registration u/s 12A. Arguments were raised by I-T department that, cancellation of registration u/s 12A is an inherent power, and there is no need of any separate power to be granted. These arguments were rejected by the apex court in case of by*	-	- *Full copy of the apex*

Sr. No.	*Particulars*	*Reference in 12AB(4) order*	*Paper-Book reference*
	Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd.[2018] 90 taxmann.com 281 (SC) observing that, order of grant / cancellation of registration of EXEMPTION, is a quasi-judicial order; and that; power for passing such order ought to be expressly granted by Legislature. In absence of express power, 12A registration can't be cancelled u/s 12AA. *Exactly similar factual matrix prevails now. Under section 12AB(4), only, registrations granted u/s 12AA and 12AB cases are covered for cancellation. In other words, u/s 12AB, no power is bestowed for cancellation of registration u/s 12A).*		*court decision is given at Flag-6 of Case-law compilation.*
2.3	*"Specified violation" are applicable from AY 2022-23 (and not for earlier years). For earlier years, criteria of "Specified Violations" can't be applied. This issue remained to be considered by learned PCIT.*	-	*Islamic Academy's case (Flag-21) given in Case Law Compilation*
2.4	*Cancellation of registration should be only for such years, for which, "specified violation" exists. In present POGS case, alleged irregularity relates to AY 17-18 and 20-21. As such, no reason exists for disturbance of other years. This factum is glossed over by learned PCIT.*	-	*Wholesale Cloth's caseFlag-9) given in Case Law Compilation*
2.5	*Registration cancellation for "specified violations' is plausible only when, the PCIT is satisfied about the same. Now, reaching a "**satisfaction**" stands at a higher pedestal, compared to earlier pedestal (say)* - *.. AO has reason to suspect …* - *.. AO has reasons suggesting escapement …* - *.. AO is of the opinion ..* - *.. AO has reason to believe, etc.* *In present case, point of "satisfaction" is not reached. Instead, conclusions have been reached on mere suspicion. Facts of the case and legal provisions are not considered in proper perspective.*	-	-

Sr. No.	*Particulars*	*Reference in 12AB(4) order*	*Paper-Book reference*
2.6	*Issue of cancellation of registration u/s 12AB ought to be tested at the end of Assessment proceedings (especially when, the Assessment proceedings are ongoing). Reason being that, issues of alleged irregularity gets elaborated / explained in detail during the scrutiny proceedings. Cancellation of registration, prior to completion of Assessment proceedings is premature step.*		*Chandigarh Education Society(Flag-10) + Shridevi Charitable Trust(Flag-25) cases given in Case-Law compilation*
2.7	*Search was initiated in Emcure Pharma's case on 16/12/2020. Simultaneous survey conducted in Appellant's case on 16/12/20202 only. Alleged incriminating material (i.e. emails of Emcure Pharma officials, etc.) relate to AY 2017-18 or AY 2020-21. Now, for these years (i.e. all Assessment Years till AY 2020-21), Appellant's registration was u/s 12A (old ergime). As stated earlier, no power to disturb 12A registration exists u/s 12AB.* *However, Power to disturb registration u/s 12AB (new regime) does exist u/s 12AB. But, for this purpose, there ought to exist, incriminating material showing 'specified violation". In present case, there is no incriminating material at all, since, search survey took place on 16/12/2020 (i.e. earlier to new regime of section 12AB).*		

Conclusion *- As per various paras of the order of learned PCIT (Central) and in particular, as mentioned in Para-18 of the last page of the said order, learned PCIT (Central Circle) has revoked registration granted to the Appellant on 4/12/1982 u/s 12A by exercising power u/s 12AB(4) of ITA. A close reading of the said section 12AB(4) reveals that, the power of cancellation of registration granted u/s 12AB(4) is restricted only for the following two types of registrations –*

a) Registrations granted u/s 12AB(1)
b) Registrations granted u/s 12AA(1)

As such, the cancellation of registration granted to the Appellant on 04/12/1982 was beyond the powers bestowed u/s 12AB(4). Disturbance of 12A registration is incorrect as per law.

Further, cancellation of registration granted u/s 12AB is permissible only on basis of some material showing "specified violation". No such material exists with learned PCIT. Hence, disturbance of 12AB registration is inappropriate on facts.

For various above contentions, cancellation of registrations granted u/s 12A on 04/12/1982 and granted on 8/2/2022 u/s 12A is wrong and incorrect.

3. Merits of the case

[Key points / issues related to merits are as below]

3.1 Regulatory framework
Indian Medical Councils Act, 1956 (i.e. IMCA) governs / regulates the medical professionals. The actual governance is enshrined to "Indian Medical Council"(i.e. IMC) (Constituted under IMCA) has laid down the framework for regulating the medical profession in India. The IMC has further delegated regulatory task to state-wise Medical Councils. For stateof Maharashtra, the actual governing Council is called as "Maharashtra Medical Council" (i.e. MMC), Constituted under Maharashtra Medical Council Act, 1965.

As per the regulatory framework, the IMC has divested powers w.r.t

- *registration,*
- *renewal and*
- *cancellation of licenses of medical professionals*

to the MMC

3.2 Essential condition for a medical professional
In India, only those medical professionals whose names are in the Indian Medical Register are eligible to practice as a medical professional.

Following are the relevant provisions:

Paper-Book-III *(Page Number)*	*Indian Medical Council Act, 1956 or Indian Medical Regulations, 2002 / 2016* *(Relevant section / clause*	*Provision in brief*
224	*Section 21*	*The Council shall cause maintenance of REGISTER which shall contain names of all medical professionals*
225	*Section 23*	*The Registrar shall enter name of a medical professional into the REGISTER*
226	*Section 27*	*Every medical professional, whose name is entered into the REGISTER can do medical practice anywhere in India*
247	*Clause 1.2.3*	*Each medical professional must participate in continuing medical education programs for at least 30 hours in every five years*

Paper-Book-III *(Page Number)*	*Indian Medical Council Act, 1956 or Indian Medical Regulations, 2002 / 2016* *(Relevant section / clause*	*Provision in brief*
308	*Guidelines for CPD Clause-1*	*For renewal of the name of medical professional in the REGISTER, earning of 6 hours per year is mandatory*

3.3 Continuing Professional Development (i.e. CPD) hours
On Page-308 of the Paper-Book-III, norms of grant of CPD hours are stated. As per these norms, the CPD hours are granted when a medical professional participates in a seminar / conference relating to study and research of the related field. These CPD hours granting mechanism is dependent on the quality of each program, contents of the same, stature of the faculties therein, etc. In short, for a medical professional, to remain in active practice, earning of 6 CPD hours per year is a sine-qua-none. From perusal of CPD Guidelines reproduced at Page-306 of Paper-Book-III, it also reveals that, if any sponsorship of any pharma company leads to marketing / advertising / promotion of drugs / equipment of such pharma companies, no any CPD hours are eligible for being granted. As such, an internal check and balance exists in the regulatory framework that, all such programs, for which CPD hours get allotted, there is absence of any pharma company's promotion of drugs / medicines / equipment.

3.4 Events organized / regulated by the MMC
Now, for granting the CPD hours, holding of worthy conferences is a key task. This task is performed by various charitable organizations. The field of medicines is huge. In each discipline, some apex charitable institutions are recognized by the IMC such as:

- *AIDS Society of India*
- *Heart Foundation*
- *Federation of Obstetrics and Gynecological Society of India (i.e. FOGSI)*
- *etc.*

Now, despite these apex bodies working in respective fields, the task of holding conferences for thousands of medical professionals scattered at various places in India, can't be performed single-handedly. As such, these apex bodies grant accreditations to various eligible charitable institutions.

POGS (i.e. Appellant herein) is an accredited institution of FOGSI above.

3.5 Appellant's programs / seminars

As per the Maharashtra Medical Council's guidelines, CPD credit points can be earned by attending Symposium/Conferences/ Workshops/Research paper/Books publications etc (Page 308 of the Paper Book No. III). Appellant trust has got itself accredited with the Maharashtra Medical Council for conducting workshops, seminars, conferences, short courses etc(Page 180 of the Paper Book No. II). As stated earlier, Appellant is an accredited institution of FOGSI in this regard.

The brief events involved thereafter w.r.t conference and sponsorships are as follows:

- *Deciding the venue, topic of the conference and the speakers*
- *Inviting expressions of interest from various pharma companies for educational grant/sponsorship*
- *Application to Maharashtra Medical Council for approval of topics, venue and CPD hours*
- *Approval from Maharashtra Medical Council w.r.t topics, venue and CPD hours*
- *Receipt of educational grant/sponsorship from the pharma companies*
- *Conference takes place*
- *Submission of list of speakers/delegates to the Maharashtra Medical Council for awarding CPD Credit points to the eligible medical practitioners.*

3.6 Attendance examples for Appellant's Seminars

A brief summary of major conferences organized by appellant along with CPD points are as follows:

Date	Conference Name	CPD Pts.	Attendance
12/8/18	Lactacon 2018	2	351
19/8/18	USG Workshop	2	169
8/12/18 to 9/12/18	Summit 2018 - Annual Conference of POGS	4	296
27/7/19 to 28/7/19	FOGSI Clinicolegal 2019	4	300+
11/8/19	Lactacon 2019	2	100
19/5/19	USG Workshop	2	129
11/12/20 to 13/12/20	Just Tumors Conference (Virtual)	3	6,500+

Date	Conference Name	CPD Pts.	Attendance
4/12/21 to 5/12/21	Fetopanishad	4	211
16/7/21 to 18/7/21	AMOGS 2021	2	174

3.7 Overall scenario of the regulatory aspects

Appellant has prepared a chart which demonstrates as to how, the regulatory authorities govern the lower authorities and in turn, how the medical professionals are regulated as regards the CPD hours mechanism. The said chart is enclosed herewith and marked as Annexure-4.

3.8 Sponsorships

The issue involved in the present appeal is, nature of sponsorships received by the Appellant. It is submitted that the entire amount of sponsorships received from Pharma companies are meant and utilized for promoting educational and research in the field of Obstetrics and Gynecology as per the term of contract with the pharma companies. As such, the appellant is carrying its activities as per the object clause of the trust deed. Further, the sponsor pharma companies add specific riders in their sponsorship letters that, their sponsorships are meant only for educational and research pursuit and not for promotion of the drugs / medicines produced by such companies. Kindly refer to the following sample sponsorship letters in this regard:

- *Emcure Pharma – Page 211 of Paper-Book-II*
- *SANOFI – Page 207 of Paper-Book-II*
- *ERIS – Page 205 of Paper-Book-II*
- *Abbot – Page 212 of Paper-Book-II*

From these sponsorship letters, it will reveal that, pursuit of the sponsorships is not to grant any freebies to medical professionals. On the other hand, pursuit is to mitigate costs of education and research programs.

3.9 Regulations issued by IMC (regarding professional conduct, etc.)

IMC issues regulations from time to time, as to how, the medical professionals should conduct their practices. The Regulations issued in year 2002 (updated in year 2009) are given at Page-246 of Paper-Book-III. A further updated Regulation issued on 18/10/2016 is enclosed herewith and marked as Annexure-5. As per clause 6.8 on Page-9 of the said 2016 Regulations (in comparison to the year 2009 regulations), it reveals, the said Regulation do not apply to Associations, and on the contrary, it applies only to medical professionals. Even on this count, the allegations / objections of the learned PCIT (Central) appear to be incorrect. Learned PCIT (Central) has relied upon the year 2002

Regulations which do not hold the field considering the revised Regulations of year 2016.

3.10 Regulations permit sponsorship for approved research programs

Kindly refer to sub-clause (e) of clause 6.8.1 of the 2016 Regulations given at Annexure-5 [and similar clause (e) of clause 6.8.1 of the 2002 / 2009 Regulations given at Page-252 of Paper-Book-III]. As per this clause, any sponsorship for a research program conducted through approved institutions is permitted expressly. As per facts, all programs conducted by Appellant (POGS) were expressly approved by the MMC and, MMC has granted CPD hours for such programs. Here is a sample list of such programs.

- *National conference on Clinicolegal – Page – 199 of Paper-Book-II (2 CPD hours)*
- *Lactacon conference – Page – 204 – Paper-Book-II (2 CPD hours)*

The CPD hours granted by MMC are updated in each medical professional's REGISTER through the e-portal of MMC.

3.11 Difference between offence v. prohibition – Learned PCIT has alleged that, Appellant's activities are prohibited by other laws and, as such, Appellant violates clause (f) of section 12AB(4). It is already explained as to how, the said clause does not apply in the present case. Be that as it may. It needs to be noted that, difference exists between an activity leading to "offence" per se, and activity which could be considered as "prohibited by law". These two categories arise from Explanation-1 to section 37 of ITA, 1961. As per wording therein, offences are considered as Limb-1 and "prohibitions under other laws" is considered as Limb-2. In the case of Apex Laboratories[2022] 442 ITR 1 (SC), Hon'ble Supreme court has observed that, activities of Apex (of extending freebies to DOCTORS) is covered by Limb-2 i.e. "prohibited by law".

U/s 12AB(4)(f), it is stipulated that, Appellant has to comply with other laws. Now, per se, none of the regulations applicable to DOCTORS (Guidelines issued u/s 20A of Indian Medical Council Act) apply to the Appellant. As such, "offence" aspect ought to be ruled out / left at that. Further, if "prohibition of law" aspect is to be applied to the present situation, then, express power, as was so available in Explanation-1 to section 37 ought to exist. As per facts, no such Limb-2 exists in section 12AB(4)(f). Hence, reliance on Apex decision is misplaced. Copy of decision of Apex Court was submitted during course of hearing.

3.12Summary of all the issues on merits of the case:

Sr. No.	*Particulars*	*Reference in 12AB(4) order*	*Paper-Book / Other reference*
3.12.1	*It is compulsory for doctors to earn 6 (six) CPD hours per year. Attending Programs / Seminars helps in earning CPD hours. Arranging seminars for facilitating Doctors to earn CPD hours is logical and correct.*	-	*225* *246* *247* *272*
3.12.2	*Approved institutions can conduct Seminars for CPD hours, provided, same are in compliance with laws and rules and regulations* *For CPD hours, detailed guidelines are issued* *There is a peculiarity of "Observers" for the CPD related Seminars.*	-	*301* *311*
3.12.3	*It is incumbent that, Seminars / Symposiums / Programs ought to be held, wherefrom, CPD hours could be earned by Members.* *For this, various apex bodies are formed (such as Cancer Society of India, Aids Society of India, FOGSI etc.). Many accredited societies work under these apex bodies. This position is captured in a FLOWCHART.* *Under FOGSI, Appellant is approved and accredited*	-	*365* *Annexure-4*
3.12.4	*Appellant's objectives (per MOA) include, study / research & development / holding seminars, etc.*	-	*Annexure-1*
3.12.5	*From time to time, Appellant, structures, some useful scientific programs for benefit of members. In these programs, many papers are presented which are of scientific nature.*	-	*183* *201*
3.12.6	*Appellant applies to MMC for CPD hours sanction for such Seminars*	-	*198* *203*
3.12.7	*MMC grants approval for apt number of CPD hours*		*199* *204*
3.12.8	*Attendance in Research & Development Seminars is aimed at knowledge development / benefit of Doctors, which is different than plausible personal benefits of doctors. Prohibited freebies / gifts (like distribution of Gold Coins, Fridge, etc.) are much different than knowledge development.*	-	-

Sr. No.	*Particulars*	*Reference in 12AB(4) order*	*Paper-Book / Other reference*
3.12.9	*Seminars are Research oriented. Now, Research activity is expressly permitted by the Guidelines.*	-	*Annexure-5*
3.12.10	*Seminars are pre-approved by MMC (Maharashtra Medical Council). Based on credentials of speakers and contents of Seminar, CPD hours are allotted to attending Members.*	-	*199* *204*
3.12.11	*Due to sponsorships, cost of attending a larger seminar gets reduced, which benefits the common Members attending Seminars*	-	-
3.12.12	*Holdingof worthy conferences requires funds. Pharma companies help in cost mitigating by sponsoring such programs. Pharma Companies stipulate purpose of sponsorship (typically, scientific knowledge, new trends in profession, etc.)*	-	*205* *207* *211* *212*
3.12.13	*Pharma companies expressly state in sponsorship letters that, no any promotion of their drugs should be done in the Seminars and that, all applicable laws need to be complied with. Unfortunately, learned PCIT reached adverse "satisfaction" without considering these vital facts. As such, his conclusions are totally incorrect.*	-	*207* *208*
3.12.14	*Detailed Guidelines are provided by GOVT authorities for activities which are permitted, and activities which are not permitted. Learned PCIT did not consider the Guidelines in proper perspective.*		
3.12.15	*Learned PCIT, erroneously, applied old regulation (2002 / 2009). New regulation of 2016 does not apply to Associations like Appellant herein. As such, allegation of violation of law can't be attributed to Appellant at all. Learned PCIT glossed over this position.*	*Para 17*	*Annexure-5*
3.12.16	*As per guidelines, if any sponsorship by any pharma company leads to marketing / advertising / promotion of drugs / equipment of such pharma companies, no CPD hours are eligible for being granted. Herein, Seminars have earned CPD hours to Doctors expressly. By analogy, it can be logically inferred*	-	*306*

Sr. No.	*Particulars*	*Reference in 12AB(4) order*	*Paper-Book / Other reference*
	that, there is no violation of Guidelines. Learned PCIT reached his incorrect conclusions without considering these facts. As such, his conclusions deserve to be overruled.		
3.12.17	*As per New Guidelines of 2016, for violation of Guidelines, following actions are provided for.* *Censure of erring Doctor* *Fine on Doctors* *Removal of name of such Doctor from Register of Doctors for varying periods* *Not a single Doctor, attending any program with Appellant, has been fined / punished. Hence, by analogy, it can be concluded that, no violation has taken place. These new / amended Guidelines are not referred by learned PCIT. Conclusions drawn from old Guidelines deserve to be left at that.*	-	*Annexure-5*
3.12.18	*Sponsorships received from Pharma Companies are meant and utilized for promoting educational and research in the field of Obstetrics and gynecology as per the term of contract.*	-	*205* *207* *211* *212*
3.12.19	*PCIT (CC) kept reliance on clause (b) and (c) of Point 6.8.1 of Guidelines reproduced at Para-7.4. Learned PCIT(CC) glossed over the permissible activities given in second sentence of clause (d) and clause (e) of the same Guidelines reproduced at Para 7.4.*	*Para 7.4*	-

Conclusion *– As such, it transpires that, Appellant has involved itself into the permissible activities. Appellant has not acted as any conduit at all. No any impermissible freebies have been extended by Appellant. Typically, large scale seminars require approvals from regulatory authorities. All such requisite approvals have been availed by Appellant. It transpires, one arm of the Government (i.e. MMC / IMC) grants CPD hours for conferences / seminars held by Appellant with sponsorships, and as such, puts it's stamp of legality on entire such conference / seminar. On the other hand,*

another arm of the Government (i.e. Income-tax Department) treats the very same seminars as violations of IMC Regulations due to sponsorships. Approach of the learned PCIT (Central Circle) is contrary to the approach of the Regulatory Authorities. As stated, learned PCIT (Central Circle) views are mere surmises of suspicions and without considering facts and laws.

4. Emerging trend of denial of exemption only to the extent of violations (without prejudice to the main contentions)

Appellant has relied upon decisions of jurisdictional High Court in following cases –

- *Audyogik Shikshan Mandal [2019] 101 taxmann.com 247 (Bombay)*
- *Maharashtra Academy of Engineering and Educational Research [2024] 161 taxmann.com 290 (Bombay)*

(Appellant has submitted copies of the above decisions during the course of the hearing).

In these cases, Hon'ble Bombay High Court, after considering views of various other High Courts, has laid down that, exemption u/s 11 ought to be denied only to the extent of violative portion. Similarly, Appellant has referred to section 13(1) and 115BBI, wherein, withdrawal of exemption only for violative part is provided for. This changing principle of the I-T law has been glossed over by learned PCIT-CC.

In the present case, no any violation exists per se. Secondly, assuming there is some violation, exemption ought to be denied for such violative part. 12A / 12AA / 12AB cancellation is not the apt remedy.

5. Charges levied by learned PCIT, Central Circle

Sr. No	*Charge levied*	*Explanation*
5.1	*It is claimed that, clause (e) of explanation to section 12AB(4) is violated. It is claimed that, the activities are not genuine and, the activities are not carried out in accordance with objects of the trust.*	*Appellant submits that, holding Seminars for benefit of thousands of Doctors is in tandem with objects and such activities are genuine.*
5.2	*It is claimed that, clause (f) of explanation section 12AB(4) is violated. It is claimed that the trust has not complied with provisions of 'Other Laws'.*	*Appellant submits that the 'Other Laws' (MMC guidelines) specifically permit organizing Seminars for benefits of thousands of Doctors considering grant of CPD hours and various contentions above, it transpires no provision of 'Other Laws" are violated.*

Sr. No	*Charge levied*	*Explanation*
5.3	*It is claimed that, clause (q) of approval u/s 12AB is violated. Clause (q) stipulates that, provisions of ITA, 1961 should be complied with.*	*Appellant submits that said clause (q) relates to approval effective from AY 2022-23. Present subject matter relates to period prior to 13/11/2020. Secondly, as stated earlier, no any provisions of I-T law is violated.*
5.4	*It is claimed that, 'A" is a conduit for reaching freebies to Doctors attending Seminars.*	*In the first place, knowledge development and research pursuit can't be equated to freebies. Secondly, Appellant's aim is to ensure happening of research and development programs. For such pursuit, it can't be called as a conduit of Pharma Companies. Thirdly, if I-T dept analogy is to be further extended, it will make large hotels (where Seminars are held) or, sound system service providers (for reaching voice to thousands of attendants), etc. also as conduits. This is strange.*

17. On the other hand ld. Departmental Supported the order of the ld. PCIT and also referred to the judgement of Hon'ble Apex Court in the case of *M/s. Apex Laboratories Pvt. Ltd.(supra)* and again asserted the fact that the assessee trust(s) are working as conduit for grant of freebies to the doctors through Pharmaceutical Companies and has thus violated the specified violation under clause (e) to (f) of Explanation below section 12AB(4) of the Act. Reference is also made to the written submissions and case laws which are as follows :

"Identical issues involved in the case of Mumbai Obstetrics & Gynaecological Society (ITA 522/PN/2023) and Agra Obstetrics & Gynaecological Society (ITA 549/PN/2023).

1. Brief facts of the case:

1.1 The assessee is a trust engaged in the activities related to obstetrics and gynecology.

1.2 A search and seizure action u/s 132 of the Act was conducted in Emcure Group on 16/12/2020. During the search action, the assessee trust was identified as beneficiary of sponsorship of its activities by Emcure Pharmaceuticals Ltd. and its associate concerns.

1.3 Simultaneously a survey action was conducted u/s 133 of the Act on the assessee trust, in which various incriminating documents/digital evidences of providing freebies in various forms to doctors/medical practitioners in flagrant violation of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 further amended on 10/12/2009 were found and impounded.For assessing the impact, the case was centralized with the ACIT, Central Circle – 2(1), Pune.

1.4 After considering the materials found during the search, AO's comments with regards to specified violation u/s 12AB(4) of the Act, the Ld. PCIT(Central) Pune, passed the order u/s 12AB(4) vide dated 06/03/2023 stating that the activities of the trust are not in accordance with the objects of the trust. Hence, the activities are not genuine. There is specified violation by the trust under clause (a), clause (e) u/s 12AB(4) of the Act. There is violation as per clause (f) also because the assessee by acting as a conduit of the pharmaceutical companies has provided freebies to the doctors/medical practitioners, as such, it has violated the MCI Regulations, 2002.

1.5 Therefore, the Ld. PCIT withdrew and cancelled the registration of the assessee w.e.f F.Y. 2013-14 and subsequent registration granted u/s 12A(1)(ac)(i) of the Act.

2. After due consideration and verification of the facts stated above and the law involved in the case, comments of the undersigned on the legal ground of jurisdiction over the above case are as under:

2.1 During the search action conducted on Emcure Pharmaceuticals Ltd., it was noticed that M/s Emcure Pharmaceuticals Ltd and its associate concerns sponsored "Continuous Medical Education Programs" i.e CME Programs organized by those medical associations or doctors whose Secretary or president had potential for providing business to Emcure Group by prescribing its medicines.

2.2 The main purpose of expenditure on Customer Relationship Management Programs was to provide freebies to doctors and medical practitioners through the Trusts, to whom funds are provided.

2.3 The assessee trust broadly has 3 income heads viz. interest on deposits with banks, donations and income from other sources. The said income from other sources includes conference receipts, membership fees, academic grants or sponsorship, etc. As per the answer to the Q.11 recorded in the statement of Dr. Harshad Parasnis, President of the trust, the sponsors include the name various companies including Emcure Pharmaceuticals Pvt. Ltd [Page no. 11 of PCIT(Central) order].

2.4 While answering to Q.12, Dr. Parasnis, the President of the trust admitted that certain number of free nominations are allowed to sponsoring company [Page no. 11 and 12]. It is clear that in lieu of sponsorship provided, certain number of free nominations are allowed to sponsoring company.

2.5 It is also observed that, the names of the delegates /doctors who would attend the conference are decided by the sponsoring pharmaceutical company only and then the list is sent to the assessee trust. This indicates that the trust has no interference in selection of the delegates/doctors.

2.6 In the answer given to the Q.13[Page no. 12], it is observed that from F.Y. 2014-15 to F.Y. 2019-20, the assessee trust has received funds from M/s Emcure Pharmaceuticals amounting to Rs. 1.61 Cr. as sponsorship grant. The receipts of such sponsorship grant from pharmaceutical companies including Emcure Group form the major part of funds received by the trust.

2.7 As per para (b) page no. 12& 13 of PCIT (Central) order, it is observed that as per the submission of the assesseepayments were made for the following:

- *Hotel Le Meredian, Pune for accommodation availed by the doctors in connection with CME Conference on 11/08/2013 and 12/08/2013.*
- *Air Travel expenses to Dove Travels Worldwide for travel of Dr. Aziz Nuzhat and Dr. Surampundi Kameswar on 04/04/2013.*
- *In FY 2018-19 expenses were incurred for accommodation of the doctors in Hotel Westin.*
- *In FY 2018-19 payments were made for accommodation of Dr. Rohini Deshpande, Dr. Jagannath Dixit, Milind Dugad, Meeta Singh, Pankaj Talwar, Deepak Jumani and Devang Kamu to Sheraton, Nagar Road, Viman Nagar, Pune. Dr. Rohini Deshpande was nominated by Emcure.*
- *Also, accommodation was provided to Dr. Daule Jyotsna in Hotel Westin, who was also nominated by Emcure.*

The above expenses indicate that the doctors nominated by Emcure Pharmaceuticals Ltd. are also provided accommodation by the assessee. This means that Emcure Pharmaceuticals Ltd. is indirectly providing funds to provide the accommodation for the doctors who are nominated by them. Also it was observed on the basis of submissions by the assessee during post survey proceedings, that no registration fees which are ordinarily charged have been collected from the nominated participants. These are some special benefits which are provided by the Emcure Pharmaceuticals to the doctors nominated by it by using the assesse trust. Also, it is observed that the independent doctors are not getting such special benefits. It is a well settled principle of law that what cannot be done directly, cannot be achieved indirectly, which was considered by the Hon'ble Supreme Court in the case of Apex Laboratories (P) Ltd vs Deputy Commissioner of Income Tax.

2.8 Page 14 to 16 of thePCIT (Central) order provides the mail communications between the assessee trust and the sponsorer i.e. Emcure

Pharmaceuticals Ltd. The said mail communication on page no.15includes the list of doctors sponsored by Emcure Pharmaceuticals Ltd. during the clinicolegal conference. Also as mentioned in Para (c) page no. 17. It was confirmed by the assessee that the list of delegates/ doctors were received on mail from Emcure Pharmaceuticals Ltd. who attended the conference. Further in response to a question it was confirmed that lodging, travelling and other expenses of the delegates were borne by Emcure Pharmaceuticals Ltd.

2.9 As per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 further amended on 10/12/2009,

> *"6.8 Code of conduct for doctors and professional association of doctors in their relationship with pharmaceutical and allied health sector industry.*
> *6.8.1 In dealing with Pharmaceutical and allied health sector industry, a medical practitioner shall follow and adhere to the stipulations given below:-*
> *a) Gifts: A medical practitioner shall not receive any gift from any pharmaceutical or allied health care industry and their sales people or representatives.*
> *b) Travel facilities: A medical practitioner shall not accept any travel facility inside the country or outside, including rail, air, ship , cruise tickets, paid vacations etc.from any pharmaceutical or allied healthcare industry or their representatives forself and family members for vacation or for attending conferences, seminars,workshops, CME programme etc as a delegate.*
> *c) Hospitality: A medical practitionershall not accept individually any hospitality like hotel accommodation for self and family members under any pretext.*
> *d) Cash or monetary grants: A medical practitioner shall not receive any cash or monetary grants from any pharmaceutical and allied healthcare industry for individual purpose in individual capacity under any pretext. Funding for medical research, study etc. can only be received through approved institutions by modalities laid down by law / rules / guidelines adopted by such approved institutions, in a transparent manner. It shall always be fully disclosed."*

> *2.10 The above regulations strictly prohibit the medical practitioners to receive gifts, facilities like travel and accommodation, cash or grant. In the present case, the trustees of the assessee trust as well as the beneficiaries of the trust are all the medical practitioners and hence they are prohibited to receive such freebies. Even though the M/s Emcure Pharmaceuticals Ltd. is not directly providing such freebies to the medical practitioners, it is providing such freebies indirectly through the assessee trust. It can be said that the assessee is acting as a conduit for providing freebies to the doctors/medical practitioners.*

2.11 Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of Apex Laboratories (P) Ltd vs Deputy Commissioner of Income Tax where it was held that,

> *"36. In the present case too, the incentives (or "freebies") given by Apex, to the doctors, had a direct result of exposing the recipients to the odium of sanctions, leading to a ban on their practice of medicine. Those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally binding effect. The conceded participation of the assessee- i.e., the provider or donor- was plainly prohibited, as far as their receipt by the medical practitioners was concerned. That medical practitioners were forbidden from accepting such gifts, or "freebies" was no less a prohibition on the part of their giver, or donor, i.e., Apex"*
>
> *It is also a known principle that what cannot be done directly, cannot be achieved indirectly. As was said in Fox v. Bishop of Chester [1824] 2 BFC 635 Jagir Singh v. Raubir Singh [1999] 2 SCR 282 that it is a :*
>
> *"Well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance"*
>
> *And that "To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined."*

2.12. Thus it was held that even the donor or provider of such freebies is also prohibited and if any act is prohibited directly then it cannot be done indirectly. In the present case, even though the Emcure Group has provided funds to the assessee trust and the assessee is providing freebies such as accommodation, travel, etc. the Emcure Group is the indirect provider of the freebies and such act is a violation of the law.The said act of violation of "other law" by the assessee falls under specified violation defined in clause (f) in Explanation below section 12AB(4) of the Act.

2.13 Hence, it can be concluded that such act as violation of law is covered by "specified violation" u/s 12AB(4)(a) and clause (f) of the Explanation of the Act which states that,

"[(4) Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,—

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or

Explanation.—For the purposes of this sub-section, the following shall mean "specified violation",—
(a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution
(f) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality 2a[; or]"

2.14 Further it should be also considered that, the Circular no. 05/2012 issued by the CBDT, New Delhi explains that :

> *"3. Section 37(1) of Income Tax Act provides for deduction of any revenue expenditure (other than those failing under sections 30 to 36) from the business Income if such expense is laid out/expended wholly or exclusively for the purpose of business or profession. However, theexplanation appended to this sub-section denies claim of any such expense, if the same has been incurred for a purpose which is either an offence or prohibited by law. Thus, the claim of any expense incurred in providing above mentioned or similar freebees in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income Tax Act being an expense prohibited by the law. This disallowance shall be made in the hands of such pharmaceutical or allied health sector Industries or other assessee which has provided aforesaid freebees and claimed it as a deductable expense in its accounts against income."*

2.15 Reliance is also placed on the decision of Hon'ble Mumbai ITAT in the case of DCIT, Mumbai v. Macleods Pharmaceuticals Ltd. where it was held that

> *"19. In view of the above discussions, it is clear that the regulations prohibiting the acceptance of freebies by the medical professionals provide, under section 20A of the Indian Medical Council Act 1956 read with rule*
>
> *6.8 of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, as amended from time to time, that such freebies cannot be lawfully accepted by medical professionals, and, therefore, any expenditure incurred for extending these freebies to the medical professionals is for a "purpose which is prohibited by law". On these facts, therefore, Explanation to section 37(1) is clearly attracted.*
>
> *20. It is an open secret, secret if it is, that all these freebies extended by the pharmaceutical companies to the medical professionals, more often than not, come with strings attached, and that is what makes the expenditure in question for a purpose*

> *which is, as discussed earlier, 'prohibited by law'. The plea of the learned counsel that these regulations do not bind pharmaceutical companies, and, therefore, extending these freebies to medical professionals cannot be treated as 'prohibited by law' is thus wholly irrelevant in the present context. What is material is that the expenditure in question is incurred for the purposes which are prohibited in law, and that is what disqualifies the expenditure in question from deduction under section 37(1) by virtue of Explanation thereto. The freebies from pharmaceutical companies cannot, under section 20A of the Indian Medical Council Act 1956 read with rule 6.8 of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, as amended from time to time, be lawfully accepted by medical professionals and, therefore, an extension of such freebies is for a purpose 'prohibited by law'. The stand of the Assessing Officer cannot, therefore, be faulted."*

2.16 Further the Hon'ble Pune ITAT in the case of DCIT v. Emcure Pharmaceuticals Ltd, has taken a view by referring to the decision of Hon'ble Supreme Court in the case of Apex Laboratories, confirmed the disallowance u/s 37(1) on account of providing freebies by the Emcure Pharmaceuticals to medical practitioners.

2.17 From the above explanation, it can be understood that to avoid such disallowance u/s 37(1) of the Act, the pharmaceutical company i.e Emcure Pharmaceuticals Ltd. has routed the expense of providing of freebies through the assessee trust as it enables the Emcure Pharmaceuticals Ltd. to claim an otherwise inadmissible expense as deduction. Such act of the assessee trust of carrying the activity of providing freebies at the behest of the pharmaceutical company is in contravention of Medical Council of India Regulations. The said activity of providing freebies and assisting Emcure Pharmaceuticals Ltd. in claiming expenditure which is otherwise inadmissible under law is nothing but facilitating tax evasion, and that amounts to misuse of the registration granted to the assessee trust u/s 12A of the Act. Also we would like to draw your kind attention, where it is observed that the sponsorship and grants given by M/s Emcure Pharmaceuticals Ltd. are claimed as "Sales Promotion Expenditure". This expense indicates that the nature of expenditure is business related expenditure and the assessee trust is providing platform for such expenses and hence the activities of the assesee do not come into the ambit of charitable activities. This act comes under violation u/s 12AB(4). Therefore, the order passed by Ld. PCIT(Central) u/s 12AB(4) of the Act for cancelling the registration of the assessee trust is justifiable.

2.18 Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of CIT(Exemptions) vs Batanagar Education and Research Trust where it was held that,

> *"11. The answers given to the questionnaire by the Managing Trustee of the Trust show the extent of misuse of the status enjoyed by the Trust by virtue of registration under section 12AA of the Act.*

> *These answers also show that donations were received by way of cheques out of which substantial money was ploughed back or returned to the donors in cash. The facts thus clearly show that those were bogus donations and that the registration conferred upon it under sections 12AA and 80G of the Act was completely being misused by the Trust. An entity which is misusing the status conferred upon it by section 12AA of the Act is not entitled to retain and enjoy said status. The authorities were therefore, right and justified in cancelling the registration under sections 12AA and 80G of the Act."*

2.19 Similar view was taken by Hon'ble Allahbad High Court in case of Dr. Bhim Rao Ambedkar Educational Society vs CIT(Exemptions) that,

> *"Withdrawal of registration granted to assessee-society under section 12AA was justified where its activities were not genuine nor was it run as per objective set out in memorandum"*

2.20 Further in the case of CIT v. Jagannath Gupta Family Trust, the Hon'ble Supreme Court has held that even one bogus donation can make the activities of the trust non genuine. Hence, only one instance of violation is also sufficient for cancelling the registration.

2.21 In the present case, in guise of organizing Continuous Medical Education (CME) programmes, the activities of the assessee trust are for providing platform to pharmaceutical company for giving freebies to medical practitioners/doctors. This is a misuse of the status conferred upon it by Section 12A as the activities by which the assessee is providing platform for the pharmaceutical company to provide freebies is strictly prohibited. Such activities are in violation of the law and hence the assessee is not entitled to enjoy such status. The facts of the above referredcase law are squarely applicable to the present case.It should be considered that a party cannot be permitted to carry out an activity on behalf of some other person who himself is prohibited to carry out such activity. It is a settled law that what cannot be done directly cannot be permitted to be done indirectly. Hence, the activities of the assessee trust lack genuineness. Therefore, cancellation of the registration of the assessee trust from A.Y. 2013-14 is justifiable.

2.22 Reliance with regards to retrospective cancellation of registration is placed on the decision of Hon'ble Delhi ITAT in the case of Young Indian v. CIT(Exemption) where it was held that,

> *"121. One of the key contentions raised by the ld. counsel before us is that the ld. CIT(E) does not have the power to cancel the registration from retrospective date and any such cancellation can only be prospective, i.e., from the date of passing of the order and in support of which certain decisions have also been relied upon. From a bare reading of Section 12AA (3) it is seen that, section provides that where a trust or an institution has been granted registration and if subsequently, Pr. CIT or CIT is satisfied that the*

activities of the trust are not genuine or are not carried out in accordance with the objects of the trust, he may cancel the registration by way of an order in writing. Consequently, if there is violation of any such conditions, then the registration so granted can be cancelled by the CIT. Nowhere, the Statute envisages that the cancellation cannot be retrospective or it has to be necessarily prospective. What it provides that the Commissioner has statutory powers to cancel the registration u/s. 12A/12AA if he finds reason to believe that the activities of the assessee are not in line with its objects or the activities carried out by the assessee are not genuine in nature. If from the date when registration has been granted, the assessee has not carried out any activity in line with its objects or the activities carried out are not genuine, then from that date itself, the registration can be cancelled because it is only when the knowledge of such breach come to the notice of the Commissioner, then he has the power to cancel the registration from the date he notices the infringement. The cancellation of registration, whether with retrospective effect or prospective, depends upon the facts and circumstances of the case and the Commissioner has power to cancel the registration from the time when such breach has occurred. Suppose, if the assessee after grant of registration carries out its activities in accordance with its objects and the activities are also genuine then the assessee is entitled for benefits of section 12AA; and if from a particular period or year, the activities are found to be either non-genuine or not carried out in accordance with its stated objects, then the Commissioner can cancel the registration from the date or period when such non genuineness is found. Hon'ble Madras High Court in the case of Prathyusha Educational Trust (supra) have clearly reiterated this proposition, relevant text of which has been already incorporated above, wherein their Lordships have held that it a misnomer to state that the order is retrospective or retroactive and the order of the cancellation of registration even passed on subsequent date would take effect from the year when cause of action arose."

2.23 Hence, the cancellation of registration from A.Y. 2013-14 in the present case is justifiable.

The above submission may kindly be considered."

18. The ld. Departmental relied on the following case laws/MCI Notification/CBDT Circular :

1	*Apex Laboratories (P.) Ltd vs DCIT (SC) 135 taxmann.com 286*
2	*CIT (Exemptions) vs Batanagar Education and Research Trust (SC) 129 taxmann.com 30*
3	*Dr. Bhim Rao Ambedkar Educational Society vs CIT(Exemptions) (Allahbad HC)88 Taxmann.com 524*

4	*DCIT, Mumbai v. Macleods Pharmaceuticals Ltd (ITAT Mumbai) 131 taxmann.com 154*
5	*CIT v. Jagannath Gupta Family Trust (SC) 411 ITR 235*
6	*DCIT v. Emcure Pharmaceuticals Ltd. (Pune ITAT)*
7	*Young Indian v. CIT(Exemption) (Delhi ITAT)*
8	*MCI Notification dated 10/12/2009*
9	*CBDT Circular 05/2012 dated 01/08/2012*

19. We have heard the rival contentions and perused the record placed before us. We have also considered the decisions relied on by both the parties. We will first take up the legal issued raised in the additional ground by POGS and MOGS stating that there was no powers with ld. PCIT to cancel the registration u/s.12A of the Act granted under the old regime in the order framed u/s.12AB(4) of the Act. Though the assessee has referred to plethora of decisions and have also referred to the relevant provisions of the Act, we find that recently the very issue has been dealt by us in the case of *M.M. Patel Charitable Trust in ITA No.1130/PUN/2024 order dated 21.02.2025* wherein we have decided this issue observing as follows :

> *"11. We have heard the rival contentions at length and perused the record placed before us. The assessee which is a Public Charitable Trust and running a Medical College, Hospital and Research Centre was subjected to search u/s.132 of the Act carried out on 25.08.2022 and certain documents alleged to be incriminating in nature were found and seized. Assessee trust enjoys registration u/s.12A of the Act granted on 16.02.2001 which was subsequently renewed u/s.12AB(1) of the Act w.e.f 01.04.2021. During the pendency of the assessment proceedings subsequent to carrying out of the search, ld. PCIT on the basis of a reference received from ld. AO under second proviso to section 143(3) of the Act carried out the proceedings so as to examine whether the assessee has made any 'specified violation' as defined in clause (f) of Explanation to section 12AB(4) of the Act and also issued show cause notice in this regard to the assesssee as to why registration u/s.12A/12AA be not cancelled. In reply, the assessee made multifold contentions challenging the jurisdiction of the ld. PCIT of passing the order of cancellation u/s.12A, 12AA and 12AB(4) of the Act, the powers of the authority u/s.12AB(4) of the Act to cancel the registration granted u/s.12A of the Act, merits of the case contending that the allegations made against the assessee trust of receiving refund of cash in lieu of expenses incurred towards staff salary, doctors salary, PG stipend as*

well as receiving capitation fees are merely based on the statement of employees which have been subsequently retracted and the Pendrive and loose document found at the residential premises of employee has also been retracted at the subsequent stage and that the Managing Trustee of the assessee trust has denied to be indulged into any of such alleged transaction in the statement given during the course of search. However, the assessee failed to succeed before ld.PCIT and now the assessee is in appeal before this Tribunal raising multifold contentions, mainly the following three issues :

a) Challenge to jurisdiction assumed by learned PCIT
b) Challenge to powers available in section 12AB
c) Challenge to cancellation of registration on merits of the Appeal

12. Before us, ld. Counsel for the assessee has not pressed the issue challenging the jurisdiction assumed by ld.PCIT. Thus, Grounds of appeal No.1 and 2 raised by the assessee are dismissed as 'not pressed'.

13. Now we take up the second issue challenging the powers available in section 12AB of the Act. Ld. Counsel for the assessee while raising the issue of challenging the powers available in section 12AB of the Act made threefold contentions and the same are :

(a) that in absence of express powers provided u/s.12AB of the Act for cancelling the registration u/s.12A of the Act, notice issued on 21.03.2023 u/s.12AB(4) of the Act is invalid and void ab-initio.

(b) that second notice issued on 20.03.2024 u/s.12AA(3)/12AA(4) is also void ab-initio as nothing contained in section 12AA(5) of the Act shall apply on or after 01st day of April, 2021.

(c) that since no specific conditions were mentioned in the registration given u/s.12A and the renewed registration u/s.12AB(1) of the Act except for carrying out the genuine activities, ld. PCIT erred in cancelling the registration given u/s.12AB(1) of the Act alleging 'specified violation' without considering that the 'specified violation' word has been inserted from 01.04.2022 and the allegation against the assessee are for F.Yrs. 2019-20 to 2021-22.

14. Now we take the first limb as to whether there are express powers provided u/s.12AB of the Act for cancelling the registration granted to the assessee u/s.12A of the Act for the year 2001. We notice that ld. PCIT (Central) issued notice on 21.07.2023 u/s.12AB(4) of the Act, copy of which is placed from pages 8 to 24 of the paper book show-causing the assessee as to why the registration u/s.12A of the Act granted on 16.02.2001 should not be cancelled. For examining this aspect, we first need to go through section 12AB of the Act. Section 12AB of the Act provides for the procedure for fresh registration and the same has been brought into Statute by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions Act) (TOLA) 2021 w.f. 01.04.2021.

Earlier section 12 was inserted by the Finance Act, 2020 w.e.f. 01.06.2020 but omitted by TOLA with retrospective effect from 01.06.2020. Section 12AB of the Act which is inserted w.e.f. 01.04.2021, the powers of cancelling the registration of the trust are provided u/s.12AB(4) of the Act which reads as under :

"[(4) Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,—

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the Principal Commissioner or Commissioner shall,—

(i) call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;

(ii) pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;

(iii) pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;

(iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.

Explanation.—For the purposes of this sub-section, the following shall mean "specified violation",—

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

(b) the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not enure for the benefit of the public; or

(d) the trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

(e) any activity being carried out by the trust or institution,—

(i) is not genuine; or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

(f) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality [7][; or]

(g) the application referred to in clause (ac) of sub-section (1) of section 12A is not complete or it contains false or incorrect information.]"

15. Now going through section 12AB(4) of the Act, we observe that section 12AB(4) only refers to the registration or provisional registration granted u/s.12AB(1)(a)(b)(b) and 12AA(1)(b) of the Act but there is no mention of section 12A of the Act. Now in absence of any express powers whether the ld.PCIT was justified to issue show cause notice u/s.12AB(4) of the Act for cancelling the registration u/s.12A of the Act. To adjudicate this issue, we would first like to refer the judgment of Hon'ble Supreme Court of India in the case of Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. Vs. CIT (2018) 90 taxmann.com 281 (SC) which is relevant as well as the ratio laid down therein. Hon'ble Apex Court has dealt with four questions and held as under :

"The main questions, that arise for consideration in this appeal, are four :

17. First, whether the CIT has express power to cancel/withdraw/recall the registration certificate once granted by him under Section 12A of the Act and, if so, under which provision of the Act?

18. Second, when the CIT grants registration certificate under Section 12A of the Act to the assessee, whether grant of certificate is his quasi judicial function and, if so, its effect on exercise of his power of cancellation of such grant of registration certificate?

19. Third, whether Section 21 of the General Clauses Act can be applied to support the order of cancellation of the registration certificate granted by the CIT under Section 12A of the Act, in case, if it is held that there is no express power of cancellation of registration certificate available to the CIT under Section 12A of the Act? And

20. Fourth, what is the effect of the amendment made in Section 12AA introducing sub-clause(3) therein by Finance (No-2) Act 2004 w.e.f. 01.10.2004 conferring express power on the CIT to cancel the registration certificate granted to the assessee under Section 12A of the Act.

21. In our considered opinion, the CIT had no express power of cancellation of the registration certificate once granted by him to the assessee under Section 12A till 01.10.2004. It is for the reasons that,

first, there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted under Section 12A of the Act. Second, the order passed under Section 12A by the CIT is a quasi judicial order and being quasi judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power.

22. Indeed, the functions exercisable by the CIT under Section 12A are neither legislative and nor executive but as mentioned above they are essentially quasi judicial in nature.

23. Third, an order of the CIT passed under Section 12A does not fall in the category of "orders" mentioned in Section 21 of the General Clauses Act. The expression "order" employed in Section 21 would show that such "order" must be in the nature of a "notification", "rules" and "bye laws" etc. (see Indian National Congress(1) v. Institute of Social Welfare [2002] 5 SCC 685.

24. In other words, the order, which can be modified or rescinded by applying Section 21, has to be either executive or legislative in nature whereas the order, which the CIT is required to pass under Section 12A of the Act, is neither legislative nor an executive order but it is a "quasi judicial order". It is for this reason, Section 21 has no application in this case.

25. The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi judicial order. A quasi judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. (See Interpretation of Statutes, Ninth Edition by G.P. Singh page 893).

26. Relying upon the aforementioned rule of interpretation, this Court has held that the Government has no power to cancel or supersede a reference once made under Section 10(1) of the Industrial Disputes Act, 1947. [See- State of Bihor v. D.N. Ganguly AIR 1958 SC 1018). Similarly, on the same principle it is held that the application of Section 21 of the General Clauses Act has no application to amend or rescind or vary a notification issued under Section 3 of the Commissions of Enquiry Act for reconstituting the commission by replacement or substitution of its sole member except applicable for a limited purpose for extending the time for completing the enquiry. (State of Madhya Pradesh v. Ajay Singh AIR 1993 SC 825). It is also held while construing the provisions of Citizenship Act that the certificate of registration of citizenship issued under Section 5(1) C of the Citizenship Act cannot be cancelled by the authority granting the registration by recourse to Section 21 of the General Clauses Act. (Ghaurul Hasan v. State of Rajasthan AIR 1967 SC 107 and Hori Shanker Jain v. Sonia Gandhi AIR 2001 SC 3689).

And lastly, while construing the provisions of the Representation of People Act, it is held that the Election Commission cannot, by recourse to Section 21 of the General Clauses Act, deregister or cancel the registration of a political party under Section 29A of the Act for the decision of the Commission to register a political party under Section 29A(7) of the Act is a quasi judicial in nature. [See Indian National Congress(1) (supra)]

27. It is not in dispute that an express power was conferred on the CIT to cancel the registration for the first time by enacting sub-Section (3) in Section 12AA only with effect from 01.10.2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence such power could be exercised by the CIT only on and after 01.10.2004, i.e., (assessment year 2004-2005) because the amendment in question was not retrospective but was prospective in nature.

28. The issue involved in this appeal had also come up for consideration before three High Courts, namely, Delhi High Court in the case of DIT (Exemptions) v. Mool Chand Khairati Ram Trust [2011] 11 taxmann.com 42/199 Taxman 1/339 ITR 622, Uttaranchal High Court in the case of Welhom Boys' School Society v. CBDT [2006] 285 ITR 74//2007) 158 Taxman 199 and Allahabad High Court in the case of Oxford Academy for Career Development v. Chief CIT [20091.315 ITR 382

29. All the three High Courts after examining the issue, in the light of the object of Section 12A of the Act and Section 21 of the General Clauses Act held that the order of the CIT passed under Section 12A is quasi judicial in nature. Second, there was no express provision in the Act vesting the CIT with power of cancellation of registration till 01.10.2004; and lastly, Section 21of the General Clauses Act has no application to the order passed by the CIT under Section 12A because the order is quasi judicial in nature and it is for all these reasons the CIT had no jurisdiction to cancel the registration certificate once granted by him under Section 12A till the power was expressly conferred on the CIT by Section 12AA(3) of the Act w.e.f. 01.10.2004.

30. We are of the considered view that the view taken by the abovementioned three High Courts in the respective cases is in conformity with law and we accordingly approve the said view taken by these High Courts in three aforementioned decisions.

31. In the light of the foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside and the order of ITAT is restored.

32. Needless to say, the CIT would be free to exercise his power of cancellation of registration certificate under Section 12AA(3) of the Act in the case at hand in accordance with law."

16. The ratio laid down by the Hon'ble Apex Court in the case of Infrastructure Development Corporation (supra) is that in absence of any express power conferred to the CIT(A) in section 12AA(3) of the Act the registration granted u/s.12A of the Act cannot be cancelled and the

same ratio is applicable on the present set of facts where registration u/s.12A has been cancelled in the proceedings carried out after 01.04.2021 u/s.12AB(4) of the Act. As we have extracted section 12AB(4) of the act in the preceding para, the same clearly deals with the registration or provisional registration granted under clause (a) (b) or (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be and not section 12A of the Act. It means that there is no express power provided u/s.12AB of the Act for cancelling the registration granted u/s.12A of the Act. Very same issue came up for adjudication before the Coordinate Bench, Cuttack in the case of Maa Jagat Janani Seva Trust (supra) wherein it has been held as under :

> *"5. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that a show cause notice for the purpose of cancellation of registration u/s.12AA of the Act came to be first issued by ld CIT(E) on 6.10.2022. A perusal of the order cancelling the registration shows that the ld CIT(E) has not given any reason for rejecting various explanation given by the assessee to various show cause notices issued. All that the ld CIT(E) says that the replies are in relation to observations made by the Assessing officer and has nothing to do with the reasons given for giving show cause notice for cancellation of registration. A perusal of the order of ld CIT(E) clearly shows that the reasons given for the show cause notice are the reasons which are considered by the Assessing Officer in the assessment order for the assessment years 2013-14 & 2014-15. The assessee has also given reply to various issues in the show cause notice. In any case, the show cause notice for cancellation of registration having been issued on 6.10.2022, ld CIT (E) could not have cancelled registration retrospectively w.e.f 1.4.2014 insofar as the provisions of section 12AA/12AB does not provide for the cancellation of registration with retrospective effect. This view of our finds supports from the decision of ITAT Bangalore Bench in the case of Amala Jyothi Vidya Kendra Trust (supra), wherein, from paras 6 to 6.10, the Co-ordinate Bench has held as follows:*
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> *"6. We have heard the rival submissions and perused the materials available on record. The main contention of the ld. A.R. is that the ld. PCIT cancelled the registration granted to the assessee w.e.f. the previous year i.e. 2017-18 relevant to assessment year 2018-19 by applying the provisions as stood on 29.12.2023, which cannot be applied for the violations of the provisions of section 12AA or 12AB of the Act. According to the ld. A.R., the ld. PCIT has cancelled the registration granted to the assessee since the ld. PCIT was satisfied that one or more specified violations have taken place. The specified violations are mentioned in explanation to section 12AB(4) of the Act as follows:*
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> *Explanation: For the purposes of this sub-section, the following shall mean "specified violation",--*

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

b) The trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

c) The trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public; or

d) The trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

e) Any activity being carried out by the trust or institution—

(i) is not genuine, or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

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

6.1 The contention of the ld. A.R. is that, these provisions have been inserted by Finance Act, 2022 w.e.f. 1.4.2022 and if there is a violation in previous year 2017-18 relevant to assessment year 2018- 19, these provisions cannot be applied to the assessee's case. For clarity, we will go through the relevant provisions applicable to previous year 2017-18 relevant to assessment year 2018-19 as follows:

> *"12AA(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the finance (No.2) Act, 1996 (33 of 1996)] and subsequently it is noticed that, the activities of the trust or the institution are being carried out in a manner that the provisions of section 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then the Pr. Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institutions.*

Provided, that the registration shall not be cancelled under this subsection if the trust or institution proves that, there was reasonable cause for the activity to be carried out in the said manner."

6.2 This section has been amended by Finance Act, 2022 w.e.f. 1.4.2022 as follows:

12AB(4): Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of subsection (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,--

a) The Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year;

b) The Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

c) Such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year;

The Principal Commissioner or Commissioner shall—

i. call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;

ii. pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;

iii. pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;

iv. forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.

Explanation: For the purposes of this sub-section, the following shall mean "specified violation",

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

b) The trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

c) The trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public; or

d) The trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

e) Any activity being carried out by the trust or institution—

(i) is not genuine, or
(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

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

6.3 As per section 12AB(4) of the Act as applicable to assessment year 2017-18, the ld. PCIT if he is satisfied that activities of the Trust or institution are not genuine or not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording reasonable opportunity of being heard. As per section 12AB(5) of the Act, when trust or institution complied wholly or in part of the income of such trust or institution in violation of section 13(1) of the Act or if they complied with any other law, for the time being in force by the trust or institution as are material for the purpose of achieving its objectives as mentioned in section 12AB(1)(b)(ii)(B) of the Act. However, in the present case, the ld. PCIT invoked the provisions of section 12AB(4)(a)(ii) of the Act as stood in the assessment year 2022-23. The objection of the ld. A.R. is that for the cancellation of registration for the assessment year 2021-22, he could not invoke the provisions of section 12AB(4)(ii) of the Act which is introduced

by Finance Act, 2022 w.e.f. 1.4.2022 and applicable for the assessment year 2022-23 onwards.

6.4 In the case of Isthmian Steamship Lines reported in 20 ITR 572 (SC) wherein the Hon'ble Supreme Court held that "it is a cardinal principle of the tax law that law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication".

6.5 In the case of Karimtharuvi Tea Estate Ltd. Vs. State of Kerala reported in 51 ITR 129 (SC) the same view was taken by the Hon'ble Supreme Court.

6.6 Further, the Hon'ble Supreme Court in the case of Shree Chowdhary Transport Company Vs. ITO reported in 426 ITR 289 (SC) wherein held as under:

> *17.4 It needs hardly any detailed discussion that in income-tax matters, the law to be applied is that in force in the assessment year in question, unless stated otherwise by express intendment or by necessary of implication. As per section 4 of the Act of 1961, the charge of incometax is with reference to any assessment year, at such rate or rates as provided in any central enactment for the purpose, in respect of the total income of the previous year of any person. The expression "previous year" is defined in section 3 of the Act to mean "the financial year immediately preceding the assessment year"; and the expression "assessment year" is defined in clause (9) of section 2 of the Act to mean "the period of twelve months commencing on the 1st day of April every year".*
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> *17.5 In the case of CIT v. Isthmian Steamship Lines (1951) 20 ITR 572 (SC), a 3-judge Bench of this court exposited on the fundamental principle that "in income-tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied." This decision and various other decisions were considered by the Constitution Bench of this court in the case of Karimtharuvi Tea Estate Ltd. v. State of Kerala (1966) 60 ITR 262 (SC) and the principle were laid down in the following terms (at pages 264-266 of 60 ITR):*
>
> *"Now, it is well-settled that the Income-tax, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force……*

The High Court has, however, relied upon a decision of this court in CIT v. Isthmian Steamship Lines, where it was held as follows:

'It will be observed that we are here concerned with two datum lines: (1) the 1st of April, 1940, when the Act came into force, and (2) the 1st of April, 1939, which is the date mentioned in the amended proviso. The first question to be answered is whether these dates are to apply to the accounting year or the year of assessment. They must be held to apply to the assessment year, because in income-tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied. The first datum line therefore, affected only the assessment year of 1940-41, because the amendment did not come into force till the 1st of April, 1940. That means that the old law applied to every assessment year up to and including the assessment year 1939-40.'

This decision is authority for the proposition that though the subject of the charge is the income of the previous year, the law to be applied is that in force in the assessment year, unless otherwise stated or implied. The facts of the said decision are different and distinguishable and the High Court was clearly in error in applying that decision to the facts of the present case."

(emphasis supplied)

17.6 We need not multiply on the case law on the subject as the principles aforesaid remain settled and unquestionable. Applying these principles to the case at hand, we are clearly of the view that the provision in question, having come into effect from April 1, 2005, would apply from and for the assessment year 2005-06 and would be applicable for the assessment in question. Putting it differently, the Legislature consciously made the said sub-clause (ia) of section 40(a) of the Act effective from April 1, 20056, meaning thereby that the same was to be applicable from and for the assessment year 2005-06; and neither there had been express intendment nor any implication that it would apply only from the financial year 2005- 06."

6.7 Being so, we find force in the argument of ld. A.R. that in income-tax matters, law to be applied is the law in force in the assessment year unless otherwise stated or implied. In the present case, ld. PCIT is cancelling the registration granted u/s 12AA/12AB of the Act w.e.f. previous year 2020-21 relevant to assessment year 2021-22. In our opinion, the law as stated in the assessment year 2021-22 is to be applied and not the law as stood in the assessment year 2022-23.

6.8 Thus, we are of the view that no retrospective cancellation could be made u/s 12AB(4)(ii) of the Act as it has been provided or is seen to have explicitly provided to have a retrospective character or intended. Therefore, without a specific mention of the amended provisions to operate retrospectively, no cancellation for the earlier years could be made. In this regard, it is appropriate to place reliance on the judgement of Hon'ble Madras High Court on the question as to whether the cancellation will operate from a retrospective date in the case of Auro Lab Ltd. Vs. ITO (2019)411 ITR 308 (Mad) wherein held as under :

> *20. On the second question as to whether the cancellation will operate from a retrospective date, it was held that the amendment to section 12AA(3) is prospective and not retrospective in character. The courts reasoned that even when Parliament had plenary powers to enact retrospective legislation in matters of taxation, the amended section is not seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively, the cancellation cannot operate from a past date.*
>
> *21 On the third question of the effective date of operation of the cancellation order, it was held that the cancellation will take effect only from the date of the order/notice of cancellation of registration. Since the act of cancellation of registration has serious civil consequences and the amended provision is held to have only a prospective effect the effect of cancellation, in' the event the pending tax appeal is decided in favour of the Revenue, will operate only from the date of the cancellation order, that is December 30, 2010. In other words, the exemption cannot be denied to the petitioner for and up to the assessment year 2010-11 on the sole ground of cancellation of the certificate of registration."*

6.9 In this case, the ld. PCIT has cancelled the registration under the new provisions of the Act i.e. 12AB(4)(ii) of the Act, which specifically provides that cancellation can be done for such previous year and all subsequent previous years, which makes it clear that the cancellation cannot be retrospective, therefore, in view of the above discussion, we are of the opinion that cancellation of registration with retrospective effect is invalid in these cases. Since the ld. PCIT invoked the provisions of section 12AB(4)(ii) of the Act, which has been introduced by the Finance Act, 2022 w.e.f. 1.4.2022 so as to cancel the registration with retrospective effect from assessment year 2018-19, which is bad in law.

6.10 It is noted that coordinate bench of this Tribunal in both assessee's case for AY 2021-22 has taken similar view and as quashed the retrospective applicability of the new amended provision u/s 12AB(4)(ii) of the Act. We also note that same view has been taken by Coordinate bench of Mumbai in the case of

> *Heart Foundation of India in ITA No.1524/Mum/2023 vide order dated 17 27.7.2023, wherein held that registration granted u/s 12A of the Act dated 21.7.1989 cannot be cancelled by ld. PCIT (Central) vide order dated 6.3.2023 w.e.f. assessment year 2016-17, by invoking the provisions of section 12AB(4)(ii) of the Act. Accordingly, we allow the primary ground nos.2, 3, 5 & 12 and order of ld. PCIT passed u/s 12AB(4)(ii) of the Act is quashed. "*

6. Further, on perusal of provisions of section 12AB(4) of the Act shows that the said provision has been substituted by the Finance Act, 2022 w.e.f. 1.4.2022. Before 1.4.2022, the registration could have been cancelled u/s.12AB(5). However, the provisions of section 12AA and Section 12AB came into effect from 1.4.2015. Before that registration was done under section 12A of the Act. One needs to understand that the provisions of section 12A of the Act was amended to 12AA and then 12AB because registration scheme for Trust was to corollary to claim file and smile i.e. to file the registration as admittedly charitable institution. Subsequently, the provisions of exemption was brought in and opportunity was given to ld CIT(E) to deny the exemption, still the power for cancellation the registration was granted. However, the power to cancel the registration with retrospective effect is not provided in the Statute. This being so, as the registration in the present case, has been cancelled retrospectively, same is not permissible as the same is not provided in the Statute, the order passed by ld CIT(E) cancelling the registration retrospectively stands cancelled."

17. Now from going through the above decisions of Coordinate Bench in the case of Maa Jagat Janani Seva Trust (supra) wherein catena of judgments have been referred and also the ratio laid down by the Hon'ble Apex Court in the case of Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. (supra) has been followed, we find that the same is squarely applicable on the facts of the instant case and therefore we are inclined to hold that since there is no express power provided u/s.12AB(4) of the Act for cancelling the registration granted u/s.12A of the Act, ld. PCIT (Central) grossly erred in issuing show cause notice u/s.12AB(1) of the Act on 21.07.2023. The said show cause notice is held to be invalid and void ab-initio and therefore finding of ld. PCIT (Central) is reversed and we hold that registration granted u/s.12A of the Act cannot be cancelled during the proceedings carried out u/s.12AB(4) of the Act."

20(a). Respectfully following the above decision and examining the facts of the instant case, we find that firstly in section 12AB of the Act powers are only there to cancel the registration u/s.12AA and 12AB of the Act but there is no express power to cancel the registration granted u/s.12A under the old regime. The situation is similar to the one which came before the Hon'ble Apex Court in

the case of Industrial Infrastructure Development Corporation (supra) where the issue was regarding cancellation of registration u/s.12A under the provisions of section 12AA of the Act and since there was no express power granted u/s.12AA of the Act to cancel the registration u/s.12A of the Act, such cancellation order was quashed. Subsequently, there was an amendment brought in by the Finance Act, 2010 thereof giving power u/s.12AA of the Act to cancel the registration u/s.12A of the Act. However, under the current provisions of section 12AB of the Act there is no express powers provided under the Act to cancel the registration u/s.12A of the Act granted under the old regime. We also find that in the impugned orders in the case of all the assessees in appeal before us, ld. PCIT has referred to the *'specified violation'* mentioned in section 12AB(4) of the Act which the assessee(s) trusts have been alleged to have been committed based on which the registrations granted u/s.12A/12AA/12AB have been cancelled. However, the word *'specified violation'* has been brought into the Act in section 12AB of the Act from 01.04.2022 onwards and is therefore applicable for A.Y. 2022-23 and onwards and therefore in absence of word *'specified violation'* prior to 01.04.2022, ld.PCIT erred in invoking section 12AB(4) of the Act in the cases of assessee(s) appeals before us. Cancellation of registration should be only for such years for which *'specified violation'* exists. In the case of POGs alleged irregularity relates to A.Y. 2017-18 to 2020-21. As such, no reason exists for disturbance of other years. Similar is the situation for other assessees also wherein also no *'specified violation'* committed by the assessee(s) as referred in section 12AB(4) of the Act post 01.04.2022. Admittedly, in case of POGS and MOGS registrations were granted under the old regime u/s.12A of the Act whereas in case of AOGS registration was

granted u/s.12AA of the Act. Thus in light of the discussions made hereinabove, we find that in the case of POGS and MOGS as the registration u/s.12A was granted under the old regime on 04.12.1982 and 16.12.1976 therefore ld. PCIT grossly erred in cancelling the registration u/s.12A of the Act from A.Y. 2014-15 onwards till A.Y. 2021-22. Accordingly, the legal issues raised in the additional grounds of appeal in case of POGS and MOGS are allowed and the impugned orders dated 06.03.2023 passed u/s.12AB(4) of the Act in case of POGS and MOGS are hereby quashed to the extent of cancelling the registration granted to the POGS and MOGS u/s.12A of the Act.

20(b) So far as the assessee namely AOGS is concerned since registration has been granted u/s.12AA of the Act, there are powers u/s.12AB(4) of the Act to cancel the registration u/s.12AA of the Act also and therefore our finding that registration u/s.12A of the Act in the old regime cannot be cancelled u/s.12AB(4) of the Act in absence of express powers, will not be of any help in the case of assessee AOGS. Therefore, the legal issue raised by way of additional ground in the case of AOGS is hereby dismissed.

21. Now we take up merits of the case which are similar in this bunch of appeals. Admittedly, subsequent to the search action u/s.132 of the Act carried out in the case of Emcure Pharmaceuticals Pvt. Ltd. on 12.06.2020, assessee(s) trusts were also subjected to survey action u/s.133A of the Act and certain documents/digital evidence were found. Subsequent to the survey proceedings, assessments of the assessee(s) trusts were underway with the AO during which the reference was made to the ld. PCIT. In the finding of ld. PCIT extracted *(supra),* so far as merits of the case are concerned, it has been stated that the

assessee trust has been used as a conduit by the EPL for providing freebies to the doctors/medical practitioners which is prohibited under the law and the reference has been made to the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

22. Ld. PCIT referred to the documents placed at pages 8-11 in Bundle No.6 and Pages 36-38 of Bundle No.5 observing that the same contains list of doctors who were nominated by Emcure Pharmaceuticals Private Limited and the nominations were accepted by the assessee(s) trusts, arrangements for accommodation of the nominated doctors are also found. By making of such arrangements between the Pharma Company and the doctors, ld. PCIT observed that the assessee(s) trusts are working as conduit and helping the Pharma companies to avoid disallowance of expenditure in violation of Medical Council of India Regulations which comes in the ambit of Explanation 1 to section 37(1) of the Act. Ld. PCIT also observed that the assessee(s) trusts which are constituted by the doctors/medical practitioners were governed by Medical Council of India Regulations, 2002. They have admitted that Pharma Companies had nominated their delegates for the conference and the assessee(s) trusts have incurred expenses towards travel facilities, lodging and boarding, registration fee etc. on such doctors on behalf of the pharmaceutical companies which is clearly in contravention of the Medical Council of India Regulations, 2002. Ld. PCIT found such activity of the assessee(s) trusts are *'specified violation'* in so far as the assessee(s) trusts were found to be carrying out the activity of organising conferences which involves providing facilities to pharma companies to give freebies to doctors and such act of providing freebies is not being carried out in

accordance with any of the conditions subject to which they were registered nor such activity is in accordance with the objects of the assessee(s) trusts). Ld. PCIT accordingly held that '*specified violation*' under clause (e) of Explanation below section 12AB(4) of the Act is found to have taken place.

23. Before us, ld. Counsel for the assessee(s) trusts has stated that it is compulsory for the doctors to earn their Continuing Professional Development (CPD) hours per year which can be achieved by attending programmes/seminars which are organised for facilitating the doctors for regular learning/knowledge updation. Now the assessee(s) trusts are governed by Maharashtra Medical Council and main object of the assessee(s) trust includes Study/Research and Development and holding seminars. The programmes for the conferences/seminars are planned for various topics and the speakers are earmarked. Application is made to the Maharashtra Medical Council for sanction of CPD hours. After such sanction which in the instant cases have been granted by the Maharashtra Medical Council to all the assessee(s) trusts from time to time as per their programmes given to the Maharashtra Medical Council and even some changes are also made as per the advice of the Maharashtra Medical Council and the research and development seminars are organised. Such seminars are aimed for knowledge development/updation and for the benefit of doctors in various medical fields. However, ld. PCIT has connected such facilities provided to the doctors with freebies/gifts like distribution of gold coins, fridge etc. It is an admitted fact that various organisations in different professional fields are organising such type of conferences and seminars. Their aim is always to attract more members but certainly to meet out the cost of such conferences,

sponsorships and grants are needed because such conferences/seminars cannot be organised successfully only with the contribution of the members. At this stage, the role of Pharmaceutical companies comes into play and they provide the sponsorship to the registered organisations, i.e. Professional Association of Persons. It is also an admitted fact that if as per the guidelines if any sponsorship by any pharmaceutical company leads to marketing/advertisement/promotion of drugs/ equipments of such pharmaceutical companies, no CPD hours are eligible for being granted. Revenue authorities have failed to bring on record any such instance where the CPD hours approving councils have referred to any such violation by the assessee(s) trusts. Even as per the new guidelines, 2016 providing for fine on the doctors, censure of erring doctors and removal of name of such doctor from Register of Doctors for varying periods in case they are found to be violating the guidelines but not a single doctor attending any programme has been fined/punished.

24. We observe that all the assessee(s) trusts in appeal before us are having common objects which mainly include promotion of professional fellowship among the members, encouraging research in the respective medical field relevant to such associations and to extend educational interest and to achieve these objectives one of the major source is of organising conferences/seminars of National and International level for which the attending doctors/delegates are also awarded Continuous Professional Development hours. Ld. Counsel for the assessee has referred to the flow of events which normally takes place for carrying out such activity and though we have mentioned in the preceding para, for the sake of convenience we briefly reproduce the same below :

Particulars
It is compulsory for doctors to earn 6 (six) CPD hours per year. Attending Programs / Seminars helps in earning CPD hours. Arranging seminars for facilitating Doctors to earn CPD hours is logical and correct.
Approved institutions can conduct Seminars for CPD hours, provided, same are in compliance with laws and rules and regulations *For CPD hours, detailed guidelines are issued* *There is a peculiarity of "Observers" for the CPD related Seminars.*
It is incumbent that, Seminars / Symposiums / Programs ought to be held, wherefrom, CPD hours could be earned by Members. *For this, various apex bodies are formed (such as Cancer Society of India, Aids Society of India, FOGSI etc.). Many accredited societies work under these apex bodies. This position is captured in a FLOWCHART.* *Under FOGSI, Appellant is approved and accredited.*
Appellant's objectives (per MOA) include, study / research & development / holding seminars, etc.
From time to time, Appellant, structures, some useful scientific programs for benefit of members. In these programs, many papers are presented which are of scientific nature.
Appellant applies to MMC for CPD hours sanction for such Seminars
MMC grants approval for apt number of CPD hours
Attendance in Research & Development Seminars is aimed at knowledge development / benefit of Doctors, which is different than plausible personal benefits of doctors. Prohibited freebies / gifts (like distribution of Gold Coins, Fridge, etc.) are much different than knowledge development.
Seminars are Research oriented. Now, Research activity is expressly permitted by the Guidelines.
Seminars are pre-approved by MMC (Maharashtra Medical Council). Based on credentials of speakers and contents of Seminar, CPD hours are allotted to attending Members.
Due to sponsorships, cost of attending a larger seminar gets reduced, which benefits the common Members attending Seminars
Holding of worthy conferences requires funds. Pharma companies help in cost mitigating by sponsoring such programs. Pharma Companies stipulate purpose of sponsorship (typically, scientific knowledge, new trends in profession, etc.)
Pharma companies expressly state in sponsorship letters that, no any promotion of their drugs should be done in the Seminars and that, all applicable laws need to be complied with. Unfortunately, learned PCIT reached adverse "satisfaction" without considering

Particulars
these vital facts. As such, his conclusions are totally incorrect.
Detailed Guidelines are provided by GOVT authorities for activities which are permitted, and activities which are not permitted. Learned PCIT did not consider the Guidelines in proper perspective.
Learned PCIT, erroneously, applied old regulation (2002 / 2009). New regulation of 2016 does not apply to Associations like Appellant herein. As such, allegation of violation of law can't be attributed to Appellant at all. Learned PCIT glossed over this position.
As per guidelines, if any sponsorship by any pharma company leads to marketing / advertising / promotion of drugs / equipment of such pharma companies, no CPD hours are eligible for being granted. Herein, Seminars have earned CPD hours to Doctors expressly. By analogy, it can be logically inferred that, there is no violation of Guidelines. Learned PCIT reached his incorrect conclusions without considering these facts. As such, his conclusions deserve to be overruled.
As per New Guidelines of 2016, for violation of Guidelines, following actions are provided for. *Censure of erring Doctor* *Fine on Doctors* *Removal of name of such Doctor from Register of Doctors for varying periods* *Not a single Doctor, attending any program with Appellant, has been fined / punished. Hence, by analogy, it can be concluded that, no violation has taken place. These new / amended Guidelines are not referred by learned PCIT. Conclusions drawn from old Guidelines deserve to be left at that.*
Sponsorships received from Pharma Companies are meant and utilized for promoting educational and research in the field of Obstetrics and gynecology as per the term of contract.
PCIT (CC) kept reliance on clause (b) and (c) of Point 6.8.1 of Guidelines reproduced at Para-7.4. Learned PCIT(CC) glossed over the permissible activities given in second sentence of clause (d) and clause (e) of the same Guidelines reproduced at Para 7.4.

25. We also observe that all the assessee(s) trusts in appeal before us are maintaining regular books of account and financial statements are audited and the funds received from membership/grant/sponsorship are being consistently applied for the objects of the trusts which mainly includes payment to hotels

for organising the seminars/tour and travel expenses, food expenses, taxi charges etc. There is no fact on record which could demonstrate that the payments made through banking channel by the assessee(s) trusts to the vendors for organising conferences/seminars are merely paper entries. Admittedly actual expenses have been incurred for the purpose of objects of the assessee(s) trusts. Ld. PCIT has only referred to Emcure Pharmaceutical Company Pvt. Ltd. where the search took place and has failed to take note that apart from EPL there are many companies which have given the sponsorship and no discrepancy has been noticed with regard to any such sponsorship given to the trusts.

26. We would like to take note about one of the appellant before us namely AIDS Society of India which have been carrying out the National Conferences since past many years. The Schedule of 12th National Conference of AIDS Society of India – ASICON, 2019 can give a brief idea about the nature of conferences being organised and carried out by the assessee trust, which is as follows :

12th National Conference of AIDS Society of India- ASICON 2019
Hotel Leela Palace, Chennai
November 22-24, 2019

Academic Partners

CAPRISA-South Africa; Chennai ART(CART); International AIDS Society (IAS); Medical Council of India (MCI); National AIDS Control Organisation (NACO); Peoples Health Organisation-India (PHO); Revised National TB Control Programme (RNTCP); UNAIDS; Voluntary Health Services (VHS); World Health Organisation (WHO)-India

Scientific Programme

Day 1: Nov 22, 2019:

09:00-09:20	**Welcome Remarks and Scientific Program Outline**	**Scientific Chairs:** Dr. Dilip Mathai, Hyderabad; Dr. R Sajithkumar, Kottayam; Dr. Jyoti Dhar, UK
09:20-10:00	**Oral Abstract Session–I (1-4)**	**Chairs:** Dr. R Sajithkumar, Kottayam Dr. Satish Rao, Mangalore
	1. *Awareness, Willingness, Facilitators and Barriers of PrEP among Key Population: Results from a cross-sectional study in high-prevalent geographies*	Dr. Ashwin Beludi, Medchal
	2. *Effect of "Mobile phone reminders and electronic tracking tool" (M-TRACK) on pre-treatment Loss to Follow up among PLHIV under programme settings: An interventional study from Gujarat*	Dr. Kedar Mehta, Vadodara Mr. Mayank Khede, CSACS
	3. *Barriers to adherence among PLHIV on ART in a tribal state of India, Chhattisgarh*	
	4. *A study of pyrexia of unknown origin in patients infected with HIV at a tertiary care referral centre*	Dr. Marikanty Adarsh, Hyderabad
Session I 10:00-11:10	**HIV Epidemic – Where are We?**	**Chairs:** Dr. Franco, Buonaguro,Italy Dr. Glory Alexander, Bangalore
10:00-10:30	Global Epidemiology : Success and Challenges	Dr. Adeeba Kamarulzaman, IAS
10:30-10:55	NACO response to Indian HIV epidemic	Dr. Naresh Goel, NACO
	Discussion	
11:10-11:30	**Tea Break**	
Session II 11:30- 11:55	**Plenary 1**	**Chairs:** Dr.Hitendra Thaker, UK Dr. Prakash Bora, Mumbai
	Newer approaches for HIV Prevention	Dr. Kenneth Mayer USA
12:00-13:00	**Inaugural ceremony and Felicitations**	**Guests of Honour:** Dr. Adeeba Kamarulzaman, IAS Dr. Bilali Camara, UNAIDS Dr. Naresh Goel, NACO

13:00-14:00	Lunch	
14:00-14:30	Oral Abstracts Session- II (5-7)	**Chairs:** DR.VHT Swamy,Mysore Dr.Meka Satyanarayana, Hyderabad
	5. *Spectrum of opportunistic CNS infections in HIV infected patients at a tertiary care centre* 6. *Assessment of AIDS dementia in HIV positive patients* 7. *Spectrum of lymphomas in patients infected with HIV at a tertiary care hospital*	Dr. Kamani Naresh Babu, Hyderabad Dr. Swati Gupta, Mumbai Dr. Sohini Ganji, Hyderabad
Session III 14:30-15:25	**From Basics to Advances**	**Chairs:** Dr. Tapan Dhole, Lucknow Dr. Sumantoke Bagchi, Mumbai
14:30-14:45	HIV Pathogenesis and Inflammation	Dr. Vanita Gupta, Chandigarh SACS
14:45-15:00	Point of care assays in HIV management	Dr. Prapti Gilada, Mumbai
15:00-15:15	Advanced Sample collection technologies for Viral load monitoring	Dr. Deepika Jindal, Roche, Mumbai
	Discussion	
Session IV 15:25-16:10	**Challenges with 90-90-90**	**Chairs:** Dr.Kenneth Mayer USA, Dr. Joseph Williams, VHS-CDC
15:25-15:45	Testing strategies in hidden and key populations	Dr. Adeeba Kamarulzaman, IAS
15:45-16:00	Challenges in linkage to care in India	Dr. Neha Garg, NACO
	Discussion	
16:10-16:30	**Tea Break**	
Session V 16:30-17:10	**Debate: PrEP is crucial for achieving Zero new infections**	**Moderators:** Dr.S.N.Mothi, Mysore Dr. Glory Alexander, Bengaluru
	For	**Against**
	Dr. R R Gangakhedkar, ICMR	Dr. Naval Chandra, Hyderabad
	Dr. Amar Pazare, Mumbai	Dr. Milind Bhrushundi, Nagpur
	Discussion	
Session VI 17:10-18:20	**Widening the Horizon**	**Chairs:** Dr. Shrikala Acharya, MDACS Dr. Matin Ahmed, Jamshedpur
17:10-17:30	Late Presentation of HIV and Missed Opportunities	Dr. Hitendra Thaker, UK
17:30-17:45	PrEP Demonstration Programmes in India	Dr. Nomita Chandhiok, ICMR
17:45-18:05	Cure of HIV	Dr. Herve Fleury, France
	Discussion	

18:30- 19:30: ASI Annual General Body Meeting
19:30 –21:30: Cultural Programme and Dinner

Day 2: Nov 23, 2019:

09:00-09:40	**Oral Abstract Presentations –III (9-11) (ART)**	**Chairs:** Dr. GD Ravindran, Bangalore Dr. Ketan Ranpariya, Surat
	8. First line ARV drug resistance mutations among the HIV-1 subtype C infected patients of Agra, North India *9. Clinical and immunological profile of antiretroviral therapy failure patients* *10. Dolutegravir regimens may need optimization for youth failing ART. Will K65R and M184V mutations lead to virologic failure and dolutegravir resistance?*	Mr. Sushanta Kumar Barik, Agra Dr. Digvijay Chavan, Aurangabad Ms. Vinie Kouamou, Zimbabwe
Session VII **09:40-11:15**	**Think Beyond What You See**	**Chairs:** Dr. S. Murugan, Tirunelveli Dr. V Chandrasekhar, Warangal
09:40-10:00	CNS Complications of HIV	Dr. Scott Letendre, USA
10:00-10:20	HIV and non-AIDS Malignancies	Dr. Franco Buonaguro, Italy
10:20-10:40	Ageing and HIV	Dr. Thomas Campbell, USA
10:40-11:00	Neurocognitive disorders in HIV	Dr. Jehangir Sorabjee, Mumbai
	Discussion	
11:15-11:30	**Tea Break**	
Session VIII **11:30-13:00**	**State of ART**	**Chairs:** Dr. Hitendra Thaker, UK Dr. Herve Fleury, France
11:30-11:55	What is new in ART?	Dr. Constance Benson, USA
11:55-12:10	Pattern of resistance to PIs and Integrase inhibitors	Dr. N Kumarasamy, Chennai
12:10-12:30	ART in patients with Tuberculosis	Dr. Susan Swindells, USA
12:30-12:45	WHO 2019 ART Guidelines	Dr. Vimlesh Purohit, WHO
	Discussion	
13:00-14:00	**Lunch**	
Session IX **14:00-14:30**	**Plenary 2**	**Co-Chair:** Dr. Jyoti Dhar, UK Dr. Ishwar Gilada,Mumbai
	Newer targets, ARVs and Antibodies in pipeline for Treatment	Dr. Babafemi O Taiwo, USA
Session X **14:30-15:00**	**Plenary 3**	**Co-Chair:** Dr. Kenneth Mayer, USA Dr.N.Kumarasamy,Chennai
	Gifts from the Ganges: Bacteriophage Therapeutics Come of Age- Role in HIV	Dr. Robert Schooley, USA
Session XI	**Interactive clinical case discussions**	**Panelists:** Dr. Babafemi Taiwo, USA, Dr. Tom Campbell, USA Dr. Jyoti Dhar, UK Dr. George Oommen, Mumbai
15.00-16.00	**Case Presentations**	Dr. N. Kumarasamy, Chennai Dr. G Manoharan, Coimbatore Dr. Trupti Gilada, Mumbai

16:00-16:15	Tea-Break	
Session XII 16:15-17:45	**Preventing Toxicities and Infections**	**Chairs:** Dr. P. Narendra Singh,Imphal Dr. Alok Vashishtha, Haridwar
16:15-16:35	Renal toxicities - Do we need TAF or two-drug strategy in LMIC?	Dr. Babafemi O Taiwo, USA
16:35-16:55	Integrase Inhibitors-New era on weight gain	Dr. Thomas Campbell, USA
16:55-.17:15	ART Neurotoxicity	Dr. Scott Letendre, USA
17:15-17:30	Adult Vaccination in HIV infected persons	Dr. R Sajithkumar, Kottayam
	Discussion	

19:00 hrs: **Cultural programme**
Dinner

Day 3: Nov 24, 2019

Session XIII 09:00-10:25	**Tackling the Partners In Crime**	**Chairs:** Dr. K Priya, Chennai Dr. Udai Lal, Hyderabad
09:00-09:20	Update on HPV management	Dr. Joel Palefsky, USA
09:20-09:40	Cure of HCV	Dr. Robert Schooley, USA
09:40-09.55	Update on HBV therapy	Dr. S.K. Guha, Kolkata
09:55-10:10	Update on TB Treatment and Research in India	Dr. Srikanth Tripathy, Chennai
	Discussion	
Session XIV 10:25-10.50	**Plenary 4**	**Chairs:** Dr. Manoharan, Coimbatore, Dr.George Oommen, Mumbai
	Future of TB- Newer Drugs and diagnostics	Dr. Constance Benson, USA
10:50-11:10	**Tea Break**	
Session XV 11:10-11:55	**Special people – Special ways**	**Chairs:** Dr. A. R. Pazare, Mumbai Dr. Ruby Bansal, Ghaziabad
11:10 -11:30	Care of Adolescent and Children	Dr. Jyoti Dhar, UK
11:30-11:45	What is new in ART for Women?	Dr. S. Poongulali, Chennai
	Discussion	
Session XVI 11.55-12.20	**Plenary 5**	**Chairs:** Dr. Franco Buonaguro, Italy Dr. G. D. Ravindran, Bengaluru
	Long Acting ARVs	Dr. Susan Swindells, USA
Session XVIII 12:20-13:30	**Towards Elimination of the Disease and the Stigma**	**Chairs:** Dr. Jyoti Dhar, UK Dr. Prakash Bora, Mumbai
12:20-12:35	Strategies to Eliminate TB	Dr. Sanjay Kumar Mattoo, RNTCP
12:35-12:50	Elimination of Mother to Child HIV Transmission	Dr. Glory Alexander, Bengaluru
12:50-13:05	Stigma and AIDS Bill	Mr. Manoj Pardeshi, NCPI+, Pune
13:05-13:20	HIV/AIDS Act : An interactive session	Justice(Rtd)Dr.B.C.Gupta,Chandigarh
	Discussion	
13.30-14.10	**Valedictory Function**	Dr. Ishwar Gilada, Mumbai Dr. Dilip Mathai, Hyderabad Dr. N. Kumarasamy, Chennai Dr. Franco, Buonaguro, Italy Dr. Susan Swindells, USA
14:10 onwards	**Lunch**	

27. Further, it is also brought to our notice that various dignitaries including the President of India, Home Minister, Minister of Health and Family Welfare have been giving the messages to the assessee trust Aids Society of India for various conferences and seminars organised by it.

1. *Message dated nil from the President of India*
2. *Message dated 14 Sep 2011 from the Ministry of Health & Family Welfare*
3. *Message dated 29 Oct 2012 from the Home Minister*
4. *Message dated 15.09.2014 from the Ministry of Health & Family Welfare*
5. *Letter dated October 07, 2013 from the Ministry of External Affairs to Unison Medicare & Research Centre*
6. *Letter dated 27.08.2014 from the Ministry of Home Affairs to ASI*
7. *Letter dated 01.09.2015 from the Ministry of Home Affairs to ASI*
8. *Letter dated October 20, 2015 from the Ministry of External Affairs to Unison Medicare & Research Centre*
9. *Letter dated 29.10.2015 from ICMR to Government of Maharashtra*
10. *Letter dated 17.06.2016 from the Ministry of Home Affairs to ASI*
11. *Letter dated 23.09.2016 from Maharashtra Medical Council to ASI*
12. *Letter dated 2nd June, 2017 from NACO to All SACS*
13. *Letter dated 4th October, 2018 from NACO to All SACS*
14. *E-mail dated 21.02.2022 from the Ministry of Health & Family Welfare*
15. *Letter dated 10th March, 2022 from NACO to All SACS*
16. *Letter dated March 10th, 2022 from ASI to Telangana State Medical Council*

28. The purpose of referring the programme details and the messages received by various dignitaries is to appreciate the fact that genuine activities of imparting the education is being carried out by these trusts consistently for past many years. It is only for the reason that one of the Pharmaceutical Company has been searched, based on which the impugned proceedings have been carried out but at no point of time it has been proved that funds

received by the assessee(s) trusts have been specifically given to the doctors by way of freebies. What actually is the activity is that for the purpose of imparting education programmes are devised and conferences are organised. Eminent speakers from across the globe/country are invited to give the deliberations and various research activities are also undertaken. Such platform of research activities provided by the conferences/seminars give rise to fostering critical thinking, enhancing learning, promoting innovation, and contributing to societal advancement by providing solutions to problems and improving lives and for carrying out this expenditure has to be incurred for booking the hotels, food, travel expenses and also the expenses relating to staff who are engaged in organizing such activity. Even in the judgment referred by the Ld. PCIT in the case of *M/s. Apex Laboratories Pvt. Ltd. vs. DCIT (supra)* the same is focussed only of giving freebies by the Pharma companies claiming it as expenditure u/s 37 of the Act and the doctors who receive the freebies. Before us, the case is not of the Pharmaceutical Company or the doctors who have got the alleged benefit and the Revenue authorities assessing such pharmaceutical companies/doctors can decide the cases as per the provisions of the Act and the settled judicial precedents. But the assessee(s) trusts in the instant case are Professional Association of Persons which have been formed to facilitate for imparting of education to the doctors and for providing CPD hours and there is no evidence on record to demonstrate that any funds have been retained by the assessee(s) trusts for its own use. Whatever funds they have received are through banking channels from the Pharmaceutical Companies or the payments have been made directly to the bank of vendors by the Pharmaceutical Company for the expenditure incurred by the assessee(s) trusts.

29. One of the allegation made by the ld. PCIT is that there is violation of Professional Conduct, Etiquette and Ethics Regulations, 2002 issued by the Indian Medical Council. We take note of para 6.8 of the regulations which were amended upto 0.01.2016 and the same reads as under :

> *"The Clause No. 6.8, as under, is included in terms of Notification published on 14.12.2009 in Gazette of India.*
>
> *"6.8 Code of conduct for doctors and professional association of doctors in their relationship with pharmaceutical and allied health sector industry.*
>
> *6.8.1 In dealing with Pharmaceutical and allied health sector industry, a medical practitioner shall follow and adhere to the stipulations given below:-*
>
> > *a) Gifts: A medical practitioner shall not receive any gift from any pharmaceutical or allied health care industry and their sales people or representatives.*
> >
> > *b) Travel facilities: A medical practitioner shall not accept any travel facility inside the country or outside, including rail, air, ship, cruise tickets, paid vacations etc. from any pharmaceutical or allied healthcare industry or their representatives for self and family members for vacation or for attending conferences, seminars, workshops, CME programme etc as a delegate.*
> >
> > *c) Hospitality: A medical practitioner shall not accept individually any hospitality like hotel accommodation for self and family members under any pretext.*
> >
> > *d) Cash or monetary grants: A medical practitioner shall not receive any cash or monetary grants from any pharmaceutical and allied healthcare industry for individual purpose in individual capacity under any pretext. Funding for medical research, study etc. can only be received through approved institutions by modalities laid down by law / rules / guidelines adopted by such approved institutions, in a transparent manner. It shall always be fully disclosed.*
> >
> > *e) Medical Research: A medical practitioner may carry out, participate in, work in research projects funded by pharmaceutical and allied healthcare industries. A medical practitioner is obliged to know that the fulfillment of the following items (1) to (vii) will be an imperative for undertaking any research assignment / project funded by industry for being proper and ethical. Thus, in accepting such a position a medical practitioner shall:-*

(i) Ensure that the particular research proposal(s) has the due permission from the competent concerned authorities.

(ii) Ensure that such a research project(s) has the clearance of national/ state /institutional ethics committees/bodies.

(iii) Ensure that it fulfils all the legal requirements prescribed for medical research.

(iv) Ensure that the source and amount of funding is publicly disclosed at the beginning itself.

(v) Ensure that proper care and facilities are provided to human volunteers, if they are necessary for the research project(s).

(vi) Ensure that undue animal experimentations are not done and when these are necessary they are done in a scientific and a humane way.

(vii) Ensure that while accepting such an assignment a medical practitioner shall have the freedom to publish the results of the research in the greater interest of the society by inserting such a clause in the MoU or any other document/agreement for any such assignment.

f) Maintaining Professional Autonomy: In dealing with pharmaceutical and allied healthcare industry a medical practitioner shall always ensure that there shall never be any compromise either with his/her own professional autonomy and/or with the autonomy and freedom of the medical institution.

g) Affiliation: A medical practitioner may work for pharmaceutical and allied healthcare industries in advisory capacities, as consultants, as researchers, as treating doctors or in any other professional capacity. In doing so, a medical practitioner shall always:

(i) Ensure that his professional integrity and freedom are maintained.
(ii) Ensure that patients interest are not compromised in any way.

(iii) Ensure that such affiliations are within the law.

(iv) Ensure that such affiliations/employments are fully transparent and disclosed.

h) Endorsement: A medical practitioner shall not endorse any drug or product of the industry publically. Any study conducted on the efficacy or otherwise of such products shall be presented to and/or through appropriate scientific bodies or published in appropriate scientific journals in a proper way".

> *The title of Section 6.8 shall be further amended by deleting the words "and professional association of doctors" in terms of Notification published on 01.02.2016 in Gazette of India as under:-*
>
> *"6.8 Code of conduct for doctors in their relationship with pharmaceutical and allied health sector industry"*
>
> *The Section 6.8.1(b) shall be substituted in terms of Notification published on 01.02.2016 in Gazette of India, as under:-*

30. From perusal of the above clause of Indian Medical Council, we notice that vide Notification published on 01.12.2016 the words "*Professional Association of doctors*" has been deleted from clause 6.8. Prior to this amendment, code of conduct was applicable for doctors and professional association of doctors but then vide Notification dated 01.12.2016 the words "*Professional Association of doctors*" has been removed which means that assessee(s) trusts which are basically *"Professional Association of doctors"* are no more covered in the code of conduct regulations issued by Indian Medical Council. Further, the alleged allegation of providing freebies to the doctors and the funds received from Pharmaceutical Companies are for the period subsequent to the Notification dated 01.12.2016.

31. From the discussion made hereinabove, we find that the assessee(s) trusts are genuinely and consistently carrying on the work for the charitable objects for which they have been granted registration u/s.12A(old regime)/12AA/12AB of the Act and the funds they have received from the pharmaceutical companies have been applied for the objects of the trusts. Further, it has been consistently held that denial of exemptions can only be to the extent of violation made by the assessee(s) trusts. Hon'ble Bombay High Court in the case of *Audyogik Shikshan Mandal (supra)* has held that exemption u/s.11 ought to be denied only to

the extent of violative portion. Further, since the assessee(s) trusts are genuinely carrying out the charitable activities, registration granted u/s.12A/12AA/12AB of the Act cannot be cancelled. However, the AOs while carrying out the assessment proceedings can decide on the merits of the case. Same analogy will be applicable on the pharmaceutical companies who have given the funds to the assessee societies and the doctors who have participated in the events organized by the assessee trusts and as discussed earlier, the assessment proceedings, if any, carried out in case of such other companies/doctors, the AOs are bound to decide in accordance with law. However, presently we are concerned with the assessee(s) trusts which are neither pharma companies nor doctors but are registered charitable associations formed by the doctors and the medical practitioners duly approved by the Maharashtra Medical Council and carrying out the genuine activities as per the guidelines made by Indian Medical Council and we fail to find any violation committed on their part so far as the facts of the case dealt with by ld. PCIT are concerned. Even in the judgment of Hon'ble Apex Court in the case of *M/s. Apex Laboratories Pvt. Ltd. vs. DCIT (supra)* reference was made for the claim of expenditure u./s.37(1) of the Act by pharma companies and the freebies received by the doctors but there is no reference to any professional association of doctors nor there is any issue of claim of expenditure u/s.37(1) for the purpose of business in the instant case. Before us, it only a professional association of persons who have formed the trusts duly approved by Maharashtra Medical Council and duly registered u/s.12A/12AA/12AB and working for the charitable objects and advancement of education and therefore ld.PCIT erred in applying the ratio laid down by the Hon'ble Apex Court in the

case of *M/s. Apex Laboratories Pvt. Ltd. vs. DCIT (supra)* on the facts of the instant case alleging the assessee(s) trust of committing the *'specified violation'*. In view the above, we are of the considered view that on merits of the case, assessee(s) trusts deserve to succeed and accordingly finding of ld.PCIT cancelling the registration of the assessee(s) trusts for the alleged violation provided in section 12AB(4) of the Act is hereby reversed and the registration granted u/s.12A/12AA/12AB of the Act are reinstated and will remain in force. Grounds of appeal No.1, 2, 3 and 4 are allowed.

32. Since the facts and circumstances for the other appeals namely MOGS, AOGS and Aids Society of India are also same, the finding given by us on merits in the case of POGS will hold good *mutatis mutandis* for these assessee(s) trusts as well. Finding of ld. PCIT in respect of MOGS, AOGS and Aids Society of India is reversed and the registration granted u/s.12A/12AA/12AB of the Act are hereby reinstated and will remain in force. Common grounds of appeal raised on merits in the case of assessee's MOGS, AOGS and ASOI are allowed as per terms indicated above.

33. To sum up, ITA No. 518/PUN/2013, 549/PUN/2023 and 417/PUN/2023 are allowed whereas ITA No.417/PUN/2023 is partly allowed in the terms indicated above.

Order pronounced on this 26th day of March, 2025.

Sd/-	Sd/-
(VINAY BHAMORE)	**(MANISH BORAD)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 26th March, 2025.
Satish / GCVSR

ITA No.518, 522, 549 and 417/PUN/2023
Poona Obstetrics and
Gynaecological Society and 3 others

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**B**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune