

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'B', LUCKNOW**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.35/Lkw/2021

Shri Ram Murti Anchal Memorial Educational Society, 81, Jhanda Kalan, Tarin Bahadurganj, Shahjahanpur. PAN:AADTS5691N (Appellant)	Vs.	CIT (Exemptions), Lucknow. (Respondent)
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Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Smt. Sheela Chopra, CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) This appeal has been filed by the assessee against order dated 21/01/2021 of learned Commissioner of Income Tax (Exemptions), Lucknow [learned "CIT(E)" for short] whereby the learned CIT(E) cancelled the assessee's registration under section 12AA of the Income Tax Act, 1961 ("IT Act" for short). Grounds of appeal are as under:

- "1. Because the learned C.I.T (Exemption) Lucknow erred in invoking the provision of Section 12AA(3) and cancelling the Registration Granted under section 12AA on the perusal of JCIT(Exemption) Lucknow, without considering the submission filed, the order inchoate & bad in eyes of Law.*

2. *Because the Learned CIT (Exemption) Lucknow erred in passing a Single Order for the three AY 2010-11, 2011-12, 2012-13, when all the three years are distinct and separate, that the assessee has filed appeal before CIT (Appeals) Bareilly, for which part hearing was done and each appeal was submitted separately.*
3. *Because the learned C.I.T (Exemption) Lucknow erred that Orders for three years Order passed u/s 143(3) / 147 Dated 30.03.2016*

AY 2010-11	29,64,780/-
AY 2011-12	16,53,625/-
AY 2012-13	16,18,916/-

passed by ITO (Exemption) Bareilly (Sahtosh Kr Pandey) has not been taken into consideration and no Remark is passed in her Order. The addition is baseless and bad in eyes of Law, treating the Educational Society as AOP by Assessing Officer.
4. *Because the learned C.I.T (Exemption) Lucknow has mentioned in her Order on p 3 Para 5 that no Proper Adjournment was sought. Whereas due to clerical mistake the PDF file of previous Application was attached in email for seeking adjournment as against the Adjournment Application made for 08.12.2020. Where Mr Alok Anchal had a Surgery and was unable to move due to medical directions.*
5. *Because the learned C.I.T (Exemption) Lucknow erred in law in not making any fresh ground of investigation before compiling the Order and cancelling the Certificate given to Trust on Recommendation of JCIT(Exemption) only and denying the submission made in totality.*
6. *Because the assessment order on facts and law was not legally sustainable."*

(A.1) The learned CIT(E) cancelled registration earlier granted to the assessee u/s 12AA of the IT Act, after making following comments in the impugned order dated 21/01/2021:

"The Trust M/s Shri Ram Murti Anchal Memorial Educational Society, 81, Jhanda Kalan, Shahjahanpur has been granted registration u/s 12A of the Income Tax Act vide order dated 22-02-2001 by Ld. Commissioner of Income Tax, Bareilly entered at Sl. No. 115/2000/2001 w.e.f. 01-07-1996. The Society is engaged in imparting education through a school namely Don & Dona convent school Shahjahanpur.

The JCIT(E), Lucknow vide letter F.No. Jt. CIT(E)/12AA / LKO/2016-17 dated 27-06-2016 submitted a proposal for cancellation of registration u/s. 12AA of the Income Tax on the following reasons mentioned in brief:

- 1. The assessee society is not filing its return.*
- 2. That the demand of Rs. 19,92,860/- has been of during the course of the assessment proceedings.*
- 3. That the bank account was opened in the name of the member of the society.*
- 4. That the return of income filed for assessment years are incomplete and do not properly state about the section under which the exemption is claimed i.e. u/s. 11 or u/s 10(23C)(ad) of the Income Tax Act, 1961.*

On the basis of the recommendation of the JCIT(E). Lucknow a show cause notice dated 08-08-2016 was issued stating that :

- 1. It has come to notice of this office that though the society is registered u/s 12AA of the income Tax Act, but the society is not regularly filing its return of income and the return of income for the AY 2010-11, 2011-12 and 2012-13 were filed by the society in response to notice u/s 148 of the IT. Act. These returns are incomplete and do not properly state about the section under which the exemption is claimed i.e. whether u/s 11 or u/s 10(23C)(mad) of the IT. Act*
- 2. The bank account of the society were opened in the name of Shri Alok Anchal and others the member of the society and further the funds were transferred in it from the society / school account in violation to the provisions of the section 13 of the IT. Act, 1961. Thus, there is clear-cut violation of the charitable objects of the society.*

3. *The Income Tax Officer (Exemptions) Bareilly and the Joint Commissioner of Income Tax (Exemptions), Lucknow on the basis of details submitted during the course of assessment proceedings for the A.Y. 2010-11, 2011-12 and 2012-13 have recommended for cancellation of registration u/s 12AA of the IT Act granted by the Commissioner of Income Tax, Bareilly on 22-02-2001.*

The assessee was requested to furnish its reply on date 01/09/2016 at 11:00 AM

On 30-08-2016 Shri Sanjay Saxena CA/AR of the assessee society appeared and sought adjournment for 13-09-2016 On 14-09-2016 Shri Sanjay Saxena, CA/AR of the applicant society again sought the adjournment for 13-10-2016. However, nobody attended on the given date nor any request seeking adjournment was filed. On 27-10-2016, the assessee was accorded another opportunity fixing the date of compliance on 16-11-2016. In response, the applicant vide letter dated nil submitted as under:

1. *The day to day operations in the bank accounts in the name of Sri Ram Murti Anchal Memorial Society had been prohibited by the department by invoking provisions under section 226(3) of I.T. Act, 1961 and to continue the affairs of the school, the bank accounts with Vijaya Bank (Account No. 714901011000426), Axis Bank (Account No. 911000020970297) & (91001003453476) opened in the name of Alok Anchal, Manager. These account were operated during A. Y. 2010-11, 2011-12 & 2012-13.*
2. *The entire receipts from above mentioned account school/society and they were duly recorded in the books of school/ society. The assessment of A.Y. 2010-11, 2011-12 & 2012-13 had been completed under section 143(3) of the Income Tax Act, 1961 wherein no adverse was found by the A.O. This fact was also specifically informed to the A.O. at the time of assessment of the trust.*
3. *The society is not carrying out any activity which are not as per bye laws of society. The copy of bye laws of society are enclosed.*

4. *The amount advanced to manager of trust is only due to reason explain in Para 1."*

The society was accorded another opportunity of being heard due of this of incumbent office letter vide to the change ITBA/COM/F/17/2020-21/1028739015(1) dated 25-11-2020 fixing the date of hearing on 08-12-2020. In response, no proper adjournment was sought.

Looking at the facts and circumstances of the case, it is noticed that the assessee itself submitted that the bank account of the society was attached by the Income Tax Department so they opened another bank account and funds have been shifted to another account which is in the name of the member of the society, Shri Alok Anchal. This clearly proves that the society willfully violated the provisions of IT Act by doing such act."

(A.2) In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT" for short), following documents were filed from the side of the appellant assessee:

- (I) Paper book of case laws, containing copies of the following decisions:

S.No.	Particulars
1.	M/s. Shine Educational and Social Welfare Trust, Aadhavan Arts and Science College Campur vs. CIT-I, ITAT Chennai, ITA No. 2778/Mds/2014 Order dated 27.02.2015
2.	CIT(E) vs. Shri Sai Darbar Charitable Trust (Dharamsala) 395 ITR 576 (PH)
3.	Bhartiya Kishan Sangh Sewa Niketan vs. CIT(E) ITA No. 6721/Del/2015, Order dt. 25.08.2017
4.	Sahid Munshi Ram Memorial Education Society vs CIT, 59 ITR (Tribunal) 40 Delhi
5.	Shri Anjaneya Medical Trust V/S CIT 382 ITR 399 (Kerala)
6.	Institute Management Committee of industries Training Institute V/S CIT, 393 ITR 161
7.	Kalinga Institute of industrial Technology vs. CIT, Orissa High Court, Order dated 01.10.2010.

- (II) Amended Form No. 31 along with certified copy of order dated 15/11/2016 of learned CIT(E), Lucknow in the case of Sri Ram Murti Anchal Memorial Educational Trust.
- (III) Paper book containing following particulars:
- (i) Certificate of registration u/s 12A(a) dated 22/02/2001 granting registration w.e.f. 01/07/1996
 - (ii) Certificate of renewal of society as issued by Registrar of Societies dated 24/03/2011
 - (iii) Memorandum of Society
 - (iv) Copy of assessment order for assessment year 2010-11, 2011-12 and 2012-13.
 - (v) Copy of audited accounts with report for assessment year 2010-11, 2011-12 and 2012-13.

(A.2.1) Earlier in the case of Sri Ram Murti Anchal Memorial Educational Trust ("SRMAMET" for short), the learned CIT(E) had passed a separate order dated 15/11/2016 rejecting the application of SRMAMET for registration under section 12A of the IT Act. SRMAMET, though worded and sounding similar, is different from the assessee "Shri Ram Murti Anchal Memorial Educational Society" ('SRMAMES' for short). The relevant portion of the aforesaid order dated 15/11/2016 is reproduced below:

"1. The above named society has filed an application for registration u/s 12A(a) of the Income Tax Act, 1961 on 25.05.2016 with the Commissioner of Income Tax (Exemptions), Lucknow.

2. Subsequently, the applicant company was accorded an opportunity of being heard vide this office letter F.No. CIT(Exemp.)/Lko/12A/2016-17/7049 dated 21.10.2016 sent to the applicant on address provided by him in Form No. 10A via Speed Post (Bearing no. EU765743182IN), calling for specific queries regarding its application for registration u/s 12A for compliance on 15.11.2016. On that date i.e. 15.11.2016, Shri Alok Anchal, Chairman of the applicant trust appeared and filed a letter. The applicant could not produce any books of accounts or vouchers or any evidence of charity on its part except projecting fake and bogus recitals of charity. It is also

important to note that school of Shri Ram Murti Anchal Memorial Educational Society has been transferred to the applicant trust with a view to avoid the tax liability which was determined on the said society vide a demand of Rs.19,92,860/- raised during the course of assessment proceedings u/s 144 of the Income Tax Act, 1961 for the A.Y. 2009-10 by the Dy. CIT Circle-1, Bareilly and subsequently the accounts of the society were attached u/s 226(3) of the income Tax Act, 1961 for the recovery of the said demands and demands of earlier years as evident from the report of the Income Tax Officer (Exemption), Bareilly vide F.No. ITO-[Exemp.]/BLY/Regd. u/s 12A/2016-17/227.

3. On perusal of the Receipts and Payments Accounts for the F.Y. 2015-16, it is found that the applicant has not even initiated any act of charity as none of the debit heads correspond to any act of charity for the F.Y. 2015-16. It is important to note here that a report of the Income Tax Officer (Exemption), Bareilly vide F.No. ITO-[Exemp.]/BLY/Regd. u/s 12A/2016-17/227 forwarded by the Addl. CIT(Exemption), Lucknow through F. No. Addl CIT(Ex.)/Lko/2016-17 1961 in the case of Shri Ram Murti Anchal Memorial Educational Society (Don & Dona Convent School) Shahjahanpur dated 31.05.2016 regarding cancellation of the registration u/s 12AA of the income Tax Act, questions the very formation of the said applicant trust. As per the report, a demand of Rs.13,92,680/- has been rested during the course of assessment proceedings u/s 144 of the Income Tax Act, 1961 for the A.Y. 2009-10 by the Dy. CIT Circle-1, Bareilly and the accounts of the society named Shri Ram Murti Anchal Memorial Educational Society (Don & Dona Convent School) Shahjahanpur opened in the name of members of the management committee comprising Mr. Alok Anchal and others for the utilisation of the society's funds which is admitted by them in the affidavit dated 13.03.2014 sworn in before the ITO Ward-2, Shahjahanpur during the course of assessment proceedings in the personal case of Mr. Alok Anchal, Member of society. From the above facts, it is quite clear that the funds of the aforementioned society were channelized directly/indirectly for the benefit of the members of the management committee and thus the applicant society clearly stands in direct violation of the Section 13(1)(c) of the Income Tax Act, 1961. It is worth noting here that the bank accounts in the name of Sri Ram Murti Anchal Memorial Society had been attached by the Income Tax Department by invoking provisions u/s 226(3) of the Income Tax Act, 1961 and henceforth the society not having left with any option decided against paying the demand raised and complying by the law

instead an entirely new institution was created by way of a trust which was formed by the same management committee as that of the earlier society and the said School i.e. the Don & Dona Convent School was transferred from the society to the newly created trust i.e. applicant itself Shri Ram Murti Anchal Memorial Educational Trust. While considering the application of said applicant trust for registration u/s 12AA of the Income Tax Act, 1961, it is important to visualize the basis for the formation of the said applicant trust. Usually charitable organisations that intend to work on the lines of charity and provide the benefits of their initiatives to the public at large is normally founded on the basis of certain concrete principles that have the element of charity enshrined in them to the core. However in the present instance, the applicant trust has been carved out of a society that has not only channelized the funds intended for public benefit towards serving the personal motives of the society members but has also failed to comply by the law of the land by not adhering and complying to the notice of demand of Rs.19,92,860/- that was generated during the course of assessment proceeding u/s 144 of the Income Tax Act, 1961 for the A.Y. 2009-10 by the Dy. CIT. Circle-1, Bareilly for Shri Ram Murti Anchal Memorial Educational Society, instead it has grossly digressed from the fundamentals of charity and has indecorously converted its assets so as to form a new trust by the name Shri Ram Murti Anchal Memorial Educational Trust and is trying to fraudulently secure benefits under the garb of the same. It is true that while considering an application for the said registration the object and genuineness of the activities of the applicant need to be looked at, however in the instant case the said applicant trust and its application for registration is nothing but a mere subterfuge by which a set of committee members constituting a distinguished set of individuals are trying to evade tax liability and are transferring assets with a view to escape the law of the land and in the process have failed to pay the tax that could have engineered the infrastructure our country for the betterment of all. In light of the above facts not only the object and the activities of the applicant trust but the very basis of formation of the said applicant trust is clouded by malafide intentions. The objects and the activities of the trust are ingenuine as the primary motive of formation of the said applicant trust was not charity but a carefully planned move to bypass law and evade tax liabilities. The above arguments render the application deficient and this deficiency is not curable. This is fatal to the claim of the applicant.

4. *In the case of CIT vs National Institute of Aeronautical Engineering Education Society 2009, 181 Taxman 205 (Uttarakhand)*

it was held that Clause (a) of sub-section (1) of section 12AA empowers the CIT to call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust or institution and may also make such inquiries, as he may deem necessary in this behalf. Said provision in section 12AA makes it clear that CIT is not supposed to allow registration with blind eyes. On perusal of the Income and Expenditure Account of the previous years it is found that the sole objective of the company is to make huge profits by undertaking the business of medical services in a totally profit oriented manner. 'Charity' is the soul of the expression 'charitable purpose'. Mere trade or commerce in the name of charity cannot be said to be a charitable purpose.

7. The Hon'ble ITAT Lucknow bench in order ITA No. 809/LKW/2014 dated 26.02.2015 has held that "We have considered the submissions of Learned D, R. of the Revenue, perused the material available on record and gone through the impugned orders of learned CIT-II, Kanpur. It is noted by the learned CIT in the order passed by him for rejecting the claim for registration u/s 12AA that the material required for formation of the satisfaction mandated by the Act is unavailable and therefore, it is held by learned CIT that the assessee has failed to fulfill the conditions for grant of registration u/s 12A of the Act. Similarly, in his order for rejecting the claim of the assessee for registration u/s 80G, he has given a finding that the assessee has failed to fulfill the conditions for approval u/s 80G of the Act. Hence, we do not find any justification to interfere in these orders of learned CIT.

8. The law requires a conjunctive test whereby objects of the applicant society have to be charitable and genuineness of charitable activities should be established for registration of application u/s 12A. Mere recital of objects or activities without cogent or corroborative evidence is not sufficient by themselves to enable a registering authority to arrive at the satisfaction mandated by law. In the instant case, the documents on record do not suffice to establish the genuineness of activities. As such the findings of fact regarding its charitable activities or rather the lack thereof arrived at on the basis of the evidence filed and arguments addressed stand uncontroverted. This is fatal to the claim of the applicant.

9. It is clear, that applicant has failed to provide sufficient material to corroborate the charitable nature of the objects and genuineness of

the activities. Despite being provided timely opportunity the applicant has not been able to substantiate its claim.

10. In view of the facts and above decisions, I am unable to accept the applicant's claim in absence of sufficient material required for formation of satisfaction. Therefore, I do not find the case fit for grant of registration u/s 12A(1) of the Income-tax Act, 1961.

11. Accordingly, the registration sought by the applicant u/s 12A(1) of the Income-tax Act, 1961 is hereby rejected."

(B) Separately assessment orders were passed by the Assessing Officer in the case of the assessee for assessment years 2010-11, 2011-12 and 2012-13 each dated 30/03/2016, taking the view that the assessee was neither entitled for exemption u/s 10(23C)(iiiad) nor u/s 11 of the IT Act. The relevant portions of the aforesaid assessment orders are reproduced below for ease of reference:

ASSESSMENT YEAR 2010-11

In the instant case re-assessment proceedings was initiated u/s 147 of the I.T. Act, 1961 by the then ITO-II, Shahjahanpur after recording reasons as under :

"It has been gathered from records and report of ITI of this office Shri Mukesh Kumar that the assessee society has not filed return of income for the year under consideration A.Y. 2010-11. The filing of income is mandatory according to section 139 of I.T. Act, in such cases of assessee society which enjoys income from imparting education through school (namely Don & Dona Convent at Mohalla Jhanda Kalah, Shahjahanpur) and claimed exemption of income under section 10(23C).

The assessee society, as evident from records, has filed return of income upto F.Y. 2007C8 relevant to A.Y. 2008-09 claiming exemption under section 11(4) and 10(23C)(vi) of I.T. Act. The assessee failed to establish the genuineness of exemption claimed under section 10(23C)(iiiad) of I.T. Act during scrutiny assessment proceedings for the A.Y. 2007-08 and the AO accordingly disallowed the claim of exemption. The

findings of AO are no still uphold by Hon'ble ITAT Bench B, Lucknow while sending back the matter to CIT(A), Bareilly for fresh adjudication vide order no. ITA/426/LKW/2013 dated 07.02.2014.

The inspector of income tax Shri Mukesh Kumar has mentioned in his reported dated 28.03.2014 that during field enquiry of assessee society and school, total income of the assessee school is approx 54.25 lakh during the year.

In view of the aforesaid facts and report and applicability of section 139/10(23C)(iiiad), I have reason to believe and satisfaction to record that income of Rs. 54.25 lakh of assessee society for the A.Y. 2010-11 has escaped from assessment as stipulated under section 147 of Income Tax Act, 1961.

Notice u/s 148 of the I.T, Act, 1961, was issued on 30.03.2014 through registered post by the then Income Tax officer Shahjahanpur. Further Notice u/s 142(1) was issued and served upon the assessee by the ITO-1(5), Shahjahanpur. Due to change of incumbent on accounts of change of jurisdiction, notices u/s 142(1) were issued on 17.11.2015, 22.12.2015, 11.01.2016 and 29.01.2016 fixing the date of compliance on 26.11.2015, 05.01.2016, 21.01.2016 and 19.02.2016 respectively which were returned back with postal remark "R". The notice u/s 142(1) of the I.T. Act, 1961 dated 29.01.2016 was also served through ITI of this office on 30.01.2016. In compliance of this notice, assessee filed its return of income on 17.02.2016 declaring total income at Nil. Accordingly, notice u/s 143(2) was issued on 18.02.2016 fixing the date of compliance on 29.02.2016. In response to the notice Shri Sanjay Saxena, CA, attended from time to time and submitted written submission along with necessary details/documents. Books of accounts along with bills/ vouchers etc. were produced and test checked.

The society is running an educational institution in the name & style "Don & Dona Convent.

2. The society had not filed any income tax return u/s 139(1), for the year under reference.

3. In the return filed, in response to notice u/s 148 it has been found that the assessee neither claimed exemption u/s 10(23C)(iiiad), nor u/s 11 of the income tax act, 1961 in ITR-7 for A.Y. 2010-11. On

perusal of the reply filed by the assessee it is seen that exemption u/s 10(23C)(iiiad), of the income tax act, 1961 is sought. However the assessee society is also registered u/s 12A of the Income Tax Act,1961 vide order dated 22.02.2001 effective from 01.07.1996. Also in the computation of income submitted, the society has claimed exemption u/s 11 of the income tax act, 1961, the assessee society has also obtained audit report in form 10B dated 30.09.2010 in respect of financial year ending on 31.03.2010 from M/S S.K. Saxena & company which is submitted to this office on 14.03.2016.

4. This office has received a letter F.No. AEFPA3638F/ITO1(4)/SPN/2015-16/1115 dated 11.03.2016 from ITO Shahjahanpur along with copy of the affidavit dated 08.03.2016 of Mr. Alok Anchal submitted by him before the ITO-1(4), Shahjahanpur. In the affidavit the deponent has shown in that "he had opened bank account in Vijya Bank bearing account no.714901011000426 for society's funds in his personal name as the society's bank account had been seized by the income tax department for recovery of demand for earlier year'. Thus the opening bank account of the society in the personal name of the trustees is clear violation of the provision of the section 13(5) of the income tax act, 1961. Non filing of return suo-moto also is contravention of the provision of section 12AA and section 13 of the income tax act, 1961.

5. The society has compiled balance sheet of the society and school and also consolidated balance sheet. Whereas under cover letter dated 18.02.2016 the assessee has submitted balance sheet as on 31.03.2010 which is signed by Mr. P.D.S. Shahni on 30.09.2013. However, under cover of letter dated 14.03.2016 the assessee has submitted balance sheet signed by Shri S.K. Saxena on 30.09.2010 for the year ending 31.03.2010 (A.Y. 2010-11). Thus, the assessee has got two balance sheets signed two different dates. The contents and other things are, however same. The Ld. Council of the assessee failed to submit the reason for signing of two balance sheet on two different dates.

6. A perusal of the balance sheet submitted under cover of letter dated 14.03.2016 shows that the assessee had a cash balance of Rs.81,01,965/-. Where has the gross receipt during the year amounted the Rs.76,31,150/- only. This shows that the affairs of the society are not being managed in a prudent manner as no person of sound mind would carry this much of cash and also not depositing any Penny in the bank account. It also cannot be ruled out about

misutilization of society fund by the managing persons by showing such large cash balances.

7. The aforesaid act, of the assessee clearly established that it is not compliant with the Law.

8. As per the audited consolidated balance sheet the gross receipt of the assessee society amounted Rs.99,94,915/- and the society has applied an amount of Rs.70,30,135/- for the charitable purposes during the year as per the audit report submitted on 14.03.2016. The application for charitable purposes thus, works out to 70.34% which is less than the 85% as required under the provision of the under income tax act, 1961. Accordingly the short fall in application of income for charitable purposes is considered as income of the society for the year under reference. It is also seen that out of total expenses of Rs.70,30,135/-, Rs.26,33,097/- is on account of depreciation and Rs. 36,47,000/- on salary of staff, the aggregating Rs.62,80,097/-. In view of there of no disallowance an another expenses is being made.

9. As regard claim of assessee for exemption u/s 10(23C)(iiid) of the income tax act, 1961 as claimed under cover letter dated 18.02.2016, the society is not existing solely for the purposes of education. It has enured benefit to the member of the management committee as they have utilized the funds of the society for their personal benefit which is evident from the affidavit dated 08.03.2016 placed on file and deposed by the Manager of the Society Shri Alok Anchal before the ITO-1(4), Shahjahanpur. Moreover, in any case the provisions of section 10(23C) also require application of income to the extent of 85% of the gross receipts for the educational purposes. From the discussion in para 8 above, the application is at 70.34% of the gross receipts during the year. In the light of this fact and profit motive of the society, the assessee is not entitled for exemption u/s 10(23C) (iiid) of the IT Act.

10. From the aforesaid discussion, it is seen that the assessee society is neither entitled for exemption u/s 10(23C)(iiid) nor u/s 11 of the IT Act 1961."

ASSESSMENT YEAR 2011-12

In the instant case re-assessment proceedings was initiated u/s 147 of the Act, 1961 taken by the then ITO-II, Shahjahanpur after recording reasons as under :

"It has been gathered from records and report of ITO of this office Shri Mukesh Kumar that the assessee society has not filed return of income for the year under consideration A.Y. 2011-12. The filing of income is mandatory according to section 139 of I.T. Act, in such cases of assessee society which enjoys income from imparting education through school (namely Don & Dona Convent at Mohalla Jhanda kalah, Shahjahanpur) and claimed exemption of income under section 10(23C).

The assessee society, as evident from records, has filed return of income up to F.Y. 200708 relevant to A.Y. 2008-09 claiming exemption under section 11(4) and 10/23C (vi) of I.T. Act, The assessee failed to establish the genuineness of exemption claimed under section 10(23C)(iiiad) of I.T. Act during scrutiny assessment proceedings for the A.Y. 2007-08 and the AO accordingly disallowed the claim of exemption. The findings of AC are no still uphold by Hon'ble ITAT Bench B, Lucknow while sending back the matter to CIT(A), Bareilly for fresh adjudication vide order no. ITA/426/LKW/2013 dated 07.02.2014.

The inspector of income tax Shri Mukesh Kumar has mentioned in his reported dated 28.03.2014 that during field enquiry of assessee society and school, total income of the assessee school is approx 54.50 lakh during the year.

In view of the aforesaid facts and report and applicability of section 139/10(23C)(iiiad), I have reason to believe and satisfaction to record that income of Rs. 54.50 lakh of assessee society for the A.Y. 2011-12 has escaped from assessment as stipulated under section 147 of Income Tax Act, 1961."

Notice u/s 148 of the I.T, Act, 1961 was issued post. By the then Income Tax officer Shahjahanpur, Notices u/s 142(1) was issued which were served upon the assessee. Due to change of incumbent

on accounts of change of jurisdiction, notice u/s 142(1) were issued on 17.11.2015, 22.12.2015, fixing the date of compliance on 26.11.2015, and 05.01.2016, respectively which were returned back with postal remark "लेने से इंकार". The notice u/s 142(1) of the I.T. Act, 1961 dated 29.01.2016 was also served through ITI of this office on 30.01.2016. In compliance of this notice, assessee filed its return of income on 17.02.2016 declaring total income at Nil. Accordingly, notice u/s 143(2) was issued on 18.02.2016 fixing the date of compliance on 29.02.2016. In response to the notice Shri Sanjay Saxena, CA, attended from time to time and submit written submission along with necessary details/documents. Books of accounts along with bills/ vouchers etc. were produced and test checked.

The society is running an educational institution in the name & style "Don & Dona Convent."

2. The society had not filed any income tax return u/s 139(1), for the year under reference.

3. In the return filed, in response to notice u/s 148, it has been found that the assessee neither claimed exemption u/s 10(23C)(iiiad), nor u/s 11 of the income tax act, 1961 in ITR-7 for A.Y. 2011-12. On perusal of the reply filed by the assessee it is seen that exemption u/s 10(23C)(iiiad), of the income tax act, 1961 is sought. However the assessee society is also registered u/s 12A of the Income Tax Act, 1961 vide order dated 22.02.2001 effective from 01.07.1996. As the computation of income submitted, the society has claimed exemption u/s 11 of the income tax act, 1961, the assessee society has also obtained audit report in form 108 dated 30.09.2011 in respect of financial year ending on 31.03.2011 from M/S S.K. Saxena & company which is submitted to this office on 14.03.2016.

4. Mr. Alok Anchal had in a affidavit dated 13.03.2014 before Ld. Income Tax officer Ward - 1(4), Shahjahanpur, has deposed that "he had opened bank account in Vijya Bank bearing account no.714901011000426. for society's funds in his personal name as the society's bank account had been seized by the income tax department for recovery of demand for earlier year'. Thus the opening bank account of the society in the personal name of the trustees is clear violation of the provision of the section 13(5) of the income tax act,

1961. Non filing of return suo-moto also is contravention of the provision of section 12AA and section 13 of the income tax act, 1961.

5. The society has compiled balance sheet of the society and school and also consolidated balance sheet. Whereas under cover letter dated 19.02.2016 the assessee has submitted balance sheet as on 31.03.2011 which is signed by Mr. P.D.S. Shahni on 30.09.2013. However under cover of letter dated 14.03.2016 the assessee has submitted balance sheet signed by Shri S.K. Saxena on 30.09.2011 for the year ending 31.03.2011 (A.Y. 2011-12). Thus the assessee has got two balance sheets signed on two different dates. The contents and other things are, however same. The Ld. Council of the assessee failed to submit the reason for signing of two balance sheet on two different dates.

6. A perusal of the balance sheet submitted under cover of letter dated 14.03.2016 shows that the assessee had a cash balance of Rs.16,52,267.57/-, and advance to Mr. Alok Anchal Rs.1,63,08,933.50/-. Since the assessee had not operated any bank account during the year how the amount has been advanced to him, who is a managing trustee of the society, is not understood. It clearly shows that the transaction have been recorded in the accounts without any basis. This shows that the affairs of the society are not being managed in a prudent manner. It also can not be ruled out about miss utilization of society fund by the managing persons by showing such large advances.

7. The aforesaid act, of the assessee clearly established that it is not compliant with the law.

8. As per the audited consolidated balance sheet the gross receipt of the assessee society amounted Rs. 99,70,602/- and the society has applied an amount of Rs. 83,16,977/- for the charitable purposes during the year as per the audit report submitted on 14.03.2016. The application for charitable purposes thus, works out to 83.41% which is less than the 55% as required under the provision of the under income tax act, 1961. It is also seen that out of total expenses of Rs.83,16,977/-, Rs. 26,76,063/- is on account of depreciation and Rs.46,27,152/- on salary of staff, the aggregating Rs. 73,03,215/-. In view there of no disallowance of other expenses is being made.

9. As regard claim of assessee for exemption u/s 10(23C) (iiia) of the as claimed under cover letter dated 18.02.2016, the society is not

existing solely for the purposes of education but for purpose of profit of the manager of the society as discussed above. It has enured benefit to the member of the management committee as they have utilized the funds of the society for their personal benefit which is evident from the affidavit dated 13.03.2014 placed on file and deposited by the Manager of the Society Shri Alok Anchal before the ITO-1(4), Shahjahanpur. Moreover, in any case the provisions of section 10(23C) also require application of income to the extent of 85% of the gross receipts for the educational purposes. From the discussion in para 8 above, the application is at 83.41 % of the gross receipts during the year. In the light of this fact and profit motive of the society, the assessee is not entitled for exemption u/s 10(23C)(iiiad) of the IT Act.

10. From the aforesaid discussion, it is seen that the assessee society is neither entitled for exemption 10(23C)(iiiad) of the IT Act nor u/s 11 of the IT Act."

ASSESSMENT YEAR :2012-13

In the instant case re-assessment proceedings was initiated u/s 147 of the I.T. Act, 1961 en by the then ITO-II, Shahjahanpur after recording reasons as under :

"It has been gathered from records and report of ITO of this office Shri Mukesh Kumar that the assessee society has not filed return of income for the year under consideration A.Y. 2012-13. The filing of income is mandatory according to section 139 of I.T. Act, in such cases of assessee society which enjoys income from imparting education through school (namely Don & Dona Convent at Mohalla Jhanda Kalah, Shahjahanpur) and claimed exemption of income under section 10(23C).

The assessee society, as evident from records, has filed return of income up to F.Y. 2007-08 relevant to A.Y. 2009-09 claiming exemption under section 11(4) and 10(23C)(vi) of I.T. Act, The assessee failed to establish the genuineness of exemption claimed under section 10(23C)(iiicd) of I.T. Act during scrutiny assessment proceedings for the A.Y. 2007-08 and the AO accordingly disallowed the claim of exemption. The findings of AO are no still uphold by Hon'ble ITAT Bench B,

Lucknow while sending back the matter to CT(A), Bareilly for fresh adjudication vide order no.ITA/426/LKW/2013 dated 07.02.2014.

The inspector of income tax Shri Mukesh Kumar has mentioned in his report dated 28.03.2014 that during field enquiry of assessee society and school, total income of the assessee school is approx 54.60 lakh during the year.

In view of the aforesaid facts and report and applicability of section 139/10(23C)(iiiad), I have reason to believe and satisfaction to record that income of Rs. 54.60 lakh of assessee society for the A.Y. 2012-13 has escaped from assessment as stipulated under section 147 of Income Tax Act, 1961."

Notice u/s 148 of the I.T, Act, 1961 was issued on 30.03.2014 through registered the then Income Tax officer Shahjahanpur, Notices u/s 142(1) dated 12. 05.2014 was issued by the then A.O. which was served upon the assessee. Due to change of incumbent on accounts of change of jurisdiction, notice u/s 142(1) were issued on 17.11.2015, 22.12.2015, fixing the date of compliance on 26.11.2015, 05.01.2016, respectively which were returned back with postal remark "R". The notice u/s 142(1) of the I.T. Act, 1961 dated 29.01.2016 was also served through ITI of this office on 30.01.2016, fixing date of compliance on 19.02.2016. In compliance of this notice, assessee filed its return of income on 17.02.2016 declaring total income at Nil. Accordingly, notice u/s 143(2) was issued on 18.02.2016 fixing the date of compliance on 29.02.2016. In response to the notice Shri Sanjay Saxena, CA, attended from time to time and submit written submission alongwith necessary details / documents. Books of accounts alongwith bills/ vouchers etc. were produced and test checked.

The society is running an educational institution in the name & style "Don & Dona Convent".

2. The society had not filed any income tax return u/s 139(1), for the year under reference.

3. In the return filed, in response to notice u/s 148 it has been found that the assessee neither claimed exemption u/s 10(23C)(iiiad), nor u/s 11 of the income tax act, 1961 in ITR-7 A.Y. 2012-13. On perusal of the reply filed by the assessee it is seen that exemption u/s

10(23C)(iiiad), of the income tax act, 1961 is sought. However the assessee society is also registered u/s 12A of the Income Tax Act, 1961 vide order dated 22.02.2001 effective from 01.07.1996. Also in the computation of income submitted, the society has claimed exemption u/s 11 of the income tax act, 1961, the assessee society has also obtained audit report in form 10B dated 30.09.2012 in respect of financial year ending on 31.03.2012 from M/S S.K. Saxena & company which is submitted to this office on 14.03.2016.

4. Mr. Alok Anchal had in a affidavit dated 13.03.2014 before Ld. Income Tax officer Ward-1(4), Shahjahanpur, has deposed that "he had opened bank account in Vijya Bank bearing account no.714901011000426. for society's funds in his personal name as the society's bank account had been seized by the income tax department for recovery of demand for earlier year'. Thus the opening bank account of the society in the personal name of the trustees is clear violation of the provision of the section 13(5) of the income tax act, 1961. Non filing of return suo-moto also is contravention of the provision of section 12AA and section 13 of the income tax act, 1961.

5. The society has compiled balance sheet of the society and school and also consolidated balance sheet. Where as under cover letter dated 18.02.2016 the assessee has submitted balance sheet as on 31.03.2012 which is signed by Mr. P.D.S. Shahni on 30.09.2013. However under cover of letter dated 14.03.2016 the assessee has submitted balance sheet signed by Shri S.K. Saxena on 30.09.2012 for the year ending 31.03.2012 (A.Y. 2012-13). Thus the assessee has got two balance sheets signed two different dates. The contents and other things are, however same. The Ld. Council of the assessee failed to submit the reason for signing of two balance sheet on two different dates.

6. A perusal of the balance sheet submitted under cover of letter dated 14.03.2016 shows that the assessed had a cash balance of Rs.29,48,387/-, and advance to Mr. Rs. 1,94,69,964/-. The assessee society had given advance to Shri Alok Anchal Rs. 1,63,08,933/- up to 31.03.2011, the balance amount of Rs. 31,61,031/-has been paid further during the year. Since the assessee had not operated any bank account during the year how the amount has been advanced to him, who is a managing trustee of the society, is not under stood. It clearly shows that the transaction have been recorded in the accounts without any basis. This shows that the affairs of the society are not being managed in a prudent manner. It also can not be ruled out

about miss utilization of society fund by the managing persons showing such large advances.

7. The aforesaid act, of the assessee clearly established that it is not compliant with the Law.

8. As per the audited consolidated balance sheet the gross receipt of the assessee society amounted Rs.99,77,656/- and the society has applied an amount of Rs.83,59,140/- for the charitable purposes during the year as per the audit report submitted on 14.03.2016. The application for charitable purposes thus, works out to 83.78 % which is less than the 85% as required under the provision of the under income tax act, 1961. It is also seen that out of total expenses of Rs.83,59,140/-, Rs.24,81,764/- is on account of depreciation and Rs.45,36,768/- on salary of staff, the aggregating Rs. 70,18,532/-. In view there of no disallowance of other expenses is being made.

9. As regard claim of assessee for exemption u/s 10(23C)(iiiad) of the income tax act, 1961 as claimed under cover letter dated 18.02.2016, the society is not existing solely for the purposes of education but for purpose of profit of the manager of the society as discussed above. It has enured benefit to the member of the management committee as they have utilized the funds of the society for their personal benefit which is evident from the affidavit dated 13.03.2014 placed on file and deposed by the Manager of the Society Shri Alok Anchal before the ITO-1(4), Shahjahanpur. Moreover, in any case the provisions of section 10(23C) also require application of income to the extent of 85% of the gross receipts for the educational purposes. From the discussion in para 8 above, the application is at 83.78 % of the gross receipts during the year. In the light of this fact and profit motive of the society, the assessee is not entitled for exemption u/s 10(23C)(iiiad) of the I.T.Act, 1961.

10. From the aforesaid discussion, it is seen that the assessee society is neither entitled for exemption u/s 10(23C)(iiiad) of the I.T. Act nor u/s 11 of the IT Act, 1961."

(B.1) On perusal of the aforesaid assessment orders, it is found that during assessment proceedings for assessment year 2010-11, 2011-12 and assessment year 2012-13; the assessee claimed benefit u/s 10(23C), and

not u/s 11 of IT Act. The Assessing Officer held that the assessee was neither entitled for exemption u/s 10(23C) nor u/s 11 of IT Act.

(C) At the time of hearing before us, learned Counsel for the assessee submitted that the objects of the assessee continued to be charitable and therefore, according to him, there was no justification for cancellation of registration u/s 12AA of the IT Act. He placed reliance on the case laws which have been referred to in foregoing paragraph (A.2.1) of this order. Learned CIT (DR) for Revenue placed reliance on the impugned order of learned CIT(E).

(D) In the present appeal before us, we are not dealing with initial grant of registration u/s 12AA of the IT Act. We are dealing with a situation of cancellation of registration granted earlier u/s 12AA of the IT Act. Relevant provisions regarding cancellation of registration are contained in section 12AA(3) and 12AA(4) of the IT Act read with section 13(1) and section 13(3) of the IT Act; which is reproduced below for the ease of ready reference:

Section-12AA

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

(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that—

- (a) the activities of the trust or the institution are being carried out in a manner that the provisions of [sections 11](#) and [12](#) do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of [section 13](#); or
- (b) the trust or institution has not complied with the requirement of any other law, as referred to in sub-clause (ii) of clause (a) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,

Section-13

13. (1) Nothing contained in [section 11](#) or [section 12](#) shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

- (a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;
- (b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;
- (bb) [***]
- (c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—
 - (i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or
 - (ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3)²²[, such part of income as referred to in sub-clauses (i) and (ii)] :

13(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—

- (a) the author of the trust or the founder of the institution;
- (b) 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;

- (c) where such author, founder or person is a Hindu undivided family, a member of the family;*
- (cc) any trustee of the trust or manager (by whatever name called) of the institution;*
- (d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;*
- (e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.*

(D.1) Some facts that emerge from perusal of aforesaid orders, referred to in foregoing paragraphs (A.1), (A.2.1) and (B) of this order, are as under:

- (i) Demand of Rs.19,42,860/- raised after assessment order u/s 144 of IT Act for assessment year 2009-10 by DCIT, Bareilly and subsequently the accounts were attached u/s 226(3) of IT Act for recovery of said demand and demand of earlier years. Attachment u/s 226(3) of IT Act is still in place as on the date of hearing on 06/07/2023. The financial transactions of the assessee was confirmed by learned Counsel for the assessee at the time of hearing.
- (ii) School, named Don & Dona Convent School ('DDCS for short'), located at Shahjahanpur of Shri Ram Murti Anchal Memorial Educational Society (SRMAMES), the assessee, was transferred to Shri Ram Murti Anchal Memorial Education Society ("SRAMET" for short) and application was made by SRAMET for registration u/s 12AA of IT Act.
- (iii) While rejecting application of SRAMET vide aforesaid order dated 15/11/2016, relevant portion of which is already reproduced in paragraph (A.2.1); learned CIT(E) observed that the applicant could not produce any books of account or vouchers or any evidence of charity on its part, except projecting fake and bogus recital of charity. It was also observed by him that on perusal of receipt and payment accounts for financial year 2015-16, it was found that the applicant had not even initiated any act of charity as none of the debit heads responded to any act of charity for assessment year 2015-16. It was further observed by him that funds of SRMAMES (the appellant assessee in the present appeal before us) were channelized directly/indirectly for the benefit of the members of the management committee which was in direct violation of section 13(1)(c) of IT Act. It was furthermore observed by

him that SRMAMET had been carved out of SRMAMES that had not only channelized the funds intended for public benefit towards serving the personal motives of SRMAMES (the appellant assessee in the present appeal before us) but had also failed to comply by the law of the land by not adhering and complying to the notice of demand of Rs.19,92,860/- that was generated during assessment proceedings for assessment year 2009-10; and that SRMAMES had grossly digressed from the fundamentals of charity and had indecorously converted its assets so as to form a new trust (SRMAMET), trying to fraudulently secure benefits under the garb of the same. Still further it was observed by him that SRMAMET was a subterfuge by which evasion of tax liability was tried and assets were transferred with a view to escape the law of the land. It was implied by learned CIT(E) that SRMAMES (the appellant assessee in the present appeal before us) and SRMAMET had entered into a collusive arrangement, by channelizing funds directly/indirectly for the benefit of the members of the management committee; and by transferring assets of SRMAMES (the appellant assessee in the present appeal before us) such as Don and Dona Convent School, Shahjahanpur; from SRMAMES to SRMAMET; in order to avoid payment of lawful tax determined as a result of assessment in the case of SRMAMES.

- (iv) The assessee did not file return of income for assessment year 2010-11, 2011-12 and 2012-13 on its own. When notices were issued by the Assessing Officer u/s 148 r.w.s. 147 of IT Act; and u/s 142(1) of IT Act.
- (v) (B.2) On perusal of aforesaid assessment orders for assessment year 2010-11, 2011-12 and 2012-13, it is also evident that numerous notices sent by the Assessing Officer through post were refused by the assessee, and were returned back by postal officials to Income Tax Department.

(D.1.1) The case laws on which the learned Counsel for the assessee placed reliance (mentioned in foregoing paragraph (A.2.1) of this order, fail to advance the case of the assessee. The decisions in the cases of Commissioner of Income Tax (Exemptions) vs. Shri Shirdi Sai Darbar Charitable Trust (Dharamshala) 395 ITR 576 (P&H), ITAT Delhi Bench order

in the case of *Bhartiya Kisan Sangh vs. CIT(E)* in I.T.A. No.6721/Del/2015, ITAT Delhi Bench order in the case of *Sahid Munshi Ram Memorial Education Society vs. CIT* [2017] 59 ITR (Trib) 40 (Delhi) and order of ITAT Jaipur Bench in the case of *IMC of ITI Chhabra vs. CIT(E)* in I.T.A. No.816/JP/2015 deal with cases regarding initial grant of registration u/s 12AA of the IT Act and do not provide guidance for a situation in which the registration granted earlier has been cancelled. In the case of *Shree Anjaneya Medical Trust Kozhikode vs. CIT* in I.T.A. No.85/Coch/2012 also, the Cochin Bench of the ITAT was dealing with a situation of initial grant of registration and not cancellation of registration; and in any case the decision was against the assessee and refusal of registration u/s 12AA of the Act was upheld by the ITAT. In the case of *Kalinga Institute of Industrial Technology vs. CIT* (supra) Hon'ble High Court held that power u/s 12AA(3) of the IT Act was exercisable by the CIT only on recording his satisfaction. In that case, notice for cancellation of registration was issued by Income Tax Officer (Technical) and not by the CIT himself, and the Hon'ble High Court quashed the notice issued by the Income Tax Officer (Technical). In the case before us, there is no allegation that the CIT(E) did not exercise the power u/s 12AA(3) herself. In the case of *Shine Educational and Social Welfare Trust vs. CIT* in I.T.A. No.2778/Mds/2014, Chennai Bench of the Income Tax Appellate Tribunal held that non filing of return was not a case for cancellation of registration. The order of Chennai Bench of ITAT is on clearly distinguishable facts, in view of foregoing paragraphs (A.1), (A.2.1), (B), (B.1) and (D.1) of this order. There are many facts in the present case before us, which distinguish the present case before us from the case of *Shine Educational and Social Welfare Trust vs. CIT* (supra), which are adverse to the assessee in the dispute before us. We shall return to these facts later in this order. Moreover, in any case, it was held in the aforesaid decision in the case of *Shine Educational and Social Welfare Trust vs. CIT*

(supra) that cancellation of registration can be exercised u/s 12AA(3) by literal interpretation of law and has impliedly held that widening the scope of section 12AA(3) may be possible if there are case laws to permit such widening of scope.

(D.1.2) As mentioned in foregoing paragraph (D.1.1) of this order, let us return to the (distinguishing) facts which are adverse to the assessee in the present appeal before us. Let us first look at foregoing paragraph (D.1) of this order. It is evident that assessee has not paid up tax dues amounting to Rs.19,42,860/-. Further, to defeat recovery of tax dues through attachment of bank accounts (not just existing ones, but any account that might be opened in future) of the assessee; the assessee has employed a subterfuge of using the bank account of an individual (Mr. Alok Anchal). This collusive arrangement is devised by the assessee and the aforesaid individual; to defeat the lawful process of recovery of tax dues of the assessee. The assessee went a step further. The assessee (SRMAMES) entered into collusive arrangement with aforesaid SRMAMET whereby school by the assessee (aforesaid Don and Dona Convent School, ("DDCS" for short) was transferred to aforesaid SRMAMET; and application for registration u/s 12AA of the IT Act was made by SRMAMET; in order to make SRMAMES lose significance in running of the school; with the larger aim of frustrating lawful recovery of tax dues of the assessee. In aforesaid order dated 15/11/2016 rejecting application of SRMAMET seeking registration [referred to in foregoing paragraph (A.2.1) of this order], it has been stated in paragraph 3 that entirely new institution (SRMAMET) was created by way of a trust which was formed by the same management committee as that of the earlier society (SRMAMES i.e. the assessee) and the said school was transferred from the society to the newly created trust, i.e. SRMAMET. It was further held in paragraph 3 of the aforesaid order

dated 15/11/2016, that SRMAMES (the assessee) has grossly digressed from the fundamentals of charity and has indecorously converted its assets so as to form a new trust by the name SRMAMET; and is trying to secure benefits under the garb of the same. It is also held in the aforesaid order dated 15/11/2016 at paragraph 3 that funds of SRMAMES (the assessee) were channelized directly / indirectly for members of the management committee and thus the society (SRMAMES, the assessee) clearly stands in direct violation of section 13(1)(c) of ITAT. It is also evident that numerous notices issued by the Assessing Officer were refused by the assessee. Firstly, therefore, it is obvious from the foregoing discussion that the appellant assessee before us has not approached ITAT with clean hands. Secondly, from the foregoing, it is also inferred that the activities of the appellant assessee are not genuine within the meaning of section 12AA(3) of IT Act. Thirdly, the assessee applicant is in violation of section 13(1)(c) of IT Act and is consequently hit by section 12AA(4)(a) read with section 13(1)(c)(ii) of IT Act. Fourthly, the assessee has not complied with Income Tax Act (not only by entering into collusive arrangements to evade recovery of tax dues, but also by not filing returns of income u/s 139 of IT Act, as is evident from perusal of impugned order dated 21/01/2021 of learned CIT(E). Therefore, the assessee, on strict and literal interpretation of Income Tax Act, is hit by section 12AA(4)(b) of the IT Act.

(D.2) When the appellant does not have clean hands, it does not deserve liberal consideration of the appellate forum. The appellant only gets the relief on the basis of strict and liberal interpretation of law in the light of facts and circumstances.

(D.2.1) We have already held in foregoing paragraph (D.1.2) of this order that the appellant assessee has not approached ITAT with clean hands.

Moreover, we have already held in foregoing paragraph (D.1.2) that the activities of the assessee are not genuine within the meaning of section 12AA(3) of the IT Act. We have further held that the assessee is hit by section 12AA(4)(a) read with section 13(1)(c)(ii) of IT Act, and by section 12AA(4)(b) of IT Act. In view of the foregoing, we find no merit in grounds 1 and 3 of appeal. As regards ground 2 of appeal, there is no requirement that the learned CIT(E) must pass separate order for separate assessment year. She was not only at liberty to pass a consolidated order for three assessment years, but in the present appeals before us, it was prudent for her to do so as similar/interlinked issues were involved. Therefore, we find no merit in ground 2 of appeal. As regards ground 4 of appeal, it is mentioned within the ground taken, that previous application was attached in the e-mail seeking adjournment. Further, on perusal of impugned order of learned CIT(E), we find that she provided reasonable opportunity to the assessee. Therefore, we find no merit in ground 4 of appeal. As far as ground 5 of appeal is concerned, there is no requirement under law for the learned CIT(E) to make fresh investigation; when materials before here were sufficient for cancellation of registration. Therefore, we find no merit in ground 5 of appeal. In view of the foregoing, grounds 1, 2, 3, 4 and 5 of appeal are dismissed. Ground 6 of appeal is general in nature, and does not require specific adjudication. It is treated as disposed as per our decision on grounds 1 to 5 of appeal, and is accordingly dismissed. Thus, all grounds of appeal are dismissed on merits; and accordingly this appeal is dismissed on merits.

(E) While we have dismissed all grounds of appeal on merits, we also wish to refer to foregoing paragraph (B.1) of this order. During assessment proceedings, the assessee claimed benefit u/s 10(23C) of IT Act, and not under section 11 of the IT Act. For claim of benefit u/s 10(23C) of IT Act,

registration u/s 12AA of IT Act is of no relevance. In that sense, this appeal is infructuous. Therefore, this appeal deserves to be dismissed, being infructuous.

(F) In the result, the appeal is dismissed.

(Order pronounced in the open court on 31/08/2023)

Sd/.
(SUDHANSHU SRIVASTAVA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated: 31/08/2023
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T.,
5. CIT(A)

Assistant Registrar