HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

D.B. Income Tax Appeal No. 387 / 2011

Commissioner of Income Tax, Kota

----Appellant

Versus

M/s Emmanuel Bible Institute Samiti Dadwara, Kota.

----Respondent

<u>Connected With</u>

D.B. Income Tax Appeal No. 110 / 2012
Commissioner of Income Tax, Kota

----Appellant

Versus

M/s Emmanuel Bible Institute Samiti Dadwada, Kota

----Respondent

D.B. Cross Objection Civil No. 27 / 2015

1. The Commissioner of Income Tax (Admn)., Central Revenue Building, Rawat Bhata Road, Kota.

2. The Income Tax Officer. Ward -2(1) Kota

----Petitioners

Versus

M/s Emmanuel Bible Institute Samiti Dadwara, Kota.

Cross Objector--Respondent

For Appellant(s) : Mr. Daksh Pareek for Mr. Sameer Jain

For Respondent(s) : Mr. Lokesh Tailor for Mr. Mahendra Gargieya

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HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE DEEPAK MAHESHWARI

<u>Judgment</u>

<u>22/11/2017</u>

1. In all these appeals common question of law and facts are involved hence they are decided by this common judgment.

2. By way of these appeals, the appellant has assailed the judgment and order of the tribunal whereby tribunal has dismissed the appeal of the department and confirmed the order of CIT(A). In the cross objection, no substantial question of law is framed.

3. This court while admitting the appeals framed following substantial question of law:-

Appeal No.387/2011 admitted on 11.9.2015

> "Whether the ITAT is right in law in not appreciating that provisions of section 13(1)(b) which have an overriding effect over the provisions of section 11 & section 12, are applicable to the assessee society since the society has been created/established for the benefit of a particular community I.e Christians?"

Appeal No.110/2012 admitted on 4.7.2012

> "Whether the Tribunal was legally justified in setting aside the order of the CIT passed u/s 12AA(3) cancelling the registration when the Registrar of Societies has also cencelled the registration of the respondent on account of irregularities found, police case and illegal activities carried on by the society?"

4. The facts of the case are that the assessee filed return of income at nil and the AO completed the assessment u/s 143(3) of the Act at an income of Rs.2,02,21,283/-. During the course of

assessment proceedings it was noticed by the AO that the assessee was not carrying out its activities in accordance with the objects of the Samiti so the activities were not genuine. The expenditure which was incurred mainly related to propagating of Christianity. It was noticed by the AO that the Registrar of Societies has also cancelled the registration on 27.2.2006. Therefore, under the facts and circumstances the AO assessed the assessee's income at Rs.2,02,21,283/-.

5. Counsel for the appellant has taken us to the order of the AO and contended that AO while considering the matter observed that the activities of the assessee were carried contrary to provision of Section 11, 12, 13(1)(b) of the Income Tax Act.

6. For ready reference, the said provisions are reproduced as under:-

> **11. Income from property held for charitable or religious purposes**
>
> (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-
>
> (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty- five per cent of the income from such property;
>
> (b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to

which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty five per cent of the income from such property;]

(c) income derived from property held under trust-

(i) created on or after the 1st day of April, 1952 , for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952 , to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

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

(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or

clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

Section 13(1)(b) in The Income- Tax Act, 1961

(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;

7. Thereafter the AO mentioned expenses under different heads which reads as under:-

"1. Rs. 2099124/- invested for religious books on priest & pastors & on education, which is as per objections of the society. We take children from all background educate them upto high school level and after that if a student wants training in Bible College. We educate them, provide food and accommodation. Education given to Peachers & Priest head contains the following head of account, Mess expenses, Electricity charges, Telephone bills. Conveyance, traveling expenses, office expenses etc. After graduate, a student from Bible College we encourage them tom go the poor village of our nation. For that we provide them vi-cycle, personal bible and some amount for their food. This again goes along with our objective i.e. to reach the people of every community with god's love.

2. Rs. 27773165/- Expenses incurred on Schools, Orphanages & churches, which again as per objectives of the society. Our object is to help poor, downtrodden, widows,

orphans, school etc. Details already submitted during hearing. Our nature is purpose of religious, education & social activities. Now once again we are submitting head wise detail of expenses to prove justification regarding expenses as per objectives of the society.

3. Rs. 4376747/-, The object of society is running orphanages, hospitals, churches & schools, hence we are helping Emmanuel School Society. Emmanuel School Society was in great Financial crisis due to heavy Tax demand of Rs.4276747/-(Not Penalty). As our object of the society to help the school we paid Rs.4376747/- towards tax demand of Emmanuel School Society.

4. Rs. 9502/- Expenses on maintenance of Raipura church as per objectives of the society.

5. Rs. 903309/- The society is running orphanages, schools & churches etc when guest come from India & abroad we provide them food, accommodation, travel, entertainment expenses & hotel charges etc. Above expenses are only for collecting more foreign contribution to meet out objectives of the society.

6. Rs. 180640/- when the Donors some to India we encourage them to visit the project side. In such case we use the money of donor through the society. Donors also would like to visit our orphanages, widows and Leper colonies where they presently working. The President & Chairman of the organization visit in India and abroad to promote the objective of the society. He visiting the Donor & updating them, During the visit they need donors share about the need of Organization, attend conferences. Personally invites medical professional and teachers to come and give free service to orphanages at different places.

7. Rs.606171/-, Gift given for promotion of fund collection to fulfill objective of the society.

8. Rs. 2513385/- We helped them in the construction of prayer hall/ community centre. Our churches are mainly established

> and organized to impart spititual education and awareness to the people. We have church building where the local Chirstian community gathers for worship. Our churches are also a means of reaching out to the needy people with help. We have gone through the social activity.
>
> 9. Rs.10000/-, We paid donation to other Christian school like Chiristian Council for Mother Teresa Social Justice and other. In such school there are student who are from very poor family. Our small amount helps to provide the basic need for those children. This is done not only for the Christian School but mainly for the children."

7.1 Therefore, those expenses were not allowed to be deducted. The matter was further considered by CIT(A) who while partly allowing the appeal observed as under:-

> "In this case, registration u/s 12A was granted and still continues i.e. it was not withdrawn, meaning there by the bar of Chiristian Religion as used by the ld. AO, is not at all relevant"(para 8 of letter-dated 26.03.2010).
>
> The appellant claimed that history of the case was "completely lost sight by the ld. AO" and emphasised, "the appellant society has been running and carrying out its activities in the same manner & method and with the same set of objects. Expenditures have been incurred on all these very activities in the past also. The accounts were also made in the same manner. Therefore, the appellant society has been claiming benefit of exemption u/s 11 & 12 of the Act. However, the department never denied benefit, the way it did this year and assessment were completed right from A.Y. 1982-83 to 2006-07. Even some of the years were assessed under scrutiny e.g. A.Y. 2004-05, was assessed vide order u/s 143(3) dated 22.12.2006 (PB 61-64). Same expenditure have been incurred in A.Y. 2004-05 and yet the ld. AO recorded a categorical finding in para 3 of the order that

expenditure were incurred for achieving the objective of the trust and are fully vouched. Thus, there appears no valid reason or fresh material as to why the ld. AO has taken departure from this settled history of the case from last several years". The appellant referred to decision in cases of Kehar Singh [195 ITR 769 (Raj)] and Mangalchand Bhanwarlal & co. [144 ITD 359 (JP)] to assert, "Although the doctrine of res-judicata normally do not apply to Income tax proceedings. However, it does apply where there is no change in the facts upon which a decision in the past has already been arrived at".

Based on the assessment order, in my opinion, crux of decision of the assessing officer is that various expenses during the year, amounting to Rs. 2,02,21,283/-, were not incurred on charitable purposes and conditions of registration under section 12AA of the I.T. Act, 1961 were violated. The main reason for this decision is his observation that such expenditure was incurred for the benefit of a particular religious community, namely Christians.

From a plain reading of section 11, it is evident that benefit of this section is available for both charitable and religious purposes, a view underscored by Hon'ble ITAT, Cochin Third Member Bench in the case of The society of Presentation Sisters (ITA # 457/Coch/2007-datd 22.09.09),relevant portion of which is reproduced below:

"So for as the provision of sec. 11(1)(a) is concerned, no distinction is made between charitable and religious purposes. A charitable institution can have religious purposes; whereas a religious institution may be partly charitable. Even otherwise relief and help to the poor, medical help to the needy, looking after of deity and temples (mosque, church included) are no doubt religious purposes but these are also considered as charitable in India. Therefore, the view taken that exemption under Sec 11(1)(a) can not be allowed to a charitable trust as it is also carrying on some purposes which are termed as 'religious' is totally unwarranted. Pt. Ram Chandra Shukla vs.

Mahadeoji mahabirji & Hazrat All Kanpur & Ors. AIR 1970 SC 450 applied; CIT vs Social Service Centre (2001) 169 CTR (AP) 130 (2001) 250 ITR 39 (AP), Addl. CIT vs. A.A. Bibijiwala Trust (1975) 100 ITR 516 (Guj) and CIT vs Barkate Saifiyah Society (1995) 213 ITR 492 (Guj) relied on; Calicut Islamic Cultural Society ITA Nos. 729/Coch/2006 and 641/Coch/2006 dated 31st July, 2008 impliedly approved."

A perusal of memorandum of Association of the appellant confirms the claim that the appellant Samiti was not meant or created for the benefit of members of a particular community, creed or religion. From details made available to me, it is evident that the Children Homes at Kota, Piploda, Chawala, new Delhi and Tindor in Rajasthan had admitted Hindu and Muslim children as well, where as all 37 children in the children Home at Fatehgarh, in Madhya Pradesh were Hindus. These details, submitted before me through letter dated 26.03.2010, were made available to the assessing officer, who did not make any adverse observation on the same. It is obvious enough that the claim of the assessing officer that the appellant catered to Christians only is not correct. It is also significant that expenditure on schools and Children homes is the single largest item of expenditure his year.

Further, in the case of Shri Digamber jain mandir, Chaksu [(2009) 29 DTR 65 (Raj)], the Hon'ble Rajasthan High Court held that "The language of Sec. 12A does not indicate, not even remotely, that an institution of religious nature cannot get itself registered u/s 12A. In other words, the institutions of religious nature as well as for charitable purpose can claim registration u/s 12A."

In light of above, in my considered opinion, decision of the assessing officer that expenditure of Rs. 2,02,21,283/- was not incurred on charitable purposes, is based on a narrow and an incorrect view of section 11 of the IT Act, 1961.

It is narrow because section 11 recognizes both charitable and religious purposes, a view confirmed by higher appellate authorities: “no distinction is made between charitable and religious purposes” in section 11 of the IT Act, 1961.

Further, this view of the assessing officer, based on his assumption that such expenditure was incurred for the benefit of a particular religious community, namely Christians, is incorrect because Memorandum of Association shows that Samiti was not created for the benefit of a community, a creed or a religion. In course of assessment proceedings, the assessing officer did not bring any evidence on record to show that activities of the appellant were meant exclusively for members of the Christian community. As mentioned above, there is evidence to show that Children Homes run by the Samiti do admit Hindu and Muslim children, a fact on which the assessing officer did not make any adverse observation, in course of appeal proceedings.

For the sake of argument, even if it is accepted that the appellant was catering only to Christians, in the opinion of the Hon’ble Rajasthan High Court, the appellant was still eligible for registration and, thus, entitled to benefit of section 12 A of the IT Act, 1961.

It is pertinent that Samiti was granted registration under Section 12A of the IT Act, 1961 on 17.09.80. Since then it has been pursued the objects laid down in the Memorandum of Association and there has been no change in the constitution or the objects of the Samiti. Further, from AY 82-83 and up to AY 06-07, the department never denied benefits of section 11 and 12A of the IT Act, 1961.

The assessing officer has not explained the import of his observation that even while the Samiti is registered under the FCR Act, 1976, the government has no control over funds received by the appellant from foreign donors and he did not elaborate the impact of this observation on entitlement of the appellant under section 11 and 12A of the IT Act, 1961.

To sum up, though a Christian organization, its Memorandum of Association is unambiguous and categorical that it was created for the benefit of all people, irrespective of caste, creed or religion and it has been mentioned above that there is evidence to show its beneficiaries include Hindus and Muslims. At the same time, there is no evidence to show that during the period under consideration the appellant incurred expenses for purposes other than its stated objectives. Even if its is held to be a religious organization, in light of decision of the Hon'ble Rajasthan High Court mentioned above, it is my view, it is eligible for registration and entitled to benefits of section 12A of the IT Act, 1961.

In this backdrop and as there is no change in facts and circumstances over earlier years, in my view, decision of the assessing officer to deny benefits of section 11 and 12A of the IT Act, 1961 is not tenable; consequently the addition of Rs.2,02,21,283/- is not confirmed. Grounds 1 to 3 of the appeal are accepted."

7.2 Further, the tribunal observed as under:-

"2.4 We have heard both the parties. The Revenue for the assessment year 2004-05 has treated the income of the assessee exempt u/s 11 of the Act. Page 15 of the paper book filed by the ld. AR showed the copy of Registration Certificate u/s 12A of the Act. It is nowhere mentioned in the Registration Certificate that the society is being registered as charitable society. If one goes through the nature of the expenses and explanation given before the AO, it is clear that the expenses at serial no. 1 and the expenses given at serial no. 8 can only be related to religious activities. Other expenses are not for religious purposes and have been incurred for Schools, orphanages etc. The Hon'ble Jurisdictional High Court in the case of CIT Vs. Digamber jain Mandir, Chaksu (supra) has held that institutions of religious nature can be allowed registration. The main heading for Section 11 is "Income from property held for charitable or religious purposes. Section 11(1)(a) says that income derived from property held under trust wholly for charitable or religious purposes is to be allowed exempt in case such income is applied to such purposes in India. The word 'such purposes' referes to the charitable as well as religious purposes.

Thus one has to see the requirement that application of income for charitable or religious purposes is to be made to the extent of 85%. The Hon'ble Apex Court in the case of Hazrat Pirmahomed Shah Sahib Roza Committee vs. CIT, 63 ITR 490 had an occasion to consider as to whether the income of the Roza property held for wholly religious purposes is exempt from assessment. The Hon'ble Apex Court held that the Roza properties were held for wholly religious purposes and income is exempt u/s 4(3)(i) of the Act 1922 corresponding to Section 11 of the Income Tax Act, 1961. In that case, the Tribunal noticed that surplus income of the property was utilized for running Madrassas, Library and giving food to pilgrims attending Roza and the Mosque on festive occasions. It is not the case of the Revenue that the expenses have not been incurred for purposes for which the society was established. It is also nt the case of the Revenue that the expenses have been incurred for benefit of the persons referred to Section 13(3) of the Act. The ld. CIT(A) has referred to the decision of Third Member of Cochin Bench in the case of Society of Presentation Sisters (ITA No. 457/Coch/2007 dated 22.09.2009). The Third Member has observed as under:-

"So far as the provisions of Section 11(1)(a) is concerned, no distinction is made between charitable and religious purposes. A charitable institution can have religious purposes; whereas a religious institution may be partly charitable. Even otherwise relief and help to the poor, medical help to the needy, looking after the deity and temples (mosques, church included) are no doubt religious purposes but these are also considered as charitable in India. Therefore, the view taken that exemption u/s 11(1)(a) cannot be allowed to a charitable trust as it is also carrying on some purposes which are termed as 'religious' is totally unwarranted. Pt Ram Chandra Shukla vs Mahadeoji

> Mahabirji & Hazrat Ali Kanpur & Ors, AIR 1970 SC 450 applied; CIT vs Social Service Centre (2001), 169 CTR (APP) 130 (2001), 250 ITR 39 (AP), Addl. CIT vs A.A. Bibijiwala Trust (1975) 100 ITR 516 (Guj.) and CIT vs Barkate Saifiyah Society (1995), 213 ITR 492 (Guj.) relied on; Calicut Islamic Cultural Society (ITA No. 729/Coch/2006 and 641/Coch/206 date 31st July, 2008) impliedly approved."

8. Regarding other appeal (110/2012), counsel for the appellant contended that registration was cancelled in view of the fact that the registration was not granted by the competent authority.

8.1 Further tribunal while considering the matter observed as under:-

> "19. Initially, the Bench thought that the matter is covered by the order of the tribunal in the case of the assessee for assessment year 2007-08 but it was noticed that there are some aspects which were not considered and these are:
>
> (i) Cancellation of registration of society by the Registrar of Society. Copy of order is to be obtained.
>
> (ii) Whether Section 13(1) and proviso to Section 2(15) will have impact for requiring the cancellation.
>
> Copy of order of Registrar of Society and copy of written petition filed before the Hon'ble High Court was filed.
>
> 20. We have heard both the parties. Section 12AA(3) refers to the power of ld. CIT to cancel the registration of trust or institution. The word cancel of registration has been mentioned in Section 186 of the IT Act and in that provision it has been mentioned as under:-

“If where a firm has been registered or is deemed to have been registered or its registration has effect u/s 7 of the Section 184 for an assessment year, the AO is of opinion that there was during the previous year no genuine firm in existence as registered, he may, after giving the firm a reasonable opportunity of being heard cancel the registration of the firm for that assessment year.”

21. The dictionary meaning of cancellation is to annul, abrogate or terminate. Hence the legislature provided u/s 186 for cancellation for particular assessment year but in Section 12AA(3), it is mentioned that ld. CIT can cancel the registration. It mean the order of registration passed by the ld. CIT is cancelled and hence order u/s 12AA(3) will terminate or annul that order.

22. The tribunal in the case of the assessee for the assessment year 2007-08 (140 TTJ 508) has held that expenses of Rs.2.02 crore are to be considered as applied for the objects of the society. The tribunal also held that assessee is entitled to registration as a religious trust. It

will be useful to refer to held portion:-

“It is nowhere mentioned in the registration certificate that the society is being registered as charitable society. If one goes through the nature of the expenses and explanation given before the AO, it is clear that the expenses at serial no.1 and the expenses given at serial No.8 can only be related to religious activities. Other expenses are not for religious purposes and have been incurred for schools, orphanges, etc. The main heading for Section 11 is “income from property held for charitable or religious purposes”. Section 11(1)(a) says that income derived from property held under trust wholly for charitable or religious purposes is to be allowed exemption in case such income is applied to such purposes in India. The words ‘such purposes’ refer to the charitable as well as religious purposes. This one has to see that requirement that application of income for charitable or religious purposes is to be made to the extent of 85 per cent.

Considering the legal position, the ld. CIT(A) was justified in deleting the addition because the assessee was a religious and charitable society and the expenses have been incurred for the purpose for which society was established-The Society of Presentation Sisters vs. ITO (2009) 125 TTJ (Coch) (TM) 909: (2009) 30 DTR (Coch) (Tribunal) (TM) 1 followed.

Conclusion: Assessee being a religious and charitable society, the expenses incurred by it relating to both religious as well as charitable activities were for the purpose for which the society was established and, therefore, the expenses incurred for religious purposes could not be disallowed for the purpose of exemption u/s 11.

23. It is true that the present appeal was not heard along with the appeal against order of ITO u/s 143(3) for assessment year 2007-08 though matters considered by Ld. CIT should have been brought to our knowledge. In respect of satisfaction of the Ld. CIT in passing order u/s 12AA(3), it is clear that there was a report from the AO. Satisfaction requires to apply the mind and came to the conclusion that prima facie the action is needed. Hence requirement of satisfaction stands complied.

24. The assessee is saying that report of AO has not been provided. The Ld. CIT is using that report and hence natural justice demands that copy of such report to be provided to assessee. On this grounds that copy of such report to be provided to assessee. On this ground, the order is required to be set aside to be made again.

25. The Registrar of Societies cancelled registration on account of certain irregularities and the following are relevant for Income Tax matter.

(a) Without amending the regulations, the posts of president and Chairman were created. Furthermore, father and son were shown as elected for these two posts.

(b) Enquiry committee constitute by social weelfare department has noticed serious allegations. A case on the basis of this report is pending with police department.

(c) The society is receiving huge sums from foreign services and the society is registered under foreign contribution Act. The sum is not being spent for the purpose for which the funds were received.

(d) The society is doing unconstitutional activities by hurting the sentiment of persons belonging to other religions. It is trying to create hatred against other religion.

(e) The irregularities committed by the society and the documentary evidences available show that the society is indulging in unconstitutional activities and such activities are also against the national security.

26. On the basis of various procedural irregularities and the regularities referred to above, the Registrar of societies cancelled the registration of societies vide order dated 27.2.2006. Against this order the society field Writ Petition before the Rajasthan High Court. The Writ petition was dismissed by the Single Judge of the Hon'ble High Court. Against the order of the Single Judge, the society filed an appeal before the Division Bench of Rajasthan High Court. Before the Division Bench it was submitted that the Registrar of Societies acts quasi judicial and therefore, he has no right to cancel the registration unless the power of cancellation is provided under the provision of the Societies Act. The counsel appearing on behalf of the State government admitted that there is no provision to cancel the registration. However, the power can be assumed by the Registrar under the General Clause Act. Hon'ble Jurisdictional High court while admitting the appeal observed that the order of canceling the registration requires consideration has prima facia the Registrar has no authority to do the same in view of the ratio of the supreme court decision in the case of Indian National Congress (I) Vs. institute of Social Welfare and others (2002) 5 SSC 685. The Hon'ble Jurisdictional High Court stayed the operation of the order of the Single Judge. It will be useful to

reproduce the relevant extract of the decision of the Hon'ble Jurisdictional High court:-

"It is nowhere mentioned in the registration certificate that the society is being registered as charitable society. If one goes through the nature of the expenses and explanation given before the AO, it is clear that the expenses at serial no.1 and the expenses given at serial No.8 can only be related to religious activities. Other expenses are not for religious purposes and have been incurred for schools, orphanges, etc. The main heading for Section 11 is "income from property held for charitable or religious purposes". Section 11(1)(b) says that income derived from property held under trust wholly for charitable or religious purposes is to be allowed exemption in case such income is applied to such purposes in India. The words 'such purposes' refer to the charitable as well as religious purposes. Thus one has to see that requirement that application of income for charitable or religious purposes is to be made to the extent of 85 per cent. Considering the legal position, the ld. CIT(A) was justified in deleting the addition because the assessee was a religious and charitable society and the expenses have been incurred for the purpose for which society was established-The Society of Presentation Sisters vs. ITO (2009) 125 TTJ (Coch) (TM) 909: (2009) 30 DTR (Coch) (Tribunal) (TM) 1 followed.

Conclusion: Assessee being a religious and charitable society, the expenses incurred by it relating to both religious as well as charitable activities were for the purpose for which the society was established and, therefore, the expenses incurred for religious purposes could not be disallowed for the purpose of exemption u/s 11."

27. The Hon'ble Jurisdictional High Court has left open the authorities to take action under the provisions of law in case there are irregularities or any illegal Act by the society. The Registrar has referred to Police case and has also referred that the society is indulging in anti-national activities. Therefore, the Ld. CIT will have to ascertain the nature of the case, if any, filed against the society and if

> these cases have impact on cancellation of registration then such factors are to be considered. We, therefore, fiil that the order of Ld. CIT u/s 12AA(3) of the Act is required to be set aside to be made again after considering our observations given in the order. The assessee will be given an opportunity of hearing before passing the fresh order."

9. Taking into consideration the fact that the matter which is pending before the High Court, the observations made by the tribunal are just and proper. 12AA registration could not have been given on the basis which is stayed by the High Court.

10. In that view of the matter, the issue is answered in favour of the assesee and against the department.

11. The appeals stand dismissed and cross objection filed by the assessee also stand dismissed.

(DEEPAK MAHESHWARI)J. (K.S. JHAVERI)J.

Brijesh 163-165.