

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

SA No.129/DEL/2024

(Arising out of ITA No.3241/Del/2023)

[Assessment Year 2014-15 to 2022-23 and 2023-24 onwards]

Legal Initiative For Forest And Environment (LIFE Trust), N-71, LGF, Greater Kailash, Part-1, Delhi-110048	Vs	PCIT (Central-2), Delhi, 341, E-2, 2 nd Floor, ARA Centre, Jhandewalan Extension, Delhi-110055
PAN-AAATL8409L		
Assessee		Revenue

Assessee by	Sh. Sachit Jolly, Adv. Sh. Aditya Rathore, Adv. Ms. Menita Khanna, Adv. Sh. Abhyudaya Shankar Bajpai, Adv. Sh. Abhishek Jebaraj, Adv. Ms. Reyna Shruit, Adv.
Revenue by	Sh. Zoheb Hussain, Special Counsel Sh. Vipul Agrawal, Sr. Standing Counsel

Date of Hearing	12.07.2024
Date of Pronouncement	09.08.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This stay application was filed by the assessee on 19.04.2024 seeking stay of order dated 30.09.2023 u/s 12A r.w.s. 12AA and 12AB(4) of the Act passed by the Pr. CIT (Central)-2, New Delhi. Vide this order, under section 12A rws 12AA & 12B(4) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') the Ld. PCTI(C)-2, New Delhi had cancelled the registration granted to the assessee from FY 2013-14 to FY 2021-22 and from FY 2022-23 onwards. The assessee has also filed an

appeal on merits, challenging the order dated 30.09.2023 passed by the Ld. PCIT, Central-2, Delhi, which is pending in appeal in ITA No.3241/Del/2023. Vide this stay petition, the ld. AR requested to stay the order dated 30.09.2023 passed under Sec.12A r.w.s. 12AA and 12AB(4) of the IT Act, cancelling the registration of the assessee trust with retrospective effect for Assessment Years. 2014-15 To 2022-23, 2023-24 onwards, pending disposal of the appeal and pass such further or other order or orders as the Tribunal may deem fit and proper in the circumstances of the case and thus render justice.

2. Brief facts of the case:- The Legal Initiative for Forest and Environment' Trust (LIFE) was formed by Shri Ritwick Dutta, Shri Rahul Chaudhary and Shri Priyabrata Satapathy on 20th May, 2008. It was stated by the assessee vide its reply dated 09.03.2023 to the PCIT, Central-2 New Delhi, during the cancellation proceedings initiated by him that it was formed with the main objective of serving environmental issues like bringing transparency and accountability in the environmental decision-making process, providing information, creating awareness by holding conferences, seminars, symposiums, conducting trainings and capacity building of communities. The PCIT noted that Legal Initiative for Forest and Environment (LIFE/LIFE Trust) got registered u/s 12A(a) of the Income Tax Act, 1961 (the Act) on 05.09.2011 vide Registration No. DIT(E)/2011-12/DEL-LR21498-05092011, w.e.f A.Y 2011-12. It was further noted that it has been granted registration as per the new provisions of the Act on 24.09.2021.

2.1. As per its Trust Deed, the PCIT noted that the following are the objects of LIFE

" Legal Initiative for Forest and Environment Trust will comprise of lawyers and activist working on issue of Environment democracy.

i) *It will seek to ensure the effective implementation of Principle 10 of the Rio Declaration in which entitles Citizen to access information, participate in environment decision-making process and access to justice.*

ii) *Legal Initiative for Forest and Environment will aim bringing about transparency and accountability in the environmental decision making process and will provide legal support to communities and groups across the country.*

iii) *To provide information, create awareness and assist in the process of access to information, participation and justice on environmental and social issues.*

iv) *To hold conferences, seminars, symposiums to generate public debate on policy and other justice and equity issues.*

v) *To conduct trainings and capacity building of communities, para-legal, law-making agencies, enforcement agencies, lawyers, NGOs and other stake holders.*

vi) *To provide legal aid and other legal and para-legal services independently and with the help of the State and judicial machinery.*

vii) *To provide counselling consultancy services.*

viii) *To undertake research, create a data bank.*

ix) *To bring out publication like pamphlets, posters, handbooks, frequently asked questions and papers.*

x) *To initiate and participate in campaigns to bring about social and environmental change.*

xi) *To engage with the government in the policy making process.*

xii) *To initiate advocacy programmes.*

xiii) *To initiate dialogue at international level to facilitate environmental democracy.*

xiv) *To build networks of communities, policy makers, lawyers, the government agencies and other like-minded persons.*

xv) *To subscribe or give donations to and financially or otherwise, to aid educational, social, charitable and other institutions, works, activities of any other society association or organization with all or*

any of the objects of the society of whose objects contain objects similar to that of the Society.

xvi) To train personnel to work at the grass-root level.

xvii) To carry out consultancy and related works for other organizations, etc.

xviii) General to do all such things as may be incidental or conducive to the attainment of the main object of the Foundation."

2.2. Further, the PCIT noted that in the case of LIFE Trust, a survey action was carried out by the Investigation Wing of the Income Tax Department in N-71LGF, Greater Kailash, New Delhi on 07.09.2022. Materials collected during the survey were shared by the Investigation Wing with the Assessing Officer (AO), i.e., DCIT, Central Circle-14, New Delhi, where the case was transferred u/s 127(2) of the Act vide order dated 10.11.2022 from the jurisdiction of ITO(Exemption)-1(4), New Delhi. The said information/material was shared by the DCIT, Central Circle-14, New Delhi with his PCIT on 17.01.2023. According to the PCIT, Central-2, New Delhi, this included information relating to carrying out of activities by the trust LIFE, which were either not as per objects of the Trust or were apparently not genuine. Thereafter, the PCIT after examining the evidences issued a show cause notice dated 04.02.2023 for cancellation of registration u/s 12AB (4) r.w.s. 12A and 12AA of the Act vide DIN No.ITBA/COM/F/17/2022-23/1049418557(1). The said notice was duly served upon the assessee through the declared e-mail requiring the assessee to furnish the relevant details along with supporting documentary evidences on 15.02.2023. Further, another show cause notice for cancellation of registration u/s 12AB (4) r.w.s. 12A and 12AA of the Act was issued on 17.08.2023 vide DIN No. ITBA/COM/F/17/2023-24/1055227296(1). The said notice was duly served upon the assessee

through the declared e-mail requiring the assessee to furnish the relevant details along with supporting documentary evidences on or before 23.08.2023. In response to the above-mentioned show-cause notices, Sh. Manmohan Aggarwal, Chartered Accountant duly authorized attended from time-to-time before the PCIT. The AR of the assessee furnished its replies on 11.02.2023, 02.03.2023, 10.03.2023, 14.03.2023, 05.04.2023, 29.05.2023 and 06.09.2023. The explanations furnished by the assessee during the various hearings, as well as its replies were duly considered and was discussed in the order dated 30.09.2023.

2.3. The PCIT in his order discussed about as to how LIFE is working and its relationship with different entities and specially Earth Justice, an organization situated in USA i.e. outside India to show that the assessee trust was not working as per the objects of the Act.

(i) Activities of LIFE reflect that it is making all efforts to stop coal based Indian Thermal Power Plants (TPPs) and coal mine projects. It is involved in seeking report on coal mines, TPPs and filing cases in different Indian courts. The PCIT noted that they were able to stop various mines and power projects.

(ii) The PCIT noted that the LIFE and its members were aware of its illegal activities and their results and they were afraid of being caught. In one email dated 21.11.2016 Mr. Ritwick (ritwick@lifeindia.net.in) expressed to Mr. Matin Wagnerm of Earth Justice at his mail i.e. wagner@earthjustice.org) that they will be going to come under Indian intelligence organization' scanner. Mail is; *My view is that Earth Justice is likely to be put under the scanner of Indian intelligence organization just like Sierra Club and*

Greenpeace. As of now the Indian Government is not much aware of Earth Justice, however, this may change if they find that there is a positive response to the call given by Earth Justice. This is my personal opinion. The actual reaction may be different. However, the probability of the above reaction is quite high.

(iii) The assessee trust is receiving majority of fund as foreign aid.

The details are as under:-

Trust	Financial Year	Domestic Contributions (Rs.)	% to Total	Foreign Contributions (Rs.)	% to Total	Total Contributions (Rs.)
LIFE	2015-16	1,625,000	29.61%	3,863,245	70.39%	5,488,245
LIFE	2016-17	1,660,000	13.89%	10,291,754	86.11%	11,951,754
LIFE	2017-18	639,000	5.65%	10,663,125	94.35%	11,302,125
LIFE	2018-19	1,500,000	10.76%	12,434,426	89.24%	13,934,426
LIFE	2019-20	1,470,000	13.06%	9,783,029	86.94%	11,253,029
LIFE	2020-21	740,000	5.64%	12,374,755	94.36%	13,114,755

(iv) LIFE trust is being used as an instrument by Earth Justice to stall the coal mines and Thermal Power Projects. For these purposes, Earth Justice is making strategies; -engaging an international treaty body; applying an international human rights strategy; such as engaging one or more UN special rapporteurs; using one of the complaint process under the international financial institutions; pressurizing private banks or investors, strategies to bring pressure from foreign governments etc.

(v) Earth Justice is also involved in targeting Indian entities undertaking projects outside India.

(vi) In litigation matters drafts are being shared by LIFE to Earth Justice for vetting and suggestions. The draft of replies to be filed before various authorities in India are forwarded by LIFE to Earth

Justice for their vetting and are filled before the said authority only after vetting by Earth Justice. LIFE trust, Earth Justice, E-law, Green Peace were having active coordination on furthering litigation in India on TPPs and coal projects. The PCIT noted that Earth Justice is not litigant in India however, it is being updated on legal status of different cases related to coal mines/TPPs by LIFE.

(vii) LIFE and Earth Justice are closely linked entities. In their relationship, Earth Justice seems to be master and LIFE is providing services to its master. LIFE is working at the behest of Earth Justice. Earth Justice is guiding LIFE what to do and what not to do.

2.4. The PCIT after taking note of the discussions made in para nos. 6.2.1.1, 6.2.2.1, 6.2.3.1, 6.2.7.1, 7.2.2.1, 7.2.3.1, 7.2.4.1, 7.2.8.1, 8.2 & 12.3 in his order based on the findings therein held that the association between assessee and Earth Justice is not as per the objects of the trust and the activities of the assessee trust were not genuine and not being carried out in accordance with the objects of the trust. He, therefore, cancelled that the registration granted to the assessee u/s 12A/12AA from F.Y 13-14 to FY 2020-21 and u/s 12AB from FY 2021-22 onwards.

2.5. Further, the PCIT in view of the findings in Para No. 9.2 of his order held that working of certain employees of the assessee trust is not as per the objects of the trust. Therefore, he came to a finding that the activities of the assessee trust are not genuine and not being carried out

in accordance with the objects of the trust. He, therefore, cancelled the registration granted to the assessee u/s 12AB from FY 2021-22 onwards.

2.6. The PCIT, in view of the finding in Para No. 10.11 of his order held that rent payment by assessee trust to Smt. Amita Dutta, mother of Shri Ritiwick Dutta is covered u/s 13(3) rws 13(1)(c)(ii). He, therefore, cancelled the registration granted to the assessee u/s 12A/12AA from F.Y 2018-19 and u/s 12AB from FY 2021-22 onwards.

2.7. The PCIT, in view of the finding in Para No. 11.3 of his order held that payment to Mr. Kaustav Dhar, an employee of the assessee trust by the assessee Trust for litigation is not as per the objects of the trust. Therefore, he held that the activities of the assessee trust are not genuine and not being carried out in accordance with the objects of the trust. He, therefore, cancelled the registration granted to the assessee u/s 12AB from FY 2021-22 onwards.

2.8. The PCIT, in view of the finding in Para No. 13.3 in his order held that rent payment by the assessee trust for LIFE LLP is covered u/s 13(3) rws 13(1)(c)(ii). He, therefore, cancelled the registration granted to the assessee u/s 12AB from FY 2022-23 onwards.

3. In the Stay Petition, the assessee submitted that Legal Initiative for Forest and Environment Trust is a Charitable organization registered in Delhi vide Trust Deed registered on 27.05.2008, and was working for environmental causes across India. The work of the assessee in safeguarding the environment has been recognized both nationally and globally. In 2021, the assessee was awarded the 'Right Livelihood award',

also known as the 'Alternate Nobel Prize', at Stockholm, Sweden. The assessee trust has always functioned with a very high degree of probity and transparency. The assessee trust had duly filed its audit returns with utmost transparency and accountability. Some of the significant objects of the Trust stated are as under:-

a) Legal initiative for forest and environment aims at bringing about transparency and accountability in the environmental decision-making process and will provide legal support to communities and groups across the country.

b) To provide information create awareness and assist in the process of access to information, participation and justice on environmental and social issues.

c) To hold conferences, seminars, symposiums, to generate public debate on policy and other justice and equity issues.

d) To conduct trainings and capacity building of the communities, paralegal, law making agencies, enforcement agencies, lawyers, NGOs and other stake holders.

e) To provide legal aid and other legal and paralegal services independently and with the help of the state and judicial machinery.

f) To undertake research, create a data bank.

g) To engage with the government in the policy making process.

h) To initiate dialogue at international level to facilitate environmental democracy.

3.1. Further, it was submitted that Mr. Ritwick Dutta, who serves as the Honorary Managing Trustee of the assessee trust, is an advocate registered with the Bar Council of Delhi since 2001 and an expert in the field of environmental law. Mr. Dutta has always conducted his private legal practice distinctly and separately from the assessee trust without any comingling of funds between them. While the assessee trust conducts

its activities across the country, the premises used by Mr. Dutta to conduct his private legal practice serves as the registered office of the assessee trust.

3.2. It was further submitted that the present proceedings arise out of a survey under Section 133A of the IT Act conducted on 07.09.2022 at the office of the assessee trust located at N-71LGF, Greater Kailash, New Delhi. In the course of the survey proceedings, the assessee fully cooperated with the Department and provided all the documents as sought for by the Department. However, the department, for reasons best known to it cloned the computers and phones of the trustees that held privileged attorney-client communications received in their individual capacities as advocates. No reasons for impounding the material were shared with the assessee.

3.3. The assessee submitted that it had fully co-operated and furnished all the information, explanations and documents as demanded in response to the show cause notices issued by the PCIT. The Ld. AR submitted that without considering the detailed submissions furnished during the course of the above proceedings, the impugned order dated 30.09.2023 under Section 12A rws 12AA & 12AB(4) of the IT Act was passed by the Pr. CIT (Central)-2, New Delhi cancelling the registration of the assessee under 12AB(4) rws Section 12A and 12 AA of the of the IT Act, with retrospective effect for AY 2014-15 to AY 2022-23, and AY 2023-2024 onwards on the ground that the activities of the assessee were not in accordance with its objects. The Ld. AR submitted that the Pr. CIT has adopted an arbitrary view of the operations of the assessee Trust and has

cancelled the registration of the assessee on frivolous grounds without establishing any finding of omission or discrepancy in the functioning of the Trust. The assessee Trust has always genuinely carried out activities in furtherance of its main objects and has therefore filed an appeal bearing ITA No. 3241/DEL/2024 seeking quashing of the cancellation of Registration u/s. 12A, 12AA and 12AB of the Assessee Trust with retrospective effect, and restoration of the registration.

4. During the course of hearing before us, the Id. AR submitted that the order dated 30.09.2023 was illegal and ought to be set-aside for lack of jurisdiction and the registration could not have been cancelled with retrospective effect unless the statute expressly provided the same. It was submitted that the power under Section 12AB(4) of the Act can only be exercised by the Commissioner or Pr. Commissioner of Income Tax, as the case may be, appointed in this behalf by the Board in terms of Rule 17A(5) of the Income Tax Rules, 1962. In this regard, Central Board of Direct Tax ["CBDT" | vide its Notification No. 52/2014 dated 22.10.2014 had created a specific jurisdiction on territorial basis in regard to the provisions generally dealing with claim of exemptions under Sections 10, 11, 12, 13A and 13B of the Act. In Delhi, such jurisdiction and the power to pass orders thereunder are vested with the Commissioner of Income Tax (Exemption), Delhi-2 by the said notification and therefore the order cancelling the registration by the Pr. CIT, Central-2, New Delhi by assuming jurisdiction was prima facie bad in law and liable to be set-aside. It was further submitted that only the jurisdiction of the Assessing Officer of the assessee trust to conduct assessment in the case of the

assessee trust was transferred and not the jurisdiction of the prescribed authority for grant or revocation of registration under Section 12A/12AA/12AB. This is also made evident from the order dated 10.11.2022 passed under Section 127(2) of the Act by the Commissioner of Income Tax (Exemptions), Delhi wherein only the jurisdiction of the Assessing Officer from Ward (Exemp.)-1(4), Delhi has been transferred to Central Circle-14, Delhi and therefore, such transfer is only limited to conducting of assessment. Without such necessary transfer of jurisdiction, the impugned order is illegal and bad in law as the power to cancel registration in terms of Section 12AB(4) continues to remain with the prescribed authority. It was further submitted that even otherwise, Section 127(2) of the Act specifies that if there is a transfer of jurisdiction from one Assessing Office to another who is not subordinate to the same Principal Chief Commissioner, then the concerned commissioner must record consent from both the transferor commissioner and the transferee commissioner. Alternatively, such transfer of jurisdiction must be notified by the CBDT. The current order, issued under section 127(2), which transfers jurisdiction from the Assessing Officer under the Principal Chief Commissioner (Exemption) to the Assessing Officer under the Principal Chief Commissioner (Central), does not mention the required consent of the Principal Chief Commissioner (Exemption). This absence of consent creates makes transfer of jurisdiction invalid. [Refer: Noorul Islam Education Trust Vs CIT [2016] 388 ITR 489 (SC)].

4.1. It was further submitted that the impugned order is also bad in law insofar as it seeks to retrospectively cancel the registration granted to the

assessee under Section 12A/12AA/12AB from FY 2013-14. It is well settled principle that unless a statute expressly states to the contrary, it cannot be construed as having retrospective effect. In that light, it is submitted that Sections 12AA(3) and 12AB(4) of the IT Act which provide for cancellation of registration, nowhere contemplate nor provide for such cancellation to have retrospective effect.

4.2. It was further submitted that it was also pertinent to note that Section 12AB(4) was amended by the Finance Act, 2022 to specifically include Section 12AB(4)(c)(fi) which states that such cancellation of registration can only be for 'such previous year and all subsequent previous years. It was submitted that given the definition of previous year' in Section 3 of the IT Act which states that the same means the 'financial year immediately preceding the assessment year', and it was therefore made expressly clear that the legislation nowhere contemplates retrospective cancellation.

4.3. Further, the Ld. AR relied upon various case laws to support its contention The AR also submitted that the assessee has always acted in accordance with its objects and genuinely carried out its activities in furtherance of its main objects. Further, it was submitted that Hon'ble High Court Delhi has granted stay in similar matters.

4.4. The ld. AR relying upon the decision of Commissioner of Income Tax vs ITAT [2013] 31 taxmann.com 369(Del), order dated 03.08.2012 submitted that the ITAT has the power to grant stay as requested by the

assessee in its case, pending disposal of its appeal on merits in ITA No.3241/Del/2023.

4.5. The case laws relied upon on the above propositions are as under:

Sl. No.	Proposition	Case laws relied upon
1	Prima facie case: (i) That the PCIT (Central) did not have the jurisdiction to pass the impugned order dated 30.09.2023 cancelling the registration and thus the impugned order is void ab initio.	Aggarwal Vidya Pracharni Sabha v PCIT (Central) Gurgaon ITA No. 1308/DEL/2023 @ Para 19-21 @ Page 47-55 of Assessee's Case Compilation; Pacific Academy of Higher Education and Research Society v PCIT (Central) ITA No. 04/JODH/2020 @ Para 6.8-6.9 @ Page 94-98 of Assessee's Case Compilation; Wholesale Cloth Merchant Association v PCIT(Central) ITA No. 688/JP/2019 @ Para 19-21 @ Page 133-139 of Assessee's Case Compilation.]
	(ii) That the impugned order could not have retrospectively cancelled the registration granted u/s 12A/12AA of the Act from AY 2014-15	CIT v. Vatika Township (P) Ltd. (2015) 1 SCC 1 @ Para 28-31 @ Page 188-189 of Assessee's Case Compilation; Oxford Academy For Career Development v CCIT /2009/ 315 ITR 382 (Allahabad) @ Para 21 @ Page 204 of Assessee's Case Compilation; ACIT v Agra Development Authority [2018/ 407 ITR 562 (Allahabad) @ Para 50-52 @ Page 220 of Assessee's Case Compilation; Auro Lab v ITO /2019] 411 ITR 308 (Madras) @ Para 20-21 @ Page 249 of Assessee's Case Compilation; Pacific Academy of Higher Education and Research Society v PCIT (Central) ITA No. 04/JODH/2020 @ Para 6.9 @ Page 94-98 of Assessee's Case Compilation; Wholesale Cloth Merchant Association v PCIT(Central) ITA No. 688/JP/2019 @ Para 30-31 @ Page 153-155 of Assessee's Case Compilation.]
2.	That the Hon'ble High Court of Delhi had granted stay in similar cases	Refer: Centre for Policy Research v PCIT(Central) W.P.C) 11270/2023 Order dated 25.08.2023; Oxfam India v PCIT(Central) W.P. (C)15287/2023 Order dated

		18.01.2024]. W.P. (C) 15364/2023 and CAV 608/2023 & CM APPL. 61634/2023 Care India Solutions For Sustainable Development
3.	Maintainability of the Stay Petition filed by the assessee and the power of the ITAT to grant stay.	M.K. Mohammed Kunhi /1969) 71 ITR 815 @ Para 9-13; ITO v. Khalid Mehdi Khan 1977 110 ITR 79 @ Para 5; CIT v ITAT [2013/ 31 taxmann.com 369 (Delhi) @ Para 21].
4.	Submission: That the Hon'ble High Court of Delhi in assessee's own case granted a stay on the operation of Section 148 notice issued by the Department.	Legal Initiative For Forest and Environment Trust v DCIT W.P. (C) 7324/2023, for AY 2016-17,

4.6. In view of the above facts and submissions, the ld. AR requested to stay the order dated 30.09.2023 passed under Sec.12A r.w.s. 12AA and 12AB(4) of the IT Act, cancelling the registration of the assessee trust with retrospective effect for Assessment Years. 2014-15 To 2022-23, 2023-24 onwards, pending disposal of the appeal and pass such further or other order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.

5. The reasons for stay as submitted by the assessee in its stay petition is reproduced as under:-

A. PRIMA FACIE CASE IN FAVOUR OF THE ASSESSEE THE ORDER DATED 30.09.2023 IS ILLEGAL AND OUGHT TO BE SET ASIDE FOR LACK OF JURISDICTION

1. At the outset it is submitted that the impugned order is wholly erroneous and liable to be set aside as it was passed by the Pr. CIT (Central)-2, Delhi. The power under Section 12AB(4) of the Act can only be exercised by the Commissioner or Pr. Commissioner of Income Tax, as the case may be, appointed in this behalf by the Board in terms of Rule 17A(5) of the Income Tax Rules, 1962. In this regard, Central Board of Direct Tax ["CBDT" | vide its Notification No. 52/2014 dated 22.10.2014 had created a specific jurisdiction on territorial bass in regard to the provisions generally dealing with claim of exemptions under Sections 10, 11, 12, 13A and 13B of the

Act. In Delhi, such jurisdiction and the power to pass orders thereunder are vested with the Commissioner of Income Tax (Exemption), Delhi-2 by the said notification. In such light, the Assessee humbly submits that the jurisdiction to grant or revoke registration lies solely with the Commissioner of Income Tax (Exemption), Delhi-2 who is the prescribed authority. Hence, the assumption of jurisdiction being erroneous, the order of cancellation is *prima facie* bad in law and liable to be set aside.

2. Further, even if it is contended that the jurisdiction was transferred on account of survey conducted on the Petitioner on 07.09.2022, it is submitted that even in that case, only the jurisdiction of the Assessing Officer of the Assessee Trust to conduct assessment in the case of the Assessee Trust was transferred and not the jurisdiction of the prescribed authority for grant or revocation of registration under Section 12A/12AA/12AB. This is also made evident from the order dated 10.11.2022 passed under Section 127(2) of the Act by the Commissioner of Income Tax (Exemptions), Delhi wherein only the jurisdiction of the Assessing Officer from Ward (Exemp.)-1(4), Delhi has been transferred to Central Circle-14, Delhi and therefore, such transfer is only limited to conducting of assessment. Without such necessary transfer of jurisdiction, the impugned order is illegal and bad in law as the power to cancel registration in terms of Section 12AB(4) continues to remain with the prescribed authority.

3. Even otherwise, Section 127(2) of the Act specifies that if there is a transfer of jurisdiction from one Assessing Office to another who is not subordinate to the same Principal Chief Commissioner, then the concerned commissioner must record consent from both the transferor commissioner and the transferee commissioner. Alternatively, such transfer of jurisdiction must be notified by the CBDT. The current order, issued under section 127(2), which transfers jurisdiction from the Assessing Officer under the Principal Chief Commissioner (Exemption) to the Assessing Officer under the Principal Chief Commissioner (Central), does not mention the required consent of the Principal Chief Commissioner (Exemption). This absence of consent creates makes transfer of jurisdiction invalid. [Refer: Noorul Islam Education Trust Vs CIT [2016] 388 ITR 489 (SC)].

STATUTE CANNOT BE GIVEN RETROSPECTIVE EFFECT UNLESS IT EXPRESSLY STATES TO THE CONTRARY

4. It is submitted that further, the impugned order is also bad in law insofar as it seeks to retrospectively cancel the registration granted to the Assessee under Section 12A/12AA/12AB from FY 2013-14. It is well settled principle that unless a statute expressly states to the contrary, it cannot be construed as having retrospective effect. In that light, it is submitted that Sections 12AA(3) and 12AB(4) of the IT Act which provide for cancellation of registration, nowhere contemplate nor provide for such cancellation to have retrospective effect. The relevant portions of Sections 12AA and 12AB are extracted hereunder:

"12AA. Procedure for registration.

(1)

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

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

"12AB. Procedure for fresh registration.

(1)

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

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

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

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

* the Principal Commissioner or Commissioner shall,—

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

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

5. It is also pertinent to note that Section 12AB(4) was amended by the Finance Act, 2022 to specifically include Section 12AB(4)(c)(fī) which states that such cancellation of registration can only be for 'such previous year and all subsequent previous years'. Given the

definition of previous year' in Section 3 of the IT Act which states that the same means the 'financial year immediately preceding the assessment year', it is made expressly clear that the legislation nowhere contemplates retrospective cancellation.

6. In the case of *Pacific Academy of Higher Education and Research Society vs. PCIT (Central)* ITA 04-05/Jodh/2020 dated January 25, 2023 (Jdh) (Trib) observed that:

*"Thus, keeping in view the above discussion, we are of the opinion that in the present case the Id. Pr.CIT(Central) has no jurisdiction to pass the impugned order. Accordingly, we quash the same. Even otherwise we are also of the view that no retrospective cancellation could be made as neither in the Sec. 12AA(3) nor in Sec. 12AA(4) it has been provided or is seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively no cancellation for the past years could be ordered. In this regard, the Hon'ble Madras High Court on the question as to whether the cancellation will operate from a retrospective date has dealt in the case of *Auro Lab vs. ITO (2019) 41ITR 0308 (Mad) 20* wherein it was held as under: The amendment to Section 12AA(3) is prospective and not retrospective in character. The courts reasoned that even when the parliament had plenary powers to enact retrospective legislation in matters of taxation, the amended section is not seen to have explicitly provided to have a retrospective character or intend. Therefore, without a specific mention of the amended provisions to operate retrospectively, the cancellation cannot operate from a past date."* [emphasis supplied]

THE ASSESSEE HAS ALWAYS ACTED IN ACCORDANCE WITH ITS OBJECTS

7. It is submitted that the Pr. CIT has adopted an arbitrary view of the operations of the Assessee Trust and has cancelled the registration of the Assessee on frivolous grounds without establishing any finding of omission or discrepancy in the functioning of the Trust. The Assessee Trust has always genuinely carried out activities in furtherance of its main objects.

B. THE HON'BLE HIGH COURT OF DELHI HAS GRANTED STAY IN SIMILAR CASES

8. The Hon'ble High Court of Delhi, while hearing a similar, challenge to a cancellation of registration u/s. 12A, 12AA and 12AB [with retrospective effect] in WP (C) 11270/2023 passed order dated 25.08.2023 staying such cancellation on the ground that the Assessee therein would suffer irreversible harm if such cancellation was not stayed and that the balance of convenience was in favour of the Assessee. The said order was duly cited and followed in two other identical challenges being W.P. (C) No. 15787/2023 and W.P. (C) No. 15364/2023 in order dated 18.01.2024 and stay was

granted to the Assessee therein. The relevant portion of the order dated 25.08.2023 In WP (C) 11270/2023 is extracted hereunder:

"9. That brings us to the issue, as to whether the balance of convenience is presently in favour of the petitioner, and would any irreparable harm be caused to the petitioner, if an interim order; as sought by the petitioner, is not granted.

10. The cancellation of registration would definitely entail a consequence, which would result in disabling the petitioner from accepting any contributions from domestic contributors. The petitioner is an organization which survives on contributions. The employees engaged by the petitioner and its work depend on the contribution that it receives. Therefore, the balance of convenience, as it stands, is in favour of the petitioner:

11. The third aspect that we need to consider is that if we were to decline the interim relief, would any detriment be caused to the petitioner, which is irreversible?

12. Insofar as this aspect is concerned, we can only say that the inability of the petitioner to accept donations may derail its programmes, which are in the pipeline.

13. Thus, having an overall view of the matter, we are of the opinion that the petitioner has made a case for grant of interim stay and for further examination of the matter by the court."

9. It is further submitted that the above quoted order was challenged by the Department in Principal Commissioner of Income Tax (Central) Delhi & Anr. v. Centre for Policy Research, SLP (C) Diary No. 44698/2023 and the Hon'ble Supreme Court saw fit to dispose of the same by declining to interfere in the decision of the Hon'ble High Court. It is submitted that the Assessee's case is similar to that of the Assessee in the above-mentioned writ petitions and accordingly, the cancellation of registration of the Assessee ought to be stayed during the pendency of these proceedings.

C. BALANCE OF CONVENIENCE IS IN FAVOUR OF THE ASSESSEE

10. On the basis of the above noted submissions, the Assessee has a strong prima facie case on merits. It is therefore submitted that the balance of convenience lies in favour of granting complete stay of cancellation of registration in the facts of the present case.

D. IRREPARABLE LOSS/INJURY

11. It is also submitted that the Assessee is dependent on the donations of its contributors for its day to day functioning and achievement of its objects. The employees engaged by the Assessee and its work depend on these contributions and

irreparable harm would be caused to the Assessee if the cancellation of registration is not stayed.

E. PRAYERS

12. In these circumstances, the Assessee prays that this Hon'ble Tribunal be pleased to:

a. Stay the order dated 30.09.2023 passed under Sec.12A r.w.s. 12AA and 12AB(4) of the IT Act, cancelling the registration of Assessee Trust with retrospective effect for Assessment Years. 2014-15 To 2022-23, 2023-24 Onwards, pending disposal of the Appeal and;

b. Pass such further or other order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

6. On the other hand, the Id. DR submitted that the petition of the assessee was not maintainable because the only provision empowering ITAT to grant stay during the pendency of the appeal is first proviso to section 254(2A) by which, the Tribunal can pass an order of stay in any proceedings in cases wherein there is any tax, interest, fee, penalty or any other sum payable by the assessee under the Act. It was submitted that in the present case, vide the impugned order, the Department has not raised any demand for any tax, interest, fee, penalty or any other sum payable. The Ld. DR also made reference to Rule 35(1)(a) of the Income Tax (Appellate Tribunal) Rules, 1963, according to which, a stay application can only be filed for stay of recovery of demand of tax, interest, penalty, fine, estate duty or any other sum.

6.1. In view of these facts, the Ld. DR submitted that the present stay petition of the assessee trust was not maintainable. The Ld. DR further submitted that as far as reliance of the assessee on the judgment of the Hon'ble High Court of Delhi in the case of CIT vs. Income Tax Appellate Tribunal [2013] 31 taxmann.com 369 (Delhi), is concerned, the

same is clearly not applicable to the facts of the present case. The Hon'ble High Court in the aforementioned case, was dealing with the implications of staying an order passed u/s 263 and in that light observed that the purpose of granting stay is two folds: (1) to prevent multiplicity of proceedings and harassment to the assessee, with the possibility of the proceedings before the Assessing Officer becoming meaningless if ultimately the order passed by the CIT is found to be invalid on grounds of jurisdiction or on merits and, (2) to ensure that the fruits of success in the appeals are not rendered meaningless or nugatory. The Ld. DR submitted that in the present case, re-assessment proceedings initiated against the assessee, are an independent set of proceedings governed by different set of provisions and cannot be said to be a consequence of the impugned order cancelling registration granted to the assessee. The same is also evident from the fact that notice u/s 148 for AY 2016-17 was issued on 04.05.2023, which is prior to the passing of the impugned order. Further, the order dated 25.05.2023 passed in WPC 7324/2023 passed by Hon'ble Delhi High Court, clearly records that the cancellation proceedings are on-going and final order is yet to be passed. In the other reassessment proceedings/notices initiated/issued after 30.09.2023, the factum of cancellation of registration u/s 12A/12AA/12AB has been noted for the purpose of completeness.

6.2. As regards the jurisdiction of PCIT (Central) - 2, Delhi to pass impugned order, it was submitted that the Central Board of Direct Tax vide its Notification No. 52/2014 dated 22.10.2014 had created a jurisdiction of CIT (Exemption) over all cases of persons in the territorial

area assigned to him/her, claiming exemption under section 11, 12 of the Act and assessed or assessable by an Income Tax authority specified in the Notification No. 50/2014 dated 22.10.2014. As regards the decision relied upon by the Ld. AR to conclude that it is the charge of CIT(Exemption), which alone can exercise the jurisdiction to cancel registration granted under 12A and 12AA, the ld. DR submitted that all decisions relied upon by the assessee have failed to take note of the Notification No.70/2014 dated 13.11.2014 issued by CBDT in exercise of power conferred by sub-section (1) and (2) of Section 120 of the Act and vide para (b) makes it clear that the CIT(Exemptions) does not exercise jurisdiction in respect of persons claiming exemption under section 11, section 12 of the Act which have been assigned to the Assessing Officers subordinate to PCIT, Central, under Section 127 of the Act. Therefore, by virtue of clause (b) of the Notification dated 13.11.2014, the PCIT (Central) has been empowered to perform/ exercise powers and functions stipulated in the Act in respect of such cases or classes or such persons or classes of persons, which were assigned to AO sub-ordinate to him, under section 127 of the Act.

6.3. It was further submitted that in fact the ITAT in the case of Aggarwal Vidya Pracharni Sabha (Supra) was constrained to observe that the query was left unsatisfied and no other Notification or Circular was brought to the notice of the Tribunal when pointed out during the hearing to ld. DR that this Notification dated 22.10.2014 does not mention specifically that the powers which can be exercised by ld. PCIT u/s 12AB(4) of the Act which has come into effect from 01.04.2021 would also

be exercised by virtue of this Notification dated 22.10.2014 or that further jurisdiction u/s 12AB of the Act could be transferred to other authorities as per this Notification. The Ld. DR further submitted that the assessee in the present case, pursuant to the order u/s 127 dated 10.11.2022, is now being assessed under DCIT, Central Circle 14. As per the Explanation to Section 127, once the 'case' of the assessee is transferred from one AO to another, all proceedings under the Act also stand transferred to that particular charge.

6.4. It was further submitted that a bare reading of the Section 127 along with Notification dated 13.11.2014, would clearly indicate that once an order u/s 127 stands passed, every proceeding stood transferred to Central Charge in the present case. Accordingly, as directed by the Notification dated 13.11.2014, all powers exercised and functions performed by the erstwhile CIT/PCIT, will now be exercised/performed by the new CIT/PCIT. There arises no need for CBDT or any other tax authority to again specify transfer of power of erstwhile CIT/PCIT will now be performed by the new CIT/PCIT.

6.5. Further, it was submitted that the aforesaid order u/s 127 dated 10.11.2022 has not been challenged by the assessee before any court/tribunal. Assessee having accepted the jurisdiction of DCIT, Central Circle 14, is now barred from challenging the jurisdiction of PCIT (Central)-2, Delhi to exercise all powers and functions as stipulated in the said Act, including the power of cancellation of registration u/s 12A/12AA/12AB of the Act.

6.6. Further, it was submitted that the reliance by the assessee on the Notification No. 30/2021 dated 01.04.2021 in the rejoinder, is also misplaced for the following reasons:-

“a. Notification No. 30/2021 was further amended by Notification No. 52/2022 dated 09.05.2022, whereby in the opening paragraphs, the words “and Commissioner of Income Tax (Exemption), Bengaluru” were omitted. Therefore, this is in contradiction to the submission of the assessee that CIT (Exemption) is only empowered to cancel registration u/s 12A/12AA/12AB.

b. Also, as per the submission of the assessee, Director of Income Tax (Centralized Processing Centre), Bengaluru or CIT (Exemption), Bengaluru becomes the sole authority for ascertaining the genuineness of the activities in terms of the objects of the trusts, for assessee situation across India, which cannot be intent of the Board.

c. Notification No. 30/2021 nowhere mentions the grant of power to cancel registration granted u/s 12A/12AA/12AB.

d. Notification No. 30/2021 only deals with cancellation of approval granted in Form 10AC and Unique Registration Number (URN) under various rules. Rule 17(6) provides that if it is noticed that Form No. 10A (application form for the registration of a charitable/religious trust) has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided, the Principal Commissioner or Commissioner, after giving an opportunity of being heard, may cancel the registration in Form No. 10AC and Unique Registration Number (URN), and such registration or such Unique Registration Number (URN) shall be deemed to have never been granted or issued.”

6.7. The ld. DR on the issue of jurisdiction to cancel registration of the assessee retrospectively submitted that the case laws relied upon by the assessee was considered by the Delhi Bench of ITAT in the case of Young Indian vs. CIT (Exemption), New Delhi, (ITA No. 7751/Del/ 2017) 2019 SCC Online ITAT 21465, in its order dated 15.11.2019, in paras 49 and 88, and proceeded to hold in Para 121 that registration can be cancelled from the date, the CIT(Exemption), notices the infringement. It was further submitted that the aforementioned Hon'ble High Court judgments relied upon by the assessee are not in the context of Section 12AB(4) and thus distinguishable on this ground alone. Clause (ii) of

Section 12AB(4)(c), as amended by Finance Act, 2022, clearly provides for cancelling the registration of such trust or institution, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place. Therefore, the said provision clearly enables the Department to pass an order cancelling the registration, which may impact previous years. It was further submitted that any decision which is per-incuriam, cannot be the basis to state existence of reasonable belief for claiming prima facie case, whereas, the Delhi Bench decision in the case of Young Indian (Supra) constitutes a binding precedent for the purposes of the present matter.

6.8. As regards the plea of the assessee for a prima facie case in its favour, relying upon the interim order dated 25.05.2023 passed by Hon'ble Delhi High Court in WPC 7324/2023 titled Legal Initiative for Forest and Environment Trust vs. DCIT and Interim orders dated 25.08.2023, 18.01.2024 passed by Hon'ble Delhi High Court in the case of Centre for Policy Research v PCIT(Central) in WP(C) No. 11270/2023, in the case of Oxfam India v PCIT(Central) in WP(C) No. 15287/2023 and in the case of Care India Solutions for Sustainable Development vs PCIT, Central, Delhi WP(C) No. 15364/2023, the Ld. DR submitted that interim order dated 25.05.2023, passed in the case of the assessee was issued in the context of reassessment proceedings initiated for AY 2016-17. The interim protection was granted by the Hon'ble High Court on the grounds of misalignment between the purportedly escaped income as indicated in notice u/s 148A(b) and the order passed u/s 148A(d) and the same could not have any bearing on the present case. It was further submitted that

interim order dated 25.08.2023, issued in the case of another assessee i.e. Centre for Policy Research was passed primarily on the issue of violation of principles of natural justice. It was further submitted that the interim order dated 18.01.2024 in case of Oxfam India and Care India Solutions for Sustainable Development was passed keeping in view the similar facts forming ground for interim order dated 25.08.2023. It was submitted that in the present case, the assessee has nowhere pleaded violations of principles of natural justice and therefore, the said interim orders are of no assistance to the assessee. In addition to the aforesaid, it was submitted that it is a settled legal position that an interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative and relied upon the decision in the case of State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694 (Para 21)]. It was also submitted that the Hon'ble High Court in the case of the managing trustee of the assessee i.e. Ritwick Dutta vs. DCIT, Central Circle 14 [WPC No. 8079/2024] vide order dated 29.05.2024 while dismissing the writ petition, has taken due note of the allegations against the assessee and its managing trustee in relation to diversion of funds being received from Earth Justice to avoid scrutiny from various government agencies. The order passed by the Hon'ble High Court clearly establishes that there cannot be a prima facie in favour of the assessee.

6.9. As regards the reliance on various decisions to contend that the Pr. CIT, Central-2, Delhi does not have the jurisdiction to cancel

registration is also unsustainable as it has been clearly established that these decisions do not lay down the correct law in view of the Notification No. 70/2014 dated 13.11.2014.

6.10. With respect to the plea of the assessee for the Balance of Convenience in favour of the assessee, it was submitted that it also does not lie in favour of the assessee, as there is nothing on record to show that the withdrawal/cancellation of registration u/s 12A/12AA/12AB has had any adverse impact on the working of the assessee or the assessee has faced any hardship. On the contrary, the registration under section 12A/12AA/12AB entitles the assessee to a special exemption from applicability of various taxing provisions under the Act. However, that exemption is subject to the assessee undertaking to ensure that its activities are genuine and in line with its stated objects. The grant of exemption is in lieu of public money and therefore, any contravention of the aforesaid undertaking and statutory provisions would clearly disentitle the assessee from claiming existence of balance of convenience in its favour.

6.11. As regards, the assessee's plea for irreparable Loss/ Injury caused to the assessee, it was submitted that the impugned order was passed on 30.09.2023 and the assessee has failed to substantiate its submission on irreparable loss/injury being caused to it as a result of the impugned order. Mere bald averments regarding the assessee being dependent on donations for day to day functioning has been made in the stay application.

6.12. The Id. DR also filed a written submission on 16.07.2021, wherein, in addition to the abovementioned submissions argued during the course of hearing, made a new submission that in deciding a matter relating to stay, public interest is a vital consideration in grant of interim injunctions. The Id. DR submitted that even though the assessee has not chosen not to make submissions on merits in support of its application for stay, it is humbly submitted that the impugned order dated 30.09.2023, clearly records that the assessee has received substantial funding (87% of total contributions on average) from entities situated outside India with the purpose of engaging in agitation/litigation beyond their stated objects. It is seen and noted in the impugned order as to how the foreign funding is influencing the working of the assessee and these trusts/institutions are indulging in activities contrary to the objects for which they were formed. Therefore, vital public interest is also involved in the present matter, which is one of the relevant factors required to be looked into, while considering applications for stay/interim injunctions. Relying upon the decision in the case of Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. (1999) 7 SCC 1, @ Para 24 (vii), it was submitted that the Hon'ble Supreme Court had held that considerations which weight with the court hearing the application or petition for the grant of injunctions includes whether the grant of or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise. Further, it was submitted that the Hon'ble Supreme Court in Mahadeo Savlaram Shelke & Ors. v. Pune Municipal Corporation & Anr., (1995) 3 SCC 33 @ Para 14 held that public interest

is one of the material and relevant considerations in either exercising or refusing to grant ad interim injunction.

6.13. In view of the aforesaid submissions, it was submitted that the assessee has failed to establish prima facie case, balance of convenience and irreparable loss, in case an interim protection is not granted till the disposal of the appeal and is liable to be dismissed as the assessee has failed to make out its case for grant of any interim protection during the pendency of the appeal.

6.14. The written submission filed by the DR on 16.07.2024 is reproduced as under:-

“1. The assessee Legal Initiative for Forest and Environment (LIFE) got registered u/s 12A r.w. 12AA of the Income Tax Act, 1961 (the Act) on 05.09.2011 from AY 2011-12 onwards. It has been granted registration u/s 12A as per the new provisions of the Act on 24.09.2021. A survey action was carried out by the Investigation Wing on 07.09.2022.

2. Vide order u/s 127 dated 10.11.2022, the jurisdiction over the assessee was transferred from Ward (Exemption) 1(4), Delhi to Central Circle 14, Delhi.

3. Materials collected during the survey were shared with the Assessing Officer (AO), i.e., DCIT, Central Circle-14, New Delhi. The said information/materials were shared by the AO with the Respondent PCIT (Central)-2 on 17/18.01.2023.

4. Thereafter, based on independent application of mind to the evidences, a show cause notice regarding cancellation of registration u/s 12AB (4) r.w.s. 12A and 12AA of the Act was issued on 04.02.2023. After considering the replies filed by the assessee, the conclusion was arrived at by the Respondent is contained in para 16 of the impugned Order dated 30.09.2023, which held that that working of the Assessee Trust is not as per the objects of the trust, including it's association between Assessee and Earth Justice.

5. The assessee has filed the present stay application on 19.04.2024 seeking stay of the impugned order dated 30.09.2023 passed under section 12A r.w.s. Section 12AA & 12AB(4) of the Act passed by Respondent.

6. Section 254(1) provides that the Ld. ITAT may, after giving both the parties to the appeal an opportunity of being heard, pass such orders

thereon as it thinks fit. However, the only provision empowering Ld. ITAT to grant a stay during the pendency of the appeal is first proviso to Section 254(2), which provides that the Ld. ITAT may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act.

7. It is humbly submitted that the application under proviso to Section 254(2) can only be moved in cases wherein there is any tax, interest, fee, penalty or any other sum payable by the assessee under the Act. In the present case, vide the impugned order, the Department has not raised any demand for any tax, interest, fee, penalty or any other sum payable.

8. Reference may also be made to Rule 35A1)(a) of the Income Tax (Appellate Tribunal) Rules, 1963, according to which, a stay application can only be filed for stay of recovery of demand of tax, interest, penalty, fine, estate duty or any other sum.

9. As far as reliance of the Assessee on the judgment of the Hon'ble High Court of Delhi in the case of CIT vs. Income Tax Appellate Tribunal [2013] 31 taxmann.com 369 (Delhi), is concerned, the same is clearly not applicable to the facts of the present case. Hon'ble High Court in the aforementioned case, was dealing with the implications of staying an order passed u/s 263 and in that light observed that the purpose of granting stay is two folds: (1) to prevent multiplicity of proceedings and harassment to the assessee, with the possibility of the proceedings before the Assessing Officer becoming meaningless if ultimately the order passed by the CIT is found to be invalid on grounds of jurisdiction or on merits and, (2) to ensure that the fruits of success in the appeals are not rendered meaningless or nugatory.

10. In the present case, Re-assessment proceedings initiated against the assessee, are an independent set of proceedings governed by different set of provisions and cannot be said to be a consequence of the impugned order cancelling registration granted to the assessee. The same is also evident from the fact that notice u/s 148 for AY 2016-17 was issued on 04.05.2023, which is prior to the passing of the impugned order. Further, the order dated 25.05.2023 passed in WPC 7324/2023 passed by Hon'ble High Court, clearly records that the cancellation proceedings are on-going and final order is yet to be passed.

In the other reassessment proceedings/notices initiated/issued after 30.09.2023, the factum of cancellation of registration u/s 12A/12AA/12AB has been noted for the purpose of completeness.

Jurisdiction of PCIT (Central) - 2, Delhi to pass impugned order:

11. Central Board of Direct Tax vide its Notification No. 52/2014 dated 22.10.2014 had created • a jurisdiction of CIT (Exemption) over all cases of persons in the territorial area assigned to him/her, claiming exemption under section 11, 12 of the Act and assessed or assessable

by an Income Tax authority specified in the Notification No. 50/2014 dated 22.10.2014.

12. Multiple Tribunal decisions [Refer: Aggarwal Vidya Pracharni Sabha v. PCIT Central Gurgaon (ITA No. 1308/DEL/2023), Pacific Academy of Higher Education and Research Society vs. PCIT Central (ITA No. 04/JODH/2020), Wholesale Cloth Merchant Association vs. PCIT Central (ITA No. 688/JP/2019)] relied upon by the assessee have relied on the said notification to conclude that that it is the charge of CIT (Exemption), which alone can exercise the jurisdiction to cancel registration granted under 12A and 12AA.

13. However, all the aforementioned decisions have failed to take note of the Notification No.70/2014 dated 13.11.2014 issued by CBDT in exercise of power conferred by sub-section (1) and (2) of Section 120 of the Act. Vide Para (b) of the notification, it has been ordered, inter alia, that:-

In exercise of the powers conferred by sub-sections (1) and (2) of section 120 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India, Central Board of Direct Taxes number 5.0.822(E), dated the 23rd August, 2001 published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (it), dated the 23rd August, 2001, except as respects things done or omitted to be done before such supersession, the Central Board of Direct Taxes hereby,—

(a) ...

(b) directs that the Director General of Income-tax or the Chief Commissioner of Income-tax specified in column (2) of the said Schedules or the Principal Commissioner/Commissioner of Income-tax specified in column (4) of the said Schedules or Joint Commissioners of Income-tax subordinate to them, shall exercise powers and perform the functions as stipulated in the said Act in respect of such cases or classes of cases or such persons or classes of persons, assigned to Assessing Officers subordinate to them, under section 127 of the said Act, from the date of publication of this notification;

14. A conjoint reading of the aforementioned Notifications and provisions makes it clear that the CIT(Exemptions) does not exercise jurisdiction in respect of persons claiming exemption under section 11, section 12 of the Act which have been assigned to the Assessing Officers subordinate to PCIT, Central, under Section 127 of the Act. Therefore, by virtue of clause (b) of the Notification dated 13.11.2014, the PCIT (Central) has been empowered to perform/exercise powers and functions stipulated in the Act in respect of such cases or classes or such persons or classes of persons, which were assigned to AO subordinate to him, under section 127 of the Act.

15. In fact, the Ld. ITAT in the case of Aggarwal Vidya Pracharni Sabha (Supra), was constrained to observe the following:

"14.5 ... The authorisation u/s 12AB or Rule 17A if have to be construed, by virtue of Board's Notification dated 22.10.2014,

then we pointed out during the hearing, to Id. DR that this Notification dated 22.10.2014 does not mention specifically that the powers which can be exercised by Id. PCIT u/s 12AB(4) of the Act and which have come into effect from 01.04.2021 would also be exercised by virtue of this Notification dated 22.10.2014 or that further jurisdiction u/s 12AB of the Act could be transferred to other authorities as per this Notification. The query was left unsatisfied and no other Notification or Circular was brought to our notice."

16. The assessee in the present case, pursuant to order u/s 127 dated 10.11.2022, is now being assessed under DCIT, Central Circle 14. As per the following Explanation to Section 127, once the 'case' of the assessee is transferred from one AO to another, all proceedings under the Act also stand transferred to that particular charge:

Explanation.—In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

17. Therefore, a bare reading of the Section 127 along with Notification dated 13.11.2014, would clearly indicate that once an order u/s 127 stands passed, every proceeding stood transferred to Central Charge in the present case. Accordingly, as directed by the Notification dated 13.11.2014, all powers exercised and functions performed by the erstwhile CIT/PCIT, will now be exercised/performed by the new CIT/PCIT. There arises no need for CBDT or any other tax authority to again specify transfer of power of erstwhile CIT/PCIT will now be performed by the new CIT/PCIT.

18. Further, the aforesaid order u/s 127 dated 10.11.2022 has not been challenged by the assessee before any court/tribunal. Assessee having accepted the jurisdiction of DCIT, Central Circle 14, is now barred from challenging the jurisdiction of PCIT (Central)-2, Delhi to exercise all powers and functions as stipulated in the said Act, including the power of cancellation of registration u/s 12A/12AA/12AB.

19. Further, the reliance by the assessee on the Notification No. 30/2021 dated 01.04.2021 in the rejoinder, is also misplaced for the following reasons:

a. Notification No. 30/2021 was further amended by Notification No. 52/2022 dated 09.05.2022, whereby in the opening paragraphs, the words "and Commissioner of Income Tax (Exemption), Bengaluru" were omitted. Therefore, this is in contradiction to the submission of the assessee that CIT (Exemption) is only empowered to cancel registration u/s 12A/12AA/12AB.

b. Also, as per the submission of the assessee, Director of Income Tax (Centralized Processing Centre), Bengaluru or CIT (Exemption), Bengaluru becomes the sole authority for ascertaining the genuineness

of the activities in terms of the objects of the trusts, for assessee situation across India, which cannot be intent of the Board.

c. Notification No. 30/2021 nowhere mentions the grant of power to cancel registration granted u/s 12A/ 12AA/ 12AB.

d. Notification No. 30/2021 only deals with cancellation of approval granted in Form 10AC and Unique Registration Number (URN) under various rules. Rule 17(6) provides that if it is noticed that Form No. 10A (application form for the registration of a charitable/religious trust) has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided, the Principal Commissioner or Commissioner, after giving an opportunity of being heard, may cancel the registration in Form No. 10AC and Unique Registration Number (URN), and such registration or such Unique Registration Number (URN) shall be deemed to have never been granted or issued.

Jurisdiction to cancel registration of the Petitioner retrospectively:

20. Petitioner has relied upon various high court judgments of [Refer: Oxford Academy for Career Development vs. CCIT [2009] 315 ITR 382 (Allahabad), ACIT vs. Agra Development Authority [2018] 407 ITR 562 (Allahabad), Auro Lab vs. ITO [2019] 411 ITR 308 (Madras)], to contest that the Respondent Department does not have the power to cancel registration of the Petitioner retrospectively.

21. Vide the impugned order dated 30.09.2023, the Respondent has cancelled the registration granted to the assessee u/s 12A/ 12AA from FY 2013-14 to FY 2020-21 and u/s 12AB from FY 2021-22 onwards.

22. The aforesaid judgments relied upon are clearly distinguishable on facts and not applicable to the present case. In the case of Oxford Academy (Supra), vide order dated 09.03.2004, registration granted on 01.04.1999 was cancelled. Hon'ble High Court held that the power to cancel registration in the form of Section 12AA(3) was incorporated w.e.f. 01.10.2004 and the same is not applicable retrospectively. In the case of Agra Development Authority (Supra), vide order dated 04.04.2012, registration granted on 01.04.2003 was cancelled with effect from AY 2009-10. Hon'ble High Court observed that the amendment to Section 12AA(3) being addition of words 'or have obtained registration at any time under Section 12-A' was w.e.f. 01.06.2010. In the case of Auro Labs (Supra), vide order dated 30.12.2010, registration granted under 12A was cancelled w.e.f. 09.10.1992. Hon'ble Court held that the 2010 amendment to Section 12AA(3) is prospective and not retrospective in character and therefore, the cancellation order can not operate from a past date.

23. The aforesaid high court judgments were also relied upon by the Ld. Tribunal in the cases of Pacific Academy of Higher Education (Supra) and Heart Foundation of India vs. CIT-Central ITA No. 1524/MUM/2023 to hold that power to cancel registration retrospectively was not available and therefore, the said decisions are also not applicable to the present case.

24. It is humbly submitted that the Delhi Bench of Ld. ITAT in the case of *Young Indian vs. CIT (Exemption), New Delhi, (ITA No. 7751/Del/2017) 2019 SCC Online ITAT 21465, vide order dated 15.11.2019, has considered all the aforesaid high court judgments in the following Paras 49 and 88, and proceeded to hold as under in Para 121:*

"49. Without prejudice, the Ld. Counsel submitted that registration cannot be cancelled retrospectively without giving specific opportunity to the assessee and further, registration cannot be cancelled with retrospective date. Reliance in this regard was placed on the judgment of Allahabad High Court in the case of Agra Development Authority (2018) 90 taxmann.com 282 and of Madras High Court in the case of Auro Lab v. ITO (2019) 102 taxmann.com 225 (Madras).

...

88. As regards reliance placed on the judgment of Madras High Court in the case of Prathyusha Educational Trust (supra) on retrospective cancellation of registration u/s. 12A/12AA, the Id. counsel submitted Hon'ble Allahabad High Court in the case of Agra Development Authority (supra) has clearly held that CIT (Exemption) is not empowered to cancel registration with retrospective effect, i.e., prior to the date of issuance of order/notice. To the same effect, there is another judgment of Hon'ble Rajasthan High Court in the case of Indian Medical Trust vs. PCIT, 414 ITR 296

...

121. .. Nowhere, the Statute envisages that the cancellation cannot be retrospective or it has to be necessarily prospective. What it provides that the Commissioner has statutory powers to cancel the registration u/s. 12A/12AA if he finds reason to believe that the activities of the assessee are not in line with its objects or the activities carried out by the assessee are not genuine in nature. If from the date when registration has been granted, the assessee has not carried out any activity in line with its objects or the activities carried out are not genuine, then from that date itself, the registration can be cancelled because it is only when the knowledge of such breach come to the notice of the Commissioner, then he has the power to cancel the registration from the date he notices the infringement...."

25. Also, the aforementioned high court judgments relied upon by the assessee are not in the context of Section 12AB(4) and thus distinguishable on this ground alone. Clause (ii) of Section 12AB(4)(c), as amended by Finance Act, 2022, clearly provides for cancelling the registration of such trust or institution, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place.

Therefore, the said provision clearly enables the Respondent Department to pass an order cancelling the registration, which may impact previous years.

No Prima Facie Case in favour of the Assessee:

26. Assessee has pleaded existence of a prima facie case on the following reasons:

a. Interim order dated 25.05.2023 passed by Hon'ble Delhi High Court in WPC 7324/2023 titled Legal Initiative for Forest and Environment Trust vs. DCIT.

b. Interim orders dated 25.08.2023, 18.01.2024 passed by Hon'ble Delhi High Court in WP(C) No. 11270/2023, WP(C) No. 15787/2023 and WP(C) No. 15364/2023 in the case of other assessee's.

c. Decisions cited in relation to jurisdictional issues mentioned earlier.

27. It is humbly submitted that interim order dated 25.05.2023, was issued in the context of reassessment proceedings initiated for AY 2016-17. The interim protection was granted by the Hon'ble High Court was issued on the grounds of misalignment between the purportedly escaped income as indicated in notice u/s 148A(b) and the order passed u/s 148A(d). The same cannot have any bearing on the present case.

28. It is submitted that interim order dated 25.08.2023, issued in the case of another assessee i.e. Centre for Policy Research was passed primarily on the issue of violation of principles of natural justice. Also, interim order dated 18.01.2024, was passed in case of Oxfam India and Care India Solutions for Sustainable Development keeping in view the similar facts forming ground for interim order dated 25.08.2023. In the present case, the assessee has nowhere pleaded violations of principles of natural justice and therefore, the said interim orders are of no assistance to the assessee.

29. In addition to the aforesaid, it is a settled legal position that an interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. [Refer: State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694 (Para 21)]

30. It is also submitted that the Hon'ble High Court in the case of the managing trustee of the assessee i.e. Ritwick Dutta vs. DCIT, Central Circle 14 [WPC No. 8079/2024] vide order dated 29.05.2024 while dismissing the writ petitions, has taken due note of the allegations against the assessee and its managing trustee in relation to diversion of funds being received from Earth Justice to avoid scrutiny from various government agencies. The order passed by the Hon'ble High Court clearly establishes that there cannot be a prima facie in favour of the assessee.

31. Further, reliance on various decisions to contend that the Respondent does not have the jurisdiction to cancel registration is also unsustainable as it has been clearly established that these decisions do not lay down the correct law in view of the Notification No. 70/2014 dated 13.11.2014. Any decision which is per-incuriam, cannot be the basis to state existence of reasonable belief for claiming prima facie

case. Whereas, the Delhi Bench decision in the case of Young Indian (Supra) constitutes a binding precedent for the purposes of the present matter.

No Balance of Convenience in favour of the Assessee:

32. Balance of convenience also does not lie in favour of the Assessee, as there is nothing on record to show that the withdrawal/cancellation of registration u/s 12A/12AA/12AB has had any adverse impact on the working of the assessee or the assessee has faced any hardship.

33. On the contrary, the registration under section 12A/12AA/12AB entitles the assessee to a special exemption from applicability of various taxing provisions under the Act. However, that exemption is subject to the assessee undertaking to ensure that its activities are genuine and in line with its stated objects. The grant of exemption is lieu of public money and therefore, any contravention of the aforesaid undertaking and statutory provisions would clearly disentitle the assessee from claiming existence of balance of convenience in its favour.

No Irreparable Loss/ Injury caused to the Assessee:

34. The impugned order was passed on 30.09.2023 and the assessee has failed to substantiate its submission on irreparable loss/injury being caused to it as a result of the impugned order. Mere bald averments regarding the assessee being dependent on donations for day to day functioning has been made in the stay application.

Public Interest is a vital consideration in grant of interim injunctions:

35. In addition to the aforementioned points, even though the assessee has not chosen not to make submissions on merits in support of its application for stay, it is humbly submitted that the impugned order dated 30.09.2023, clearly records that the assessee has received substantial funding (87% of total contributions on average) from entities situated outside India with the purpose of engaging in agitation/litigation beyond their stated objects.

36. It is seen and noted in the impugned order as to how the foreign funding is influencing the working of the assessee and these trusts/institutions are indulging in activities contrary to the objects for which they were formed. Therefore, vital public interest is also involved in the present matter, which is one of the relevant factors required to be looked into, while considering applications for stay/interim injunctions.

37. Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. (1999) 7 SCC 1, @ Para 24 (vii), the Hon'ble Supreme Court had held that considerations which weight with the court hearing the application or petition for the grant of injunctions includes whether the grant of or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.

38. The Hon'ble Supreme Court in Mahadeo Savlaram Shelke & Ors. v. Pune Municipal Corporation & Anr., (1995) 3 SCC 33 @ Para 14 has

held that public interest is one of the material and relevant considerations in either exercising or refusing to grant ad interim injunction.

39. In view of the aforesaid submissions, it is humbly submitted that the assessee has failed to establish prima facie case, balance of convenience and irreparable loss, in case an interim protection is not granted till the disposal of the appeal.”

7. In rejoinder, the ld. AR submitted on the issue of maintainability that the Department's reliance on Rule 35A of the Income Tax Appellate Tribunal Rules is misplaced because Rule 35A specifically deals with an application for a stay of recovery of demand and does not state that an order on the application of stay cannot be passed in the Tribunal. It was further submitted that the power to grant a stay is incidental or ancillary to its appellate orders as given under Section 254(1) of the Act. Further, it is submitted that a Rule cannot circumscribe the power given by a Statute. Hence, Rule 35-A would only apply where an application of stay is filed in cases of demand of recovery and not in cases where an application of stay is filed on the operation of the order and this power shall lie under Section 254(1) of the Act. It was further submitted that rules cannot decide whether the Tribunal has the power or not, but the Statute defines the power of the Tribunal and also relied upon the decisions of the Hon'ble Supreme Court and High Courts cited above by the assessee.

7.1. As regards the power of PCIT, it was submitted that the Department's reliance on Notification No. 70/2014, dated 13.11.2014, is misplaced because the power to grant exemption is not a supervisory power over the AO but a separate power independent of the assessment. This is because, for the power of grant/revocation of the exemption

status, the CBDT had issued Notification 52/2014 granting the power to issue registration u/s 12A to CIT(E). Thereafter, in view of the faceless regime, the CBDT has issued a separate notification no. 30/2021, dated 01.04.2021, which grants the power to grant/revoke registration to DIT(CPC), Bengaluru and not to CIT (E) or PCIT(Central). Therefore, when the CBDT, through Notification No. 30/2021, has clearly provided that DIT(CPC) Bengaluru will have the power to grant/revoke registration, PCIT(Central) could never have revoked registration by way of transfer u/s 127 order when CIT(Exemption) itself was not empowered to grant/revoke the registration. The Department's reliance on Order dated 10.11.2022 passed under Section 127 of the Act granting the PCIT the power to grant/revoke registration is misplaced since the transfer was made solely for administrative convenience and assessment purposes. The order u/s 127 reads, 'Accordingly, the transfer is effective as per the table mentioned below for the purpose of administrative convenience, coordinated investigation and meaningful assessment.' Further, Section 127 of the Act does not envisage the transfer of jurisdictions from CIT(E) to PCIT(Central) and such a power to transfer rests solely with the CBDT, which can be done only via Section 120 of the Act, which is not the case in the present matrix. Further it was submitted that the list submitted by the Department enumerating the different functions of the PCIT itself does not contain the power of the PCIT to grant/revoke registration u/s 12A of the Act, because the power to grant/revoke registration is de hors the Assessing Officer of the assessee trust since such a power is not guided by who the Assessing Officer is but rests solely with DIT(CPC), Bengaluru, by virtue of Notification No. 30/2021 dated 01.04.2021. Further, the

Hon'ble High Court of Delhi, in assessee's own case, i.e., Legal Initiative For Forest and Environment Trust v DCIT W.P. (C) 7324/2023, has for AY 2016-17, granted a stay on the operation of Section 148 notice issued by the Department.

7.2. As regards retrospectivity, it was submitted that the judgment relied on by the Department in the case of Young Indian (supra), the Tribunal noted the judgements of the Hon'ble High Courts and the Hon'ble Supreme Court, however it does not deal with any of those judgements in the operative portion of the judgment and therefore, the order in Young Indian (supra) is per incuriam, whereas the order of ITAT in Wholesale Cloth Merchant Association (supra) considers and relies on the Hon'ble Supreme Court and all the High Court decisions in this regard. Therefore, in light of the above submissions and the arguments made during the course of the hearing, it was submitted that the assessee has made out a prima facie case for a grant of interim stay on the impugned order.

7.3. The assessee also filed a written submission on 15.07.2024 giving a summary of its main submission made during the course of hearing and its rejoinder, which is reproduced as under:-

“1. The instant Stay Application is filed in ITA No. 3241/DEL/2023 on 15.04.2024 seeking a stay of the Order dated 30.09.2023 ("Impugned Order") cancelling registration granted to the Assessee under Section 12A r.w.s. 12AA & 12AB(4) of the Income-tax Act, 1961 ("the Act") passed by the PCIT(Central), Delhi -2 .

2. It is submitted that for the grant of an order of interim stay, the Hon'ble Supreme Court has prescribed three conditions that have to be factored in for the grant of an order of interim stay, viz., 1) a prima facie case, 2) an irreparable loss and 3) a balance of convenience.

Prima facie case

3. It is submitted that the Assessee has made out a prima facie case for grant of interim stay on the Impugned Order for the following reasons-

a. That the PCIT(Central) did not have the jurisdiction to pass the Impugned Order dated 30.09.2023

i. It is submitted that the PCIT(Central) did not have the jurisdiction to cancel the registration granted to assessee u/s 12A and 12AA of the Act, and therefore, the Impugned Order is void ab initio. [Refer: Aggarwal Vidya Pracharni Sabha v PCIT (Central) Gurgaon ITA No. 1308/DEL/2023 @ Para 19-21 @ Page 47-55 of Assessee's Case Compilation; Pacific Academy of Higher Education and Research Society v PCIT (Central) ITA No. 04/JODH/2020 @ Para 6.8-6.9 @ Page 94-98 of Assessee's Case Compilation; Wholesale Cloth Merchant Association v PCIT(Central) ITA No. 688/JP/2019 @ Para 19-21 @ Page 133-139 of Assessee's Case Compilation.]

b. That the Impugned Order could not have been retrospectively cancelled the registration granted u/s 12A/ 12AA of the Act from AY 2014-15

i. It is submitted that unless a statute expressly states to the contrary, it cannot be construed as having retrospective effect. Since Section 12AA(3) and 12AB(4) of the Act do not provide for cancellation with retrospective effect, no cancellation for previous assessment years could have been ordered. [Refer: CIT v. Vatika Township (P) Ltd. (2015) 1 SCC 1 @ Para 28-31 @ Page 188-189 of Assessee's Case Compilation; Oxford Academy For Career Development v CCIT /2009/ 315 ITR 382 (Allahabad) @ Para 21 @ Page 204 of Assessee's Case Compilation; ACIT v Agra Development Authority [2018/ 407 ITR 562 (Allahabad) @ Para 50-52 @ Page 220 of Assessee's Case Compilation; Auro Lab v ITO /2019] 411 ITR 308 (Madras) @ Para 20-21 @ Page 249 of Assessee's Case Compilation; Pacific Academy of Higher Education and Research Society v PCIT (Central) ITA No. 04/JODH/2020 @ Para 6.9 @ Page 94-98 of Assessee's Case Compilation; Wholesale Cloth Merchant Association v PCIT(Central) ITA No. 688/JP/2019 @ Para 30-31 @ Page 153-155 of Assessee's Case Compilation.]

Irreparable loss

4. It is submitted that if the operation of the Impugned Order is not stayed then the Assessee will suffer irreparable loss and injury. In this regard, the Assessee submits:

a. Due to the passing of the Impugned Order cancelling the Assessee's registration u/s 12A/12AA/12AB of the Act, the Assessee is unable to receive donations for its day-to-day functioning, effectively bringing all its operations to a standstill.

b. In this regard, the Assessee places reliance on the rulings of the Hon'ble High Court of Delhi, wherein in cases involving

identical issues and factual matrix, the Hon'ble Court has granted a stay on the order cancelling the registration of the Assessee trusts on the ground that irreparable loss will be caused to the Assessee trusts otherwise. [Refer: Centre for Policy Research v PCIT(Central) W.P.C) 11270/2023 Order dated 25.08.2023; Oxfam India v PCIT(Central) W.P. (C)15287/2023 Order dated 18.01.2024].

c. Further, the Impugned Order @ Para 15 @ Page 82 treats the Assessee and the aforesaid institutions as the same and acting in concert. Therefore, on parity of reasoning, the interim order in the above cases should ensure benefit to the Assessee as well. In this regard, it would be instructive to refer to the judgment of the Hon'ble Supreme Court in Vishnu Traders v. State of Haryana and Others 1995 Supp (1) Supreme Court Cases 461 where it states that 'all similar matters should receive similar treatment except where factual differences require a different treatment so that there is assurance of consistency, uniformity, predictability and certainty of judicial approach'.

d. Further, pursuant to the cancellation of the Assessee's registration, the Department has initiated assessment proceedings on the gross receipts received by the Assessee, treating the Assessee as a non-exempt organisation. If the registration granted to the Assessee were still valid, the Department would not be able to make such assessments on a gross basis.

e. The Department has also issued Section 148A notices for A Ys 2014-15 onwards, for which the Impugned Order had cancelled the registration retrospectively. Moreover, assessment proceedings for subsequent A Ys are also being carried out against the Assessee, treating the Assessee as a non-exempt organization. The initiation of such proceedings will jeopardize the Assessee's functioning and have the potential to break its financial backbone.

Balance of Convenience

5. It is submitted that for the grant of an interim order of stay, the balance of convenience lies in the favour of the Assessee. In this regard, the Assessee submits the following:

a. That if an interim stay on the operation of the Impugned Order is not granted to the Assessee, they will be unable to receive any funds through donations. Consequently, due to lack of funding all the operations of the Assessee shall come to a standstill, including the inability to pay the salaries of its employees.

b. In fact, the Hon'ble High Court of Delhi in Centre for Policy Research (supra) and Oxfam India (supra) have observed that cancelling the registration of the assessee trusts will disable them from receiving donations. Since the assessee trusts survive solely on the donations received, the balance of convenience will stand in favour of the assessee trusts.

6. Therefore, the Assessee submits that it meets all the necessary conditions— namely, a prima facie case, irreparable loss, and the balance of convenience-for an order granting an interim stay on the operation of the Impugned Order.

7. Further, during the course of the arguments, a challenge was raised on the maintainability of a stay application before the Hon'ble ITAT. In this regard, the Assessee submits:

a. That the Hon'ble ITAT, in the exercise of its appellate power under the Act, is empowered to pass an order of stay. [Refer to: M.K. Mohammed Kunhi /1969) 71 ITR 815 @ Para 9-13; ITO v. Khalid Mehdi Khan | 1977| 110 ITR 79® Para 5; CIT v ITAT [2013/ 31 taxmann.com 369 (Delhi) @ Para 21].

b. Further, the Assessee submits that under Section 254(1) of the Act, the Hon'ble ITAT has been accorded powers of widest amplitude to pass such orders as it thinks fit after giving a reasonable opportunity of being heard to both the parties to the appeal.

Rejoinder Submissions of the Assessee

A. Qua Maintainability

i. It is submitted that the Department's reliance on Rule 35A of the Income Tax Appellate Tribunal Rules is misplaced because Rule 35A specifically deals with an application for a stay of recovery of demand and does not state that an order on the application of stay cannot be passed in the Tribunal. The power to grant a stay is incidental or ancillary to its appellate orders as given under Section 254(1) of the Act.

ii. Further, it is submitted that a Rule cannot circumscribe the power given by a Statute. Hence, Rule 35-A would only apply where an application of stay is filed in cases of demand of recovery and not in cases where an application of stay is filed on the operation of the order. This power shall lie under Section 254(1) of the Act. Therefore, rules cannot decide whether the Tribunal has the power or not, but the Statute defines the power of the Tribunal along with decisions of the Hon'ble Supreme Court and High Court.

B. Qua Power of PCIT

i. It is submitted that the Department's reliance on Notification No. 70/2014, dated 13.11.2014, is misplaced because the power to grant exemption is not a supervisory power over the AO but a separate power independent of the assessment. This is because, for the power of grant/revocation of the exemption status, the CBDT had issued Notification 52/2014 granting the power to issue registration u/s 12A to CIT(E). Thereafter, in view of the faceless regime, the CBDT has issued a separate notification no. 30/2021, dated 01.04.2021, which grants the power to grant/voke registration to DIT(CPC), Bengaluru and not to CIT (E) or PCIT(Central).

ii. Therefore, when the CBDT, through Notification No. 30/2021, has clearly provided that DIT(CPC) Bengaluru will have the power to grant/revoke registration, PCIT(Central) could never have revoked registration by way of transfer u/s 127 order when CIT(Exemption) itself was not empowered to grant/revoke the registration.

iii. The Department's reliance on Order dated 10.11.2022 passed under Section 127 of the Act granting the PCIT the power to grant/revoke registration is misplaced since the transfer was made solely for administrative convenience and assessment purposes. The order u/s 127 reads, 'Accordingly, the transfer is effective as per the table mentioned below for the purpose of administrative convenience, coordinated investigation and meaningful assessment.' Further, Section 127 of the Act does not envisage the transfer of jurisdictions from CIT(E) to PCIT(Central). Such a power to transfer rests solely with the CBDT, which can be done only via Section 120 of the Act, which is not the case in the present matrix.

iv. The list submitted by the Department enumerating the different functions of the PCIT itself does not contain the power of the PCIT to grant/revoke registration u/s 12A. This is because the power to grant/revoke registration is de hors the Assessing Officer of the assessee trust since such a power is not guided by who the Assessing Officer is but rests solely with DIT(CPC), Bengaluru, by virtue of Notification No. 30/2021 dated 01.04.2021.

v. Further, the Hon'ble High Court of Delhi, in Assessee's own case, i.e., *Legal Initiative For Forest and Environment Trust v DCIT W.P. (C) 7324/2023*, has for AY 2016-17, granted a stay on the operation of Section 148 notice issued by the Department.

C. **Qua Retrospectivity**

i. It is also submitted that the judgment relied on by the Department in the case of *Young India (supra)*, the Tribunal noted the judgements of the Hon'ble High Courts and the Hon'ble Supreme Court, however it does not deal with any of those judgements in the operative portion of the judgment and therefore, the order in *Young India (supra)* is *per incuriam*. Whereas the order of ITAT in *Wholesale Cloth Merchant Association (supra)* considers and relies on the Hon'ble Supreme Court and all the High Court decisions in this regard.

8. Therefore, in light of the above submissions and the arguments made during the course of the hearing, the Assessee has made out a *prima facie* case for a grant of interim stay on the Impugned Order.

8. We have considered the rival submissions and perused the material available on record. The preliminary issue to be decided in the matter of present stay application is about its maintainability. As stated above, the assessee relied upon three case laws namely M.K. Mohammed Kunhi

/1969) 71 ITR 815, ITO v. Khalid Mehdi Khan | 1977| 110 ITR 79, CIT v ITAT [2013/ 31 taxmann.com 369 (Delhi), to submit that the ITAT has powers to grant stay of any proceedings, which has a relevance to the appeal filed by the assessee u/s 253 of the Act before the Tribunal or in respect of the operation of the any order, which is the subject matter of the appeal. In the case of CIT vs ITAT (supra) the Hon'ble Delhi High Court affirmed the order of the Tribunal, wherein, vide order dated 21.05.2010 had granted stay to the ongoing assessment proceedings pursuant to an order dated 01.04.2010 passed by the CIT u/s 263 of the Act, setting aside the assessment order for Assessment Years 1999-2000 to 2005-06, which was challenged by the assessee by way of an appeal before the Tribunal and the hearing of which was in progress before the Tribunal. The Hon'ble High Court in para 21 of its order held as under:-

“21. So far as the order of the Tribunal passed on 21.05.2010 is concerned, it is well settled by the judgment of the Supreme court in ITO v. Mohd. Kunhi, (1969) 71 ITR 815 that the Tribunal, while exercising its appellate powers under the Income Tax Act has also the power to ensure that the fruits of success are not rendered futile or nugatory and for this purpose it is empowered, to pass appropriate orders including orders of stay.

In ITO v. Khalid Mehdi Khan, (1977) 110 ITR 79 the Andhra Pradesh High Court, applying the rule laid down in Mohd. Kunhi (supra), stayed the assessment proceedings pending before the Assessing Officer consequent to the directions of the CIT given in orders passed under Section 263 of the Act. The stay order passed by the Tribunal on 21.05.2010 is, therefore, supported by ample authority. It is part of the exercise of the appellate power of the Tribunal under Section 254 (1). The object of the order is twofold: the first is to prevent multiplicity of proceedings and harassment to the assessee, with the possibility of the proceedings before the Assessing Officer becoming meaningless if ultimately the order passed by the CIT is found to be invalid on grounds of jurisdiction or on merits and, second, to ensure that the fruits of success in the appeals are not rendered meaningless or nugatory. It has not been shown before us by the petitioner as to what error was committed by the Tribunal in passing the stay orders, nor was it argued that the Tribunal did not exercise its discretion on the basis of settled parameters for granting stay of proceedings.”

8.1. In the above para, the Hon'ble Delhi High Court relied upon the decision of the Hon'ble Apex Court in the case of M.K. Mohammed Kunhi(supra) and of the Hon'ble Andhra Pradesh High Court in the case of ITO v. Khalid Mehdi Khan. In the case of M.K. Mohammed Kunhi (supra) the issue related to request of the assessee for grant of stay of penalty demand u/s 271(1)(c) of the Act for AYs 1954-55, 1960-61 and 1961-62, where it had filed an appeal against the said orders before the Tribunal which was pending for disposal. In this case, even though, the request for stay of the penalty demand was made, when there was no provision in the Act for granting of stay of tax, interest, fee, penalty or any other sum payable, which was introduced by the Finance Act,2007 w.e.f. 01.06.2007 by way of proviso to section 254(2A) of the Act, the Hon'ble Apex Court affirmed the order of the Hon'ble High Court, which had granted stay of the recovery of the demand relating to the penalty orders. In this order, the Hon'ble Apex Court made important observations about the powers of the Tribunal provided u/s 254(1) of the Act as under:-

“Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when s. 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when s. 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory.”

8.2. In the case of ITO v. Khalid Mehdi Khan (supra), on similar facts as in the case of CIT vs ITAT (supra), the Tribunal vide an order

dated 2nd April, 1976 had granted stay of the assessment proceedings, which was initiated in pursuance of order u/s 263 of the Act passed on 27.02.1976, wherein assessment order for Assessment years 1971-72 and 1972-73 was set-aside by the CIT. In this case, the Revenue had challenged the order by way of Writ on the ground that even if the Income-tax Appellate Tribunal is presumed to have the power to grant stay of operation of the order appealed against, as held by the Supreme Court in Income-tax Officer v. M.K. Mohammed Kunhi [1969]71 ITR 815 (SC), even then, by virtue of the introduction of Sub-section (2A) in Section 153 of the Act by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971, the said power of the Tribunal becomes curtailed and must now be read in the light of the said sub-section, and particularly Clause (ii) in Explanation 1 in Section 153(3). The Department submitted before the Hon'ble Court that inasmuch as the Tribunal has not been held to be a "court", the department cannot have the benefit of Clause (ii) in Explanation 1 and cannot, therefore, seek to exclude the period during which the stay granted by the Tribunal is in operation. The Department submitted that in a given case, it may happen that the stay-granted by the Tribunal may be operative for a sufficiently long period, leaving no sufficient time for the department to complete the assessment within the period of limitation prescribed by Sub-section (2A) of Section 153, which would naturally result in grave prejudice to the revenue.

8.3. The Hon'ble Andhra Pradesh High Court did not accept the plea of the Department and while affirming the order of the Tribunal, observed in para no.4 and 7 as under:-

“4. For the purpose of examining the said contention, it is necessary to refer to the relevant provisions in the Act. Section 253 provides for an appeal to the Appellate Tribunal against the orders of the Appellate Assistant Commissioner, and the Commissioner, passed under specified provisions of the Act. Sub-section (1) of Section 254 empowers the Tribunal to pass such orders on the appeal as it thinks fit, after giving both the parties to the appeal an opportunity of being heard. In Income-tax Officer v. M. K. Mohammed Kunhi [1969] 71 ITR 815 (SC), the Supreme Court held that Section 254 of the Act confers on the Appellate Tribunal powers of widest amplitude in dealing with appeals before it and that, by necessary implication, it also confers on the Tribunal the power of doing all such acts or employing all such means as are essentially necessary for the exercise of its substantive power, viz., a proper and effective disposal of the appeal. In other words, it was held that the conferment of the substantive power to entertain and dispose of the appeal carried with it, by necessary implication, all the ancillary and incidental powers which are necessary to make the exercise of the substantive power fully effective. While holding that the Income-tax Appellate Tribunal is not a "court", it was held that it exercises all the judicial powers similar to and identical with the powers of an appellate court under the Civil Procedure Code and that, therefore, the power to grant stay is necessarily implied. However, it was observed that the said power shall not be exercised by the Tribunal in a routine manner or as a matter of course, but will be exercised only where a strong prima facie case is made out and after considering the several relevant circumstances, and only on being satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory if the proceedings sought to be stayed are allowed to continue during the pendency of the appeal.

XXXXXXXX

7. Now, it would be seen that neither Sub-section (2A) nor any other provision in the Act expressly qualifies or abridges the power of the Tribunal to pass all necessary orders under Section 254(1) of the Act. Does it do so by necessary implication? It is, no doubt, true that Clause (ii) in Explanation 1 may not help the department in seeking to exclude the period during which the stay granted by a Tribunal is in operation, since the Tribunal is, admittedly, not a court, yet we are not convinced that Subsection (2A) has the effect

*of depriving or abridging the power of the Tribunal to grant appropriate interim orders under Section 254(1) of the Act. The decision of the Supreme Court was rendered in September, 1968, while Sub-section (2A) was introduced by the Taxation Laws (Amendment) Act, 1970. Parliament must be presumed to have known about the said decision of the Supreme Court with reference to the powers of the Tribunal under Section 254 of the Act, and if it wanted to deprive the Tribunal of the said power or to abridge the same, it could have done so expressly. Moreover, no reasons are placed before us compelling us to hold that Sub-section (2A) cuts down the power of the Tribunal under Section 254(1) of the Act in any manner. However, it is obvious that the provision contained in sub-section (2A) shall have to be an additional factor which the Tribunal has to take into consideration while passing an order of stay or other interlocutory order pending the appeal before it. In other words, while granting the stay or any other interlocutory order, the Tribunal shall have to keep in mind the period of limitation prescribed in Section 153(2A) of the Act and pass orders in the light of the same. It is always open to the department to bring to the notice of the Tribunal the particular difficulties, if any, it would face in case a stay is granted, and the Tribunal shall of course consider the said plea and all other relevant circumstances and shall exercise its power having regard to them and in the light of the principles enunciated by the Supreme Court in *Income-tax Officer v. Mohammed kunhi* [1969] 71 ITR 815 (SC). That the Tribunal has taken into consideration the relevant circumstances in this case is evident from the fact that, having granted a stay, it directed the appeals to be posted for hearing within two months therefrom. We are told, however, that the appeals could not be so heard on account of the filing of these writ petitions which necessitated the remittance of relevant records to this court.”*

8.4. On a careful perusal of the above decisions, we observe that the Hon'ble Apex Court and Hon'ble High Courts of Andhra Pradesh, and Delhi have held that the ITAT has the power to grant stay of the operation of the order, which is subject matter of challenge before the Tribunal during its pendency before it, if the Tribunal came to a finding that by not staying the operation of the material order will make the appeal filed by the assessee a nugatory if the assessee succeeds in the appeal at a later stage. Therefore, we do not agree with the plea of the department that the Tribunal does not have power to grant stay as contended by it and it

is held that the Tribunal has powers under section 254(1) of the Act to grant stay in the appropriate cases.

9. Further, it was submitted that the re-assessment proceedings initiated against the assessee, are an independent set of proceedings governed by different set of provisions and cannot be said to be a consequence of the impugned order cancelling registration granted to the assessee and that the notice u/s 148 for AY 2016-17 was issued on 04.05.2023, which is prior to the passing of the impugned order and further the order dated 25.05.2023 passed in WPC 7324/2023 passed by Hon'ble High Court, clearly records that the cancellation proceedings are on-going and final order is yet to be passed. Further, it was submitted that in the other reassessment proceedings/notices initiated/issued after 30.09.2023, the factum of cancellation of registration u/s 12A/12AA/12AB has been noted for the purpose of completeness. However, we do not agree with it. It is a fact that the notice u/s 148 of the Act for AY 2016-17 was issued on 04.05.2023 prior to the date on which the cancellation order was passed on 30.09.2023, but it cannot be denied that such cancellation order dated 30.09.2023, which has been appealed by the assessee will not have an adverse impact on the ongoing assessment proceedings of the assessee for Assessment Year 2016-17. Similarly, as stated by the Revenue that even though for other assessment years, in the reasons recorded for reopening the assessment, the fact of cancellation of registration vide order dated 30.09.2023 of the PCIT(Central)-2, Delhi has been noted for completeness but again it cannot be denied that the cancellation order will not have an adverse

impact on the ongoing re-assessment proceedings in the case of the assessee.

9.1. In view of the above facts, since the cancellation order dated 30.09.2023 of the PCIT(Central)-2, Delhi will have an adverse impact in respect of all the ongoing assessment proceedings reopened/pending in the case of the assessee, respectfully following the decision of the Hon'ble Andhra Pradesh High Court in the case of Khalid Mehndi Khan (supra) and Hon'ble Delhi High Court in the case of CIT vs ITAT (supra), it is held that the Tribunal will have the power to grant stay the order dated 30.09.2023 cancelling the registration of the assessee trust with retrospective effect in the case of the assessee if the facts and circumstances of the case warrants a stay of the operation of the said order. However, in view of the discussion, later in this order, it is held that the assessee is not entitled for stay in this case.

9.2. The assessee in its stay petition has sought stay on the ground that prima facie the case was in favour of the assessee as the order dated 30.09.2023 was illegal and ought to be set-aside for lack of jurisdiction being passed by the PCIT(Central)-2, Delhi because such jurisdiction was not transferred to him by virtue of the order u/s 127 of the Act dated 10.11.2022 and it was also not possible by virtue of Board Notification No.52/2014 dated 22.10.2014 and Notification No.30/2021, dated 01.04.2021. Further, it submitted that the cancellation order could not have been passed with retrospective effect i.e. for FY 2013-14. Thirdly, it submitted that the assessee always acted in accordance with its objects and the Hon'ble Delhi High Court has granted stay in similar cases. It

also submitted that balance of convenience was in favour of the assessee and if the stay is not granted, there will be irreparable loss/injury to the assessee. The detailed submissions of the assessee, its rejoinder and the submission of the Department have already been discussed in detail earlier in this order.

9.3. While deciding this stay application, we are of the view that for grant of stay, the assessee has to satisfy all the three conditions i.e. prima facie case in favour of the assessee, balance of convenience and irreparable loss/injury to become eligible for stay and if the assessee fails to pass any of these tests, the assessee will not be entitled for stay.

9.4. The assessee has relied upon three decisions namely Aggarwal Vidya Pracharni Sabha v PCIT (Central) Gurgaon (supra), Pacific Academy of Higher Education and Research Society v PCIT (Central) (supra), Wholesale Cloth Merchant Association v PCIT(Central)(supra) to submit that the PCIT(Central)-2, Delhi lacked jurisdiction to pass the order dated 30.09.2023 as according to the assessee, only the assessment jurisdiction of the case had been transferred to DCIT (Central) Circle-14, New Delhi and the jurisdiction regarding the grant of registration or its cancellation in the case of the assessee was still vested with CIT(Exemption)-2, New Delhi. In this regard, the Revenue contended that the above three case laws did not consider the Board Notification No.70/2014 dated 13.11.2014 conferring jurisdiction to the respective PCIT to exercise all the powers under the Act where the assessment of the case has been transferred u/s 127 of the Act to the AO for completing the assessment falling under the administrative jurisdiction of the said PCIT.

The relevant extract of the said Notification No. 70/2014 dated 13.11.2014 is reproduced as under:-

In exercise of the powers conferred by sub-sections (1) and (2) of section 120 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India, Central Board of Direct Taxes number S.O.822(E), dated the 23rd August, 2001 published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii), dated the 23rd August, 2001, except as respects things done or omitted to be done before such supersession, the Central Board of Direct Taxes hereby,—

(a) ...

(b) directs that the Director General of Income-tax or the Chief Commissioner of Income-tax specified in column (2) of the said Schedules or the Principal Commissioner/Commissioner of Income-tax specified in column (4) of the said Schedules or Joint Commissioners of Income-tax subordinate to them, shall exercise powers and perform the functions as stipulated in the said Act in respect of such cases or classes of cases or such persons or classes of persons, assigned to Assessing Officers subordinate to them, under section 127 of the said Act, from the date of publication of this notification;

9.5. It was submitted that a conjoint reading of the aforementioned Notification and provisions of the Act makes it clear that the CIT(Exemptions) does not exercise jurisdiction in respect of persons claiming exemption under section 11, section 12 of the Act which have been assigned to the Assessing Officers subordinate to PCIT, Central, under Section 127 of the Act and by virtue of clause (b) of the Notification No.70/2014 dated 13.11.2014, the PCIT (Central) has been empowered to perform/exercise powers and functions stipulated in the Act in respect of such cases or classes or such persons or classes of persons, which were assigned to AO sub-ordinate to him, under section 127 of the Act.

9.6. On a careful perusal of the three case laws relied by the assessee, it is seen that the above three case laws have not considered the

said Board Notification No.70/2014 dated 13.11.2014 In fact, the Delhi Tribunal in the case of Aggarwal Vidya Pracharni Sabha v PCIT (Central) Gurgaon (supra) para no.14.5 of its order had specifically mentioned that when a query was made to the CIT-DR to produce any further notification by virtue of which the power exercised by the PCIT u/s 124B(4) of the ACT , which had come into effect from 01.04.2021 would also be exercised or that further jurisdiction u/s 12AB of the Act could be transferred to other authorities as per this notification was left unsatisfied and no other Notification or Circular was brought to the notice. The relevant observation of the Tribunal in para 14.5 is reproduced as under:-

“14.5 The Rule 17A, as clarified by Circular dated 3rd June 2022 provides that in addition to the ‘specified violations’, the power of cancellation has also been granted under sub-rule (5) of rule 17A and sub-rule (5) of rule 2C of the Income tax Rules, 1962 to the Principal Commissioner or Commissioner authorised by the Board. The authorisation u/s 12AB or Rule 17A if have to be construed, by virtue of Board’s Notification dated 22.10.2014, then we pointed out during the hearing, to ld. DR that this Notification dated 22.10.2014 does not mention specifically that the powers which can be exercised by ld. PCIT u/s 12AB(4) of the Act and which have come into effect from 01.04.2021 would also be exercised by virtue of this Notification dated 22.10.2014 or that further jurisdiction u/s 12AB of the Act could be transferred to other authorities as per this Notification. The query was left unsatisfied and no other Notification or Circular was brought to our notice.”

9.7. In view of the above facts, we are of the view that in absence of consideration of the Board Notification No.70/2014 dated 13.11.2014 in the above three case laws, we cannot hold that the Pr. CIT(Central-2), Delhi lacked jurisdiction to pass the order dated 30.09.2023, cancelling the registration of the assessee trust.

9.8. Similarly, on the issue of the jurisdiction of the Pr. CIT(Central-2), Delhi to cancel the registration with retrospective effect, it

is observed that Delhi Bench of the Tribunal in the case of Young Indian (supra), had considered all the high court judgments relied by the assessee in the following Paras 49 and 88, and proceeded to hold that the PCIT had the power to cancel the registration with retrospective effect as under in Para 121. The relevant paras are as under:-

"49. Without prejudice, the Ld. Counsel submitted that registration cannot be cancelled retrospectively without giving specific opportunity to the assessee and further, registration cannot be cancelled with retrospective date. Reliance in this regard was placed on the judgment of Allahabad High Court in the case of Agra Development Authority (2018) 90 taxmann.com 282 and of Madras High Court in the case of Auro Lab v. ITO (2019) 102 taxmann.com 225 (Madras).

...

88. As regards reliance placed on the judgment of Madras High Court in the case of Prathyusha Educational Trust (supra) on retrospective cancellation of registration u/s. 12A/12AA, the Id. counsel submitted Hon'ble Allahabad High Court in the case of Agra Development Authority (supra) has clearly held that CIT (Exemption) is not empowered to cancel registration with retrospective effect, i.e., prior to the date of issuance of order/notice. To the same effect, there is another judgment of Hon'ble Rajasthan High Court in the case of Indian Medical Trust vs. PCIT, 414 ITR 296

...

121. .. Nowhere, the Statute envisages that the cancellation cannot be retrospective or it has to be necessarily prospective. What it provides that the Commissioner has statutory powers to cancel the registration u/s. 12A/12AA if he finds reason to believe that the activities of the assessee are not in line with its objects or the activities carried out by the assessee are not genuine in nature. If from the date when registration has been granted, the assessee has not carried out any activity in line with its objects or the activities carried out are not genuine, then from that date itself, the registration can be cancelled because it is only when the knowledge of such breach come to the notice of the Commissioner, then he has the power to cancel the registration from the date he notices the infringement...."

10. In view of the above facts, we are of the view that we cannot hold that the Pr. CIT(Central-2), Delhi had no jurisdiction to cancel the registration with retrospective effect vide his order dated 30.09.2023.

10.1. Therefore, we are of the view that no prima facie case in favour of the assessee is made out by the assessee.

11. As regards, the claim of the assessee that it had been carrying its activities as per the objects of the trust, it is seen that prima facie, the same is not in sync with the materials/ emails gathered during the course of survey conducted by the Investigation Wing, Delhi in the case of the assessee on 07.09.2022. In this regard, the email dated 21.11.2016 Mr. Ritwick (ritwick@lifeindia.net.in) expressed to Mr. Matin Wagnerm of Earth Justice at his mail i.e. wagner@earthjustice.org) apprehending that they will be going to come under Indian intelligence organization's scanner, reads as under:--

'My view is that Earth Justice is likely to be put under the scanner of Indian intelligence organization just like Sierra Club and Greenpeace. As of now the Indian Government is not much aware of Earth Justice, however, this may change if they find that there is a positive response to the call given by Earth Justice. This is my personal opinion. The actual reaction may be different. However, the probability of the above reaction is quite high.'

11.1. In the above mail, the words 'scanner of Indian Intelligence Organization' and its apprehension of being bracketed in the category of Sierra Club and Greenpeace prima facie indicate some suspicious activity and that everything was not being done in accordance with law.

11.2. A similar chat with Ms. Puja Tewari dated 03.05.2023 was found in the phone of Shri Ritwick Dutta, Managing Trustee of the trust

LIFE, where she is discussing about routes of funding to LIFE after FCRA regulations. She also mentions, as under: -

“Dear. Ritwick... thanks. No background just to understand current work and funding amount gaps and possible routes of funding options to Life post fcra regulations etc.. Earth Justice is one for eg.... to get your opinion on latest work many thanks and regards.”

11.3. In this order, we are consciously avoiding to deal with the submissions of the assessee to the show-cause notices issued by the PCIT, Central-2, Delhi and his finding in the order, so as not to give any finding on the merits regarding the decision of cancellation of the registration of the assessee trust by the PCIT, Central-2, Delhi, which will be separately decided in the appeal filed by the assessee.

11.4. However, some findings of the PCIT, Central Circle-2, New Delhi, in his order is taken to show the apparent contradiction in the claim made by the assessee and facts emerging out of the survey and the proceedings for cancellation of registration initiated by Pr. CIT, Central-2, Delhi. In its reply dated 14.03.2023 in respect of queries in point no. 6.1.2 of the order, the assessee submitted that it had neither received any money from M/s Earth Justice nor had made any expenditure in relation to any activity, which can be construed as prohibitory in nature and violating any conditions of registration u/s 12AA of the Act. However, the facts shown on in the table as reproduced on page 16 of the order, shows that the assessee trust had receipts from M/s Earth Justice during FY 2013-14 and FY 2014-15. Further, in the second table on pages-16-17 of the order, it is seen that certain bills dated 13.03.2019 have been raised by the Hotel Astor, Kolkata in the name of the assessee trust in respect of

persons belonging to Earth Justice. This apparent contradiction prima facie show lack of transparency in the activities of the assessee trust. Further, a table is shown on page no.22 showing the receipts of the funds by the assessee trust, its honorary managing trustees Shri Ritiwick Dutta in his proprietorship concern and his LIFE LLP, which is reproduced as under:-

“Funding from Earth Justice

Year	Amount (As per FCRA fillings)	Recipient
2013-14	29,79,010/-	Life Trust(*)
2014-15	11,95,185/-	Life Trust(*)
2015-16	1,12,15,501/-	Ritwick Dutta
2016-17	1,58,90,241/-	Ritwick Dutta
2017-18	3,08,05,382/-	Mr. Ritwick Dutta
2018-19	4,42,73,631/-	Mr. Ritwick Dutta
2019-20	4,95,99,542/-	Mr. Ritwick Dutta
2020-21	7,17,24,139/-	Mr. Ritwick Dutta
2021-22	37,68,615/-	Mr. Ritwick Dutta
2021-22	12,50,76,105/-	LIFE Legal LLP

As per FCRA. However, LIFE has shown receipt of Rs.1,84,669/-, Rs.13,16,387/-, Rs.20,56,132/- and Rs.5,95,007/- in F. Ys 2013-14, 2014-15 2015-16 and 2016-17 respectively in its financials.

From the above, it can be seen, that, Earth Justice has been regularly funding LIFE over the years.”

11.5. India is a fast-growing nation and the development of its projects to meet its energy requirements is critical for its growth. The PCIT, Central-2, Delhi, in his order has given a finding that the funds received by the assessee from M/s Earth Justice and by LIFE Proprietorship Concern of Sh. Ritiwick Dutta, which was later converted

in LIFE LLP was utilized to stop coal based Indian Thermal Power Plants and Coal Mine projects. In this regard, various emails reproduced on page no.7, 8, 9, 10 and 11 prima facie indicates the involvement of the assessee trust in furnishing about the status of Thermal Power Projects and the Coal mining. The discussion by the PCIT, Central-2, in para no.6.2.3.1(v) on pages no.26-27 of his order in respect of email dated 10.07.2016 titled 'LIFE Coal Cases update 10.07.2016' shows that the assessee trust proposes to file and litigate matter in respect of Thermal Power Plants and Coal Mines. These facts prima facie show the contradiction in the claim of the assessee that it has no involvement with Earth Justice and is not engaged in the stopping the thermal power projects and coal mining with assistance from Earth Justice.

11.6. Therefore, in view of the facts on record, the claim for exemption by the assessee on account of suffering irreparable loss and balance of convenience is also not satisfied because prima facie the facts on record suggest that the activities of the trust in stopping coal based Indian Thermal Power Plants and Coal Mine projects will cause irreparable loss to the nation rather than the assessee. Therefore, in this background, it is held that the assessee fails to satisfy the test of irreparable loss caused to it by the cancellation order dated 30.09.2023. Consequently, the balance of convenience is also not in favour of the assessee.

11.7. Further, the assessee has claimed that in similar cases i.e. in the case of Centre for Policy Research vs PCIT (Central)(supra) and Oxfam India v PCIT(Central)(supra), the Hon'ble Delhi High Court has granted

stay of the operation of the order cancelling the registration of the said trust. The above decision of the Hon'ble Delhi High Court has been carefully perused and it is seen that in the said cases unlike in the case of the assessee, wherein facts showing prima facie lack of transparency in its activities emerges had not emerged in the cited cases in which the Hon'ble Delhi High Court has granted the stay. Therefore, we are not inclined to accept the plea of the assessee in this regard.

11.8. As discussed above, the assessee has failed to satisfy the three conditions for grant of stay i.e. a prima facie case, an irreparable loss and balance of convenience. Further, as per the facts stated in para no. 11 to 11.6 as above, it is also seen that the activities of the assessee trust prima facie are not being carried out as per the objects of the trust. Therefore, we are of the considered view that the assessee trust is not entitled for stay in this case and we hereby reject the stay application of the assessee.

12. In the result, the stay application of the assessee is dismissed.

Order pronounced in the open court on 9TH August, 2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 09.08.2024.

SJK

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT

4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,