* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 18th August2025***
Pronounced on: 10th September 2025

\+ **ITA 258/2025 & CM APPL. 46431/2025**

COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI

.....Appellant

Through: Mr. Abhishek Maratha, Sr. SC, Mr. Apoorv Agarwal, Mr. Parth Samwal, Jr. SC with Ms. Nupur Sharma, Mr. Gaurav Singh, Ms. Bhanukaran Singh Jodha, Ms. Muskaan Goel, Mr. Himanshu Gaur and Mr. Nischay Purohit, Advs.

versus

HAMDARD LABORATORIES (INDIA) ....Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Madhur Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been preferred by the Appellant/*Commissioner of Income Tax (Exemptions)* [hereinafter "***Revenue***"] under *Section 260A* of the **Income Tax Act, 1962** (hereinafter the ***"IT Act"***) assailing the impugned order dated 27th September 2023, passed by the *Income Tax*

Appellate Tribunal, Delhi, (hereinafter ***"ITAT"***) in **ITA No.1311/DEL/2022** for the Assessment Year ('***AY***') *2016-17*.

2. The *ITAT* had dismissed the Appellant's/Revenue's appeal against the order dated 30th March 2022, passed by the *Commissioner of Income Tax (Appeals)* [hereinafter ***"CIT(A)"***].

3. *CIT(A)* had allowed the appeal of the Respondent/Assessee, holding that the Assessee was a charitable institution, eligible for exemption under *Section 11* and *12* of the IT Act, and deleted the addition of total income of *Rs.1,93,93,48,991/-* made on account of disallowance under *Section 11* and *12* of the IT Act.

4. Appeal had been preferred by the Respondent/Assessee against an assessment order dated 30th December 2018 passed by the Assessing Officer ('***AO***'), Assistant Commissioner of Income Tax, wherein, the Respondent/Assessee had filed its return of income for *AY 2016-17*, declaring '*Nil'* income and had claimed exemption under *Section 11* and *12* of the IT Act. Notice was issued under *Section 143(2)* of the IT Act and the assessment was completed on 30th December 2018 for a total income of *Rs.1,93,93,48,991/-*.

<u>Factual background</u>

5. Respondent/Assessee is a Trust registered under *Section 12A* of the IT Act. Upon filing its return for *AY 2016-17* and disclosing *'Nil'* income claiming exemption under *Section 11* and *12* of the IT Act, the case was selected for scrutiny by the *AO* and statutory notices were issued. Submissions were made by the Respondent/Assessee before the *AO*, essentially concerning the residential accommodation made

available to its trustees and their family members. The two properties in question were at ***25, Kautilya Marg, New Delhi*** and ***13, Rajdoot Marg, New Delhi,*** which were provided for use to the trustees and their families at a consolidated lease rent of *Rs.90,000/-* per month. The *AO* held that the provisions of *Section 13(2)(b)* of the IT Act would disentitle the Respondent/Assessee from availing exemption under *Section 11* and *12* of the IT Act. The Respondent/Assessee was therefore taxed and taxable income was computed at *Rs.1,93,93,48,991/-*, including, addition of *Rs.31,20,000/-* as income from house property and disallowing claim of *Rs.5,23,190/-*for depreciation in respect of leased out properties. The relevant paragraphs from the Assessment Order are extracted as under:

> *"12 The assessee being a charitable organization is entitled for benefit of registration under section 12A and 80G of the Act only if the funds received by the assessee and assets held under trust are judiciously expended/used and are not applied for unreasonable benefit of any particular person specified in section 13(3) of the Act.*
> *13. The property at 25 Kautilya Marg. New Delhi and 13 Rajdoot Marg, New Delhi are properties belonging to the trust and hence leasing out the same for use by trustees and their family is covered by section 13(2)(b) of the Act and hence the assessee was asked to justify reasonableness of consideration/rent received for such use by the trustees and their family members.*
> *14. In accordance with the provisions of Section 13(2) of the 1.T. Act, 1961 if charitable trust/institution applies part of its income or property directly or indirectly under the rules governing the trust for the benefit of any person specified under section 15(3) of the Income Tax Act, the entire income of such trust or institution will be assessable in accordance with proviso to Section 164(2) of the Act.*
> ....
> ....

17. That the trustees and their family belong to the prohibited category within the meaning of section 13(3)(cc) and 13(3)(d) and since property of the institution had been provided an rent to such persons during the previous year relevant to assessment years without adequate rent, the legal fiction in subsection (2) of section 13 would come into play and the income or property of the institution shall, for the purpose of section 13(1)(d), be deemed to have been applied for the benefit of the prohibited category of persons under sub-section (3). Consequently, the benefit of exemption undersection 11 was lost by reason of section 13(1)(c)(ii). Thus, the exemption u/s 11 & 12 of the Act is denied to the assessee.

18. The utilization of land or building owned by the trust for the benefit of specified persons for consolidated lease rent of Rs. 90,000 per month cannot be treated as reasonable and hence the provisions of section 13(2)(b) are clearly attracted in the case of the assessee."

(emphasis added)

6. The respondent/assessee filed an appeal before the *CIT(A)* and thereafter, a remand report on each ground of appeal was called. Counter comments were obtained from the respondent/assessee upon receiving the remand report. After introduction of the '*faceless scheme'* w.e.f. from 25th September 2020, fresh notices were issued under *Section 250* of the IT Act and subsequently, written submissions were furnished by the respondent/assessee. The *CIT(A)* held that respondent/assessee is a charitable institution, eligible for exemption under *Section 10(23C)(iv)* or under *Section 11 and 12* of the IT Act.

7. Relevant paragraphs of the order passed by *CIT(A)*are as under:

"5. The Appellant has vehemently contested the AO's action in examining its case with the provisions of section 11 & 12

and claimed it is eligible for exemption u/s. 10(23C)(iv) of the Act."

7. I have considered the facts of the case, assessment order/remand report, appellant's written submissions and re-joinder on AO's remand report. In the instant case, the AO after observing that in the return of income filed for the AY 2016-17, the assessee trust claimed benefits of section 11 & 12, rejected the same after observing that the assets held under assessee trust are not judiciously expended / used and were applied for unreasonable benefit of person specified in section 13(2)/13(3) of the Act. On the basis of detailed findings recorded in the assessment order the AO denied the benefits of section 11 and 12 of the Act to the assessee and assessed it as AOP at a total Income of Rs.1,93,93,48,991/-. On the contrary, the appellant's claim is that the AO instead of examining the matter with reference to the provisions of Section 10(23C)(iv) of the Act adverted to the provisions of Sections 11&12 of the Act and invoked the provisions of Sections 13(2)/13(3) of the Act sans evidence, although there was no change in facts as compared to the preceding assessment years and he should have followed the rule of consistency. Besides, the appellant has strongly submitted that its case is not covered by provisions of Sections 13(2)/13(3) as no undue benefits were passed on to the specified persons u/s 13(3) as alleged by the AO. In the remand proceedings, both the AO and appellant reiterated their claims. Here first question before me is that whether the assessee is allowed to raise plea /argument that its case may be examined with the provisions of section 10(23C)(iv), particularly when no such claim was made in the return of income. In this regard, it is noted that as per landmark decision of the Hon'ble Supreme Court in Goetze India any claim made otherwise than by filing of revised return cannot be entertained by the AO during the course of assessment proceeding, however, the said case does not apply to claims made before the Appellate Authorities otherwise than by Revised Return of Income. I find that there is plethora of decisions, ratio of

which held that a fresh claim can be raised before the Appellate Authorities, even if it has not been raised before the Assessing Officer nor claimed in the Return of Income, the Appellate Authorities have wide powers to entertain it.

The law developed, post Goetz (India)'s case, has made it abundantly clear that an assessee is entitled to make fresh claim for deduction or relief before the Appellate Authorities, during the course of the Appellate proceedings, irrespective of the claim not being made by revising the Return of Income before the Assessing Officer during the course of assessment proceedings. The decision in Goetze (India)'s case has not prohibited such claim before the Appellate Authorities further these judicial precedents cited and reproduced above make it amply clear that an assessee is otherwise eligible for a particular deduction/exemption then the same cannot be denied to him or it simply on the of the grounds that this claim was not made by the assessee in his return of income. In the instant case, at the outset, the appellant has been claiming that it is duly eligible for exemption as per provisions of section 10(23C)(iv) of the Act. In the remand report, the AO has also not commented that the appellant trust is not eligible for exemption u/s. 10(23C)(iv) of the Act. The AO simply emphasized that this claim was made in the return of income.

For the attainment of the aforesaid objects, the appellant utilizes the income generated from manufacture and sale of Unani and Ayurvedic medicines. Entire income of the appellant is donated to a registered charitable society namely Hamdard National Foundation (hereinafter referred to as (HNF) which came into existence on June 6, 1964 with the same charitable objects as given in the Trust Deed of Hamdard Laboratories India. Thus HLI is a business held under charitable trust and HNF is a special purpose vehicle set up for the sole purpose of effectuating the charitable intent of HLI. With the income generated from manufacture

and sale of Unani Medicines, following education and medical institutions have been established and are being run:

1. Jamia Hamdard University, Hamdard Nagar, New Delhi
2. Hamdard Institute of Medical Sciences & Research (Medical College). Hamdard Nagar, New Delhi along with two state of art modern hospitals with 600 bed capacity.
3. Majeedia Hospital of Unani Medicines
4. Hamdard Public School, Talimabad, New Delhi
5. Hamdard Primary School, Okhla, New Delhi.
6. Rabea Girls Public School, Old Delhi.
7. Hamdard Study Circle providing free coaching to poor and needy aspirants of Indian Administrative Services.
8. Hamdard Coaching Centre providing free coaching to poor and needy students preparing for all India Medical & Engineering competitions.

In the instant case, there is no dispute that HLI exists solely for charitable purposes and not for purposes of profit, as there is no findings in this regard found recorded in the assessment order. It is a fact that the appellant has derived the benefit of exemption under the relevant provisions of the Income Tax Act 1922 and thereafter continuously u/s 10(23C)(iv) of the Act including the three immediately preceding assessment years i.e. 2013-14 to 2015-16. Despite all these facts the AO failed to follow the principle of consistency. Since there was no change in facts, therefore, the AO has to allow the assessee's claim following the principle of consistency as laid down by the Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT [1992] 60 Taxman 248/193 ITR 321 (SC) and various other judicial precedents referred to below:-

1. *Radhasoami Satsang v. CIT [1992] 60 Taxman 248/193 ITR 321 (SC)*
2. *Commissioner of Income-tax vs. Gopal Purohit [2010] 188 Taxman 140 (Bombay)*
3. *Principal Commissioner of Income-tax-8 v. Quest Investment Advisors (P.) Ltd. [2018] 96 taxmann.com 157 (Bombay)*
4. *Deputy Commissioner of Income Tax, Circle 17(1), New Delhi v. Moet Hennessy (I) (P.) Ltd [2020] 114 taxmann.com 733 (Delhi - Trib.)*
5. *NIIT Ltd. v. Deputy Commissioner of Income-tax, LTU, Central Circle-16(1), Now Delhi [2010] 112 taxmann.com 66 (Delhi-Trib)*

Moreover, in the case of Adarsh Public School vs. JCIT [2018] 90 taxmann.com 356 (Delhi - Trib), the Hon'ble Delhi ITAT Bench 'A' held that there is no disharmony between Section 10(23C) and section 11 and, thus, exemption of section 11 cannot be denied even when there is a specific provision of section 10(23C) Though in the said decision, allowability of sec. 11 was in dispute but ratio of this judgment holds goods in the instant case also.

In view of the above facts and judicial precedents cited supra, I am of the considered view that unless and until the grant of exemption u/s. 10(23C) (iv) of the Act is not withdrawn by the prescribed authority, the same cannot be denied by the AO. Accordingly, the AO is directed to entertain the appellant's claim of exemption u/s. 10(23C)(iv) and allow it accordingly. Effectively on all the grounds raised in para 2 above, the appellant succeeds.

8. Even otherwise also, I find merit in appellant's claim that its case is not covered by provisions of sec. Sections 13(2)/13(3) as no undue benefits were passed on to the specified persons u/s 13(3) of the Act. It would be appropriate to refer to the provisions of section 13(1) of the Act which deals with the trusts not eligible for exemption.

As per section 13(1), the following trusts are not eligible for exemption under Sections 11 and 12:

> *a. A trust for private religious purposes, which ensures no public benefit: [Sec. 13(1)(a)]*
>
> *b. charitable trust created or established on or after 1-4-1962 for the benefit of any particular religious community or caste [Sec. 13(1)(b)] (other than scheduled castes/tribes, backward classes or women and children). (Explanation 2)*
>
> *c. A trust or institution for charitable or religious purposes, if any part of its income or property is used or applied, or enures, directly or indirectly to the benefit of a person specified u/s 13(3) of the Act, viz., (i) the author or founder of the trust; (ii) a substantial contributor whose total contributions to the trust upto the end of the relevant previous year exceed Rs. 50,000; (iii) where the author or contributor is an HUF, a member of the family (iv) the trustee or manager of the trust: (v) any relative of such author, founder, contributor, member, trustee or manager; and (vi) any concern in which any of the persons aforesaid has a substantial interest. [Sec. 13(1)(c)]*

The AO held that the assessee transferred the amount to the trusts/concerns referred under Section 13(3) of the Act hence, its case is covered under provisions of Section 13(2). Considering the facts of the case as brought out, I am inclined to agree with the contention of the appellant trust. It is seen that there were no benefit to any individual or trustees, question of using or applying any part of income or any property of the trust directly or indirectly for the benefit or any persons referred to in sub section (3) would not arise in this case. The facts as mentioned above make it absolutely clear that the appellant trust has not provided any benefit to the trustee and there is no violation of section 13(2) of the Act.

> *In view of the facts discussed above and judicial precedents supra, it is held that the no undue benefits passed on from the assessee trust to the trustee and as such there is no violation of sec. 13(2)/13(3) as alleged by the AO. However, since I have already held that the appellant trust is eligible for exemption u/s. 10(23C)(iv), which is its main plea, therefore, grounds/plea raised by the appellant regarding this issue become academic in nature.*"
>
> (emphasis added)

8. In the appeal filed before the *ITAT,* two grounds were taken by the appellant/*Revenue*, which are extracted as under:

> *"1. Whether on the facts and in the circumstances of the case, Ld CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that assessee has offered substantial concession in rent to person specified u/s13(3), which is a clear violation of Section 13(2)(b) of the Act, 1961 and hence assessee is not eligible for exemption u/s 11/12 of the Act, 1961.*
>
> *2. Whether Ld. CIT(A) in the facts and circumstances of the case was correct in allowing exemption u/ s 11 & 12 of the Income Tax Act, 1961 to the assessee."*

9. *ITAT* noted that in order to quantify the concession allowed with respect to respondent/assessee's property, the *AO* had relied on data available at the website, *makaan.com* for semi furnished accommodation for area of *3300 sq. ft.* Further, the *CIT (DR)* had admitted that the Revenue Department did not obtain valuation report from the statutory authority.

10. *ITAT* therefore, arrived at a view and conclusion which is extracted below for ease of reference:

> *"8. ...<u>There is no change either in facts or in law in AY 2016-17 from those in preceding years as evidenced from</u>*

the orders of assessment for AY 2013-14, 2014-15 and 2015-16 appearing at pages 46-49 of Paper Book. In CIT vs. Amit Jain (2015) 374 ITR 550 (Del) and in CIT vs. Denso India Ltd. (2015) 374 ITR 62(Del) Hon'ble Delhi High Court held that where the AO has been following a view for the past several years, he cannot depart from the same when there has been no change in law or facts.

9. We may note the facts and decision of the Hon'ble Delhi High Court in CIT (Exemption) vs. Hamdard National Foundation (India) (2022) 441 ITR 348 (Del.). In this case, the facts were that the assessee-foundation had let out its properties and received rental income from H in relevant assessment years. In addition, the assessee had also received corpus donation from H during assessment year 2007-08. The Assessing Officer after making enquiry from various websites held that in lieu of voluntary and corpus donation received from H, properties owned by assessee were let out to H at a much lower rate as compared to the market rate. He, thus, invoked section 13(2)(b) read with section 13(3) and held that assessee was not eligible for exemption under sections 11 and 12. The Tribunal decided in favour of the assessee..."

(emphasis added)

Submissions on behalf of Appellant/Revenue

11. *Mr. Abhishek Maratha,* counsel appearing for the Appellant/Revenue made the following submissions:

11.1 Respondent/Assessee claimed exemption under *Section 10(23C)(iv)* of the IT Act, for the first time before the *CIT(A),* denoting that the *AO* did not have an occasion to decide the legitimacy of their claim on this ground. The *AO* had essentially looked at the issue of violation of provisions of *Section 13(2)(b)* read with *Section 13(3)(b)* of the IT Act and thereafter, denied the benefit of exemption under *Section 11* and *12* of the IT Act.

11.2 In this scenario, *CIT(A)* should have remanded the matter back to *AO* for consideration of Respondent's/Assessee's claim under *Section 10(23C)(iv)* of the IT Act, or exercised co-terminus powers and investigated the matter as an AO and arrived at a fresh fact finding.

11.3 *CIT(A)* merely called for the remand report, which is a limited fact-finding aid and cannot substitute the statutory duty of the Appellate Authority under *Section 254* of the IT Act, to conduct an independent and comprehensive examination of the matter. Therefore, circumstantially, there was no material before the *CIT(A)* while setting aside the *AO's* decision.

11.4 Reliance for this purpose was placed on a decision of the Supreme Court in ***Jute Corporation of India v. Commissioner of Income Tax & Anr.***, 1991 Suppl. (2) SCC 744, in particular, *paragraph 3* which is extracted as under:

> *"3. Section 251 of the Income Tax Act (hereinafter referred to as the 'Act') prescribes power of the Appellate Authority hearing appeal against the order of Income Tax Officer. Clause (a) of Section 251(1) confers power on the Appellate Authority namely the Appellate Assistant Commissioner [now after the Amendment of 1987 the Deputy Commissioner (Appeals)] according to which Appellate Authority while hearing appeal against an order of assessment. has power to confirm. reduce, enhance or annual the assessment; he is further empowered to set aside the assessment and remit the case back to the Assessing Officer for making a fresh assessment in accordance with its directions. after making such further inquiry as may be necessary. If a direction is issued by the Appellate Authority, the Assessing Officer is required to proceed to make such fresh assessment and determine the amount of tax, if any payable on the basis of fresh assessment. The Appellate Assistant Commissioner is thus invested with wide*

powers under s.251(1)(a) of the Act while hearing an appeal against the order of assessment made by the Income Tax Officer. The amplitude of the power includes power to set aside the assessment order or modify the same. The question is whether the Appellate Assistant Commissioner while hearing an appeal under s.251(1)(a) has jurisdiction to allow the assessee to raise an additional ground in assailing the order of the assessment before it. The Act does not contain any express provision debarring an assessee from raising an additional ground in appeal and there is no provision in the Act placing restriction on the power of the Appellate Authority in entertaining an additional ground in appeal. In the absence of any statutory provision, general principle relating to the amplitude of appellate authority's power being co-terminus with that of the initial authority should normally be applicable. But this question for the purposes of the Income Tax Act has been an intricate and vexed one. There is no uniformity in the judicial opinion on this question."

(emphasis added)

11.5 Reliance was also placed on the decision of Supreme Court in ***National Thermal Power Co. Ltd. v. Commissioner of Income Tax*** (1997) 7 SCC 489 which cited ***Jute Corporation*** *(supra)* with approval and held as under:

"5. In the case of Jute Corporation of India Ltd. v. C.I.T. this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking

modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

6. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad (Delhi), C.I.T. v. Karamchand Premchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."

(emphasis added)

11.6 *CIT(A)* and *ITAT* failed to appreciate that the rental concession provided to the trustees was a clear violation of *Section 13(2)(b)* read with *Section 13(3)(b)* of the IT Act. The respondent's/assessee's claim that no undue benefits had been given to the *specified persons* under *Section 13(3)* of the IT Act, was not supported by any evidence; therefore, the onus to prove that the license fee charged was reasonable and in accordance with market rate was on respondent/assessee. The respondent's/assessee's contention that the trustees function in a dual

capacity, *i.e.* as trustees and as employees, and accordingly, the provision of housing facilities made to them, was not without due recompense or at a concession, cannot be taken as a valid justification.

11.7 Respondent/Assessee ought to have proved its case for claiming exemption under *Section 10(23C)(iv)* of the IT Act. In any event, exemption under *Section 11* and *Section 12* of the IT Act was not granted due to violation of *Section 13* of the IT Act, in that context, benefit under *Section 10(23C)(iv)* of the IT Act should also not be granted. Further, the proviso to *Section 10(23C)* of the IT Act mandates that the income of the respondent/assessee (being a *trust*) to be wholly and exclusively applied to the objects for which it is established. These underlying principles were not being satisfied by the respondent/assessee, herein. Reliance placed by *CIT(A)* on the preceding three assessment years of *AY 2013-14, 2014-15 and 2015-16*, where exemptions were granted under *Section 10(23C)(iv)* of the IT Act, could not be made applicable for a different assessment year.

Submissions on behalf of the Respondent/Assessee

12. *Mr. Madhur Aggarwal*, Senior Counsel appearing for the Respondent/Assessee made the following submissions:

12.1 The respondent/assessee is a Trust constituted under its own Trust Deed dated *28th August 1948,* whereby the partners of a business known as "*Hamdard Dawakhana*" dedicated the said business to charity. The partnership was engaged in the business of manufacture and sale of indigenous medicines. To carry out its charitable activities, Hamdard had created a Special Purpose Vehicle ('***SPV***'), a registered society for

philanthropic purposes, *viz.* Hamdard National Foundation ***('HNF')*** on *12th May 1964,* which continued to enjoy exemption under *Section 11* of the IT Act, since then. The Respondent/Assessee had, therefore, derived the benefit of tax exemption consistently for the last few decades, about 70 years, both under the *IT Act of 1922* and thereafter, under the *IT Act of 1961*, initially under *Section 11* of the *IT Act of 1961* and thereafter under *Section 10 (23C)(iv)* of the *IT Act of 1961*.

12.2 In the appeal preferred before this Court, the Appellant/Revenue did not propose a question of law, with respect to the findings of the *ITAT/CIT(A)*, regarding the claim of exemption granted to the Respondent/Assessee under *Section 10(23C)(iv)* of the IT Act. This appeal is therefore, academic in nature.

12.3 In the immediately three preceding *AYs* of *2013-14, 2014-15* and *2015-16*, the *AO* had observed that the Respondent/Assessee is a registered trust under *Section 12A* of the IT Act and claimed exemption under *Section 10(23C)(iv)* of the IT Act, further noting that the main activity of the trustee is to run a manufacturing and trading business of *Ayurvedic* and *Unani* medicines. Popular products/formulation of the respondent/assessee Trust are *Rooh-Afza, Rogan Badam-Shrin, Cinkara, Safi & Chavyan Prash* etc.

12.4 The object of the society appeared to be charitable within the meaning of *Section 2(15)* of the IT Act and benefit of exemption under *Section 11* and *Section 12* of the IT Act was also allowed to the Respondent/Assessee. The *AO,* therefore, concluded respondent/assessee trust's income to be *"Nil"* income under *Section 143(3)* of the IT Act.

12.5 Reliance was placed on the decision of Division Bench of this Court in ***Hamdard Laboratories India & Anr. v. Assistant Director Income Tax (Exemption)*** 2015:DHC:7806-DB, pronounced on 18th September 2015. The judgment dealt with Writ Petitions concerning charitable status of the respondent/assessee Trust (*respondent herein also*) under *Section 10(23C)(iv)* of the IT Act with effect from *AY 2004-2005*. The conclusion arrived at by the Division Bench is extracted as under:

> *"111. The DGIT(E)"s order dated 21.08.2013 withdrawing Hamdard's exemption under Section 10(23C)(iv) with effect from AY 2004-05 of the Act is hereby quashed. Hamdard is entitled to refund of any amount collected by the Revenue pursuant to the order dated 21.08.2013 with interest @ 6% per annum from the date such amount was paid was income tax. W.P.(C) 5711 of 2013 is disposed of in the said terms."*

The Court held that the respondent/assessee Trust's dominant purpose was charitable in nature and was not guided by motive of profit making. It was further held that:

> *"102…Hamdard is by no means a mask or a device to conceal any income generated from any of its activities."*

12.6 It was vehemently stressed by the Senior Counsel for the respondent/assessee that the appellant/Revenue has to abide by the principles of consistency and for this reliance was placed on ***CIT v. Excel Industries Ltd.***, (2014) 13 SCC 459, ***Radhasoami Satsang, Saomi Bagh, Agra v. CIT***, (1992) 1 SCC 659 and ***Berger Paints India Ltd. v. CIT***, (2004) 12 SCC 42.

12.7 Reliance was also placed on judgment of ***CIT (Exemption) v. Hamdard National Foundation*** (2022) 4 HCC (Del) 428 for *AY 2007-*

2008 to *AY 2010-2011*, where this Court had dealt with issues raised under *Section 13(2)(b)* of the IT Act and held that that the burden of showing that the rent charged was not adequate was on the Revenue. The Court held as under:

> *"21. Under section 13(2)(b), the burden of showing that the rent charged by the respondent/assessee was not 'adequate' is on the revenue. Unless the price/rent was such as to shock the conscience of the Court and to hold that it cannot be the reasonable consideration at all, it would not be possible to hold that the transaction is otherwise bereft of adequate consideration. It is necessary for the Assessing Officer to show that the property has been made available for the use of any person referred to in sub-section (3) of section 13 otherwise than for adequate consideration. In order to determine the same, the context of the facts of the particular case needs to be appreciated. For determining "Adequate" consideration/rent, however, market rent or rate is not the sole yardstick; other circumstances of the case also need to be considered.*
>
> *24. In the present case, the learned ITAT has observed that the revenue had failed to bring on record any cogent evidence to show that the rent received by the respondent assessee, in the facts of the case, was inadequate. It has held that the material collected from the internet as well as the estate agents cannot be termed as a corroborative piece of evidence in this regard. It has further held that the rent received by the respondent assessee exceeds the valuation adopted by the Municipal Corporation of Delhi for the purpose of levying house tax…"*
>
> (emphasis added)

12.8 The *AO* had taken into account an unfair comparison by using the screenshots provided by the appellant/Revenue. The comparison of the properties with the screenshots was not valid, since the screenshots were either independent houses or independent floors with covered areas,

larger than the covered area of property at *25 Kautilya Marg*, and were either furnished or semi-furnished. The burden to be discharged by the appellant/Revenue to prove that the properties given to the trustees was for an unreasonable rent, was basis the reliance placed on data retrieved from *makaan.com,* which could not have been relied upon by the *AO.* Therefore, such evidence could not be sufficient for the purpose of disentitling the respondent/assessee from the exemptions claimed.

Analysis

13. We have heard the counsels for the parties, perused the documents and the written submissions which have been placed before us. Relevant provisions around which the discussion and analysis revolves, are extracted as under for ready reference:

> "***Section 2. Definitions***
> *In this Act, unless the context otherwise requires—*
> ……
> *(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility: Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless— (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and (ii) the aggregate receipts from such activity or activities during the previous year, do*

not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

Section 10. Incomes not included in total income.
In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

…….
(23C) any income received by any person on behalf of—
……..
(iv) any other fund or institution established for charitable purposes which may be approved by the Principal Commissioner or Commissioner, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States.
Provided that the exemption to the fund or trust or institution or university or other educational institution or hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), under the respective sub-clauses, shall not be available to it unless such fund or trust or institution or university or other educational institution or hospital or other medical institution makes an application before the 1st day of October, 2024, in the prescribed form and manner to the Principal Commissioner or Commissioner.

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

apart is not in excess of fifteen per cent of the income from such property;…….

Section 12. Income of trusts or institutions from contributions.

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

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

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

(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilised for purposes other than providing relief to the victims of

earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax.

Section 13. Section 11 not to apply in certain cases.

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

……

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3), such part of income as referred to in sub-clauses (i) and (ii):

……

(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

……

(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

……

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

……

(b)any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

……

(cc)any trustee of the trust or manager (by whatever name called) of the institution;……"

14. The appellant/Revenue has raised the following issues: *(a)* status of the respondent/assessee as a charitable institution; *(b)* eligibility for exemption under Section 11 and 12 of the IT Act; and *(c)* additional claim for exemption under *Section 10(23C)(iv)* of the IT Act.

15. The respondent/assessee filed its return of income for the *AY 2016-2017* declaring '*Nil'* income and claimed exemption under *Section 11 and 12* of the IT Act. However, its plea was rejected by the *AO* and income for which exemption was being sought, had been added. The basis of this addition was the provision of two properties owned / leased by the respondent/assessee, given to the trustees and their families on a lease/rental basis.

16. The *AO* then applied conditions given under *Section 13(2)(b)* read with *Section 13(3)(b)* of the IT Act. The issue went up in appeal by the respondent/assessee before the *CIT(A)* who entertained the appeal on two counts: *firstly*, that the respondent/assessee had consistently been granted benefit of exemption under *Section 10(23C)(iv)* of the IT Act, including in three immediate preceding *AYs 2013-2014* to *2015-2016* and there being no change in facts, principle of consistency was applied and the

benefit was extended to the respondent/assessee. *Secondly,* even on issues of *Section 13(2) and Section 13(3)* of the IT Act, the *CIT(A)* held that no benefit to individual or trustee would arise in the case. This decision was appealed by appellant/Revenue before the *ITAT* against the *CIT(A)*'s order, however, the said appeal was dismissed by the *ITAT,* upholding the order of the *CIT(A)*.

17. In this context, it is noted that the Trust was constituted under a Trust Deed dated 20th August 1948 and the partners of the business known as *Hamdard Dawakhana*, dedicated the business to charity. Hamdard created a *Special Purpose Vehicle* namely *Hamdard National Foundation* (***HNF***) with a registered society for philanthropic purposes.

Exemption under Section 10(23C)(iv) of the IT Act

18. On the *first* issue of applicability of exemption granted under *Section 10(23C)(iv)* of the IT Act, reliance has been placed by respondent/assessee's counsel on previous orders passed by this Court and it is important to examine the same.

19. The Division Bench of this Court in ***Hamdard Laboratories (India) & Anr. v. Assistant Director Income Tax (Exemption)*** *(supra)* in a decision delivered on 18th September 2015 deliberated upon the charitable status of *Hamdard Laboratories* (respondent/assessee herein) under *Section 10(23C)(iv)* of the IT Act. The *DGIT (Exemption)* by an order had withdrawn exemption granted to the *Hamdard Laboratories* /assessee under *Section 10(23C)(iv)* retrospectively with effect from *AY 2004-2005*.

20. The Court, in its final analysis, noted a previous decision of the Court in ***Commissioner of Income Tax v. Hamdard Dawakhana (Wakf)*** (1986) 157 ITR 639 [hereinafter "***Hamdard (Wakf)***"] where the nature of activities of *Hamdard (Wakf)* were examined and were held to be charitable. It was held that objects of *Hamdard (Wakf)* fell within the ambit of first three heads of charitable purpose under *Section 2(15)* of the IT Act namely '*medical relief*', '*education'* and '*relief for the poor'* and that the decision had been consistently applied and affirmed by the Courts in various judgments.

21. In the same context, *Hamdard National Foundation* (***HNF***) was pleaded as a mechanism having the same objects as that of *Hamdard Laboratories*/assessee and being a beneficiary of donations made by them perpetuating the charitable nature of the trust. *Hamdard National Foundation* (***HNF***) was therefore a mechanism, having the same objects as that of *Hamdard Laboratories*/assessee, and grant of donation by one charitable institution to another for the purposes of carrying charitable activities, amounts to an application of income for charitable purposes. The Court assessed the nature of *Hamdard Laboratories*/assessee's objects relying upon the decision of ***Hamdard Dawakhana (Wakf)*** ***(****supra)*. The Court noted that the clauses enumerating objects of *Hamdard Laboratories*/assessee continued to remain the same. Since the definition of '*charitable purpose*' applicable prior to 2009 was identical to one considered in ***Hamdard Dawakhana (Wakf)*** *(supra),* the issue concerning charitable nature of the organisation prior to 2009, was no longer *res integra*. The Court then went on to examine the charitable nature of the organisation from 1st April 2009 onwards.

22. After a detailed examination of the objects of *Hamdard Laboratories*/assessee, the Court in ***Hamdard Laboratories*** ***(****supra****)*** noted as under:

> *"67. Hamdard had been carrying out its since charitable activities through HNF since the latter was set up, and HNF enjoyed the benefit of exemption under Section 11 of the Act since its inception on 12.05.1964. HNF's charitable status was further approved by the CIT(A) in its order dated 31.01.2012. However, the DGIT(E) has drawn a distinction between corpus and non-corpus donations of Hamdard to HNF, the non-corpus fund –which is the source of HNF"s charity – comprises of a small proportion of Hamdard's total donation to HNF. In other words, the DGIT(E) held that the predominant portion of donation is applied towards building HNF's corpus as opposed to being applied for charitable purposes and the extent of actual charity carried out by HNF is not significant. However, in this Court's opinion, Hamdard rightly contends that the DGIT(E) erroneously drew a distinction between corpus and non-corpus donations made by it to HNF. The resolutions of Hamdard placed on record clearly mandate that the interest income generated from corpus donations was to be utilized for charitable purposes."*
>
> (emphasis added)

23. The Court further reiterated the same in a subsequent paragraph which is extracted as under:

> *"77. This Court finds that the DGIT(E) misconstrued the nature of Hamdard's activities, inasmuch as it held them to be in the nature of business. This Court has already held above that Hamdard's objects are charitable in nature, and its activities relating to manufacture and sale of unani medicines and other allied businesses are only meant to act as a source of funds for its charitable activities. It is undisputedly a case of a business held in trust, and*

Hamdard has been consistently applying the proceeds of its activities for charitable purposes."

(emphasis added)

24. The Court further held that *Hamdard Laboratories*/assessee continues to apply its income from business activities for charitable purposes in accordance with the Trust Deed and that the Revenue (*appellant herein*) had granted exemption to it under *Section 10(23C)(iv)* of the IT Act *vide* order dated 28th December 2007 *with complete knowledge of Hamdard Laboratories*/assessee's *activities*.

25. In the present appeal, *CIT(A)* while assessing the claim for exemption under *Section 10(23C)(iv)* examined the objects of the Trust under *Clauses 44, 45* and *46* of the Trust Deed of 1948 and held as under:

"7. In the Instant case, there is no dispute that HLI exists solely for charitable purposes and not for purposes of profit, as there is no findings in this regard found recorded in the assessment order. It is a fact that the appellant has derived the benefit of exemption under the relevant provisions of the Income Tax Act 1922 and thereafter continuously u/s 10(23C)(iv) of the Act including the three immediately preceding assessment years i.e. 2013-14 to 2015-16. Despite all these facts the AO failed to follow the principle of consistency. Since there was no change in facts, therefore, the AO has to allow the assessee's claim following the principle of consistency as laid down by the Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT [1992] 60 Taxman 248/193 ITR 321 (SC) and various other judicial precedents ..

...In view of the above facts and judicial precedents cited supra, I am of the considered view that unless and until the grant of exemption u/s. 10(23C) (iv) of the Act is not withdrawn by the prescribed authority, the same cannot be

denied by the AO. Accordingly, the AO is directed to entertain the appellant's claim of exemption u/s. 10(23C)(iv) and allow it accordingly. Effectively on all the grounds raised in para 2 above, the appellant succeeds."

(emphasis added)

26. The *ITAT* while considering submissions with regard to *Section 10(23C)(iv)* of the IT Act approved of the view taken by the *CIT(A)* and noted as under:

"8. We have carefully considered the submission of the parties and perused the records. It is significant to note from the assessment order dated 07.12.2017 in the case of the assessee after scrutiny under CASS for AY 2015-16 (copy at page 49 of Paper Book) that the order specifically mentions that the assessee Trust is registered under section 12A and also notified under section 10(23C)(iv) of the Act, said Notification having been restored by the Hon'ble Delhi High Court vide order dated 18.09.2015 in W. P. (C) 5711/2013 with effect from AY 2004-05 onwards. The predecessor Ld. AO has observed that the assessee claimed exemption under section 10(23C)(iv) and that the objects of the Trust being charitable within the meaning of section 2 (15) the benefit of section 11 and 12 is allowed. There is no change either in facts or in law in AY 2016-17 from those in preceding years as evidenced from the orders of assessment for AY 2013-14, 2014-15 and 2015-16 appearing at pages 46-49 of Paper Book. In CIT vs. Amit Jain (2015) 374 ITR 550 (Del) and in CIT vs. Denso India Ltd. (2015) 374 ITR 62 (Del) Hon'ble Delhi High Court held that where the AO has been following a view for the past several years, he cannot depart from the same when there has been no change in law or facts."

(emphasis added)

27. There is no dispute that the respondent/assessee has been enjoying exemption granted under *Section 10(23C)(iv)* since *AY 2004-2005* and

this Court in ***Hamdard Laboratories*** *(supra)* has assessed fully the objects of *Hamdard Laboratories* and affirmed its claim for exemption under *Section 10(23C)(iv)* of the IT Act.

Rule of Consistency

28. Counsel for respondent/assessee argued on the rule of consistency, which has to be examined now. Reliance has been placed on certain decisions in this regard.

29. In ***CIT v. Amit Jain*** *(2015) 374 ITR 550 (Del) and in* ***CIT v. Denso India Ltd.*** *(2015) 374 ITR 62 (Del)* a Coordinate *Bench of* this Court held that where the *AO* has followed a view for the past several years, he cannot depart from them in the event where there has been no change in law or facts. Relevant paragraphs of the said decision are extracted as under:

> "8. …A*n important detail which cannot be overlooked by the Court is that in all past periods and even subsequent periods, similar income reported by the assessee was accepted by the Revenue as short-term capital gain. In ITA517-12 Page 8 fact for AY 2005-06, the scrutiny assessment under Section 143 (3) accepted the sum of Rs.1.02 crores as short-term capital gain. In the circumstances, it was all the more necessary for the Revenue to point to some unique feature or distinctive material to differentiate the assessee's activities for the subject assessment year, since they fundamentally remained the same and unchanged."*
>
> (emphasis added)

30. In ***Radhasoami Satsang, Saomi Bagh, Agra v. CIT***, reported as 247 (1993) ITR 321 SC, the Supreme Court had an occasion to consider the '*rule of consistency*' in context of ***Radhasoami Satsang*** which was

seeking exemption as a *religious trust* and had been applying its donations and offerings of various properties, which were vested in Central Council. It was held as under:

> "16. *We are aware of the fact that, strictly speaking, res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.*
> *17. On these reasonings, in the absence of any material change justifying the Revenue to take a different view of the matter- and, if there was no change, it was in support of the assessee-we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under sections 11 and 12 of the Income-tax Act of 1961."*
>
> (emphasis added)

31. ***Radhasoami Satsang*** *(supra)* was relied upon by the Supreme Court in ***CIT v. Excel Industries Ltd.***, (2013) 358 ITR 295 (SC). The Apex Court noticed that the decisions had relied upon ***Hoystead v. Commissioner of Taxation*** [1926] AC 155 (PC) where it has been held as under:

> *"14. ...Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the*

case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted, and there is abundant authority reiterating that principle. Thirdly, the same principle-namely, that -of a setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

(emphasis added)

32. Further ***Parashuram Pottery Works Co. Ltd. v. ITO*** [1977] 106 ITR 1, the Supreme Court observed as under:

"15. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity."

(emphasis added)

33. Additionally, the Supreme Court in ***Berger Paints India Ltd. v. CIT***, reported as 266 ITR 99 held as under:

"12. In view of the judgments of this court in Union of India v. Kaumudini Narayan Dalal [2001] 249 ITR 219; CIT v. Narendra Doshi [2002] 254 ITR 606 and CIT v. Shivsagar Estate [2002] 257 ITR 59, the principle established is that if the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case

> *of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause."*
>
> (emphasis added)

34. In the opinion of this Court, the '*rule of consistency'* would be squarely applicable in this case, as has been rightly taken into account by the *CIT(A)* in the impugned decision. There has been no change in facts or law. The previous three assessment orders of *AYs 2013-2014 to 2015-2016* relating to *Section 10 (23C) (iv)* of the IT Act clearly stated as under:

> *"The main activity of the assessee trust is to run a manufacturing and trading business of Ayurvedic and Unani medicines. The popular products/formulation of the assessee trust are Rooh-Afza, Rogan Badam-Shrin, Cinkara, Safi & Chavyan Prash etc. The assessee has claimed exemption u/s 10(23C)(iv) of the Act. The objects of the society appear to be charitable in nature within the meaning of section 2(15) of the Income-tax Act, 1961. The benefit of section 11 & 12 is allowed to the assessee."*

35. The appellant/Revenue did not plead any particular circumstance or fact before this Court to displace the exemption granted under *Section 10 (23C) (iv)* of the IT Act and no unique feature or distinctive material has been adverted before the *CIT(A)* or the *ITAT* that would draw out any differentiation. In this view of the matter, exemption granted under *Section 10(23C)(iv)* of the IT Act will squarely apply to the respondent/assessee even in the subject AY and the submissions on behalf of appellant/Revenue in order to erode and dilute the same cannot subsist.

The issue of remand

36. The appellant/Revenue argued that since the exemption under *Section 10(23C)(iv)* of the IT Act was not claimed before the *AO*, there had been no determination by the *AO* on that issue and the determination was effectively restricted to *Section 13(2) read with Section 13(3)* and exemption under *Section 11 and 12* of the IT Act. When the appeal was filed before *CIT(A)* by the respondent/assessee, issue of exemption under *Section 10(23C)(iv)* of the IT Act had been taken up and it was expected that *CIT(A)* would therefore, revert the matter back to the *AO* for further determination.

37. For this purpose, reliance was placed on ***Jute Corporation*** *(supra)* and ***NTPC*** (*supra*). However, the principle that the Appellate Authority's power is *co-terminus* with that of the *AO* is not disputed. Even on the basis of ***Jute Corporation*** *(supra)* and ***NTPC*** (*supra*), it has been opined by the Supreme Court that the Appellate Commissioner, while hearing an appeal under *Section 251* of the IT Act, is not barred from permitting the respondent/assessee from raising an additional ground, and then entertaining that additional ground, provided that the ground raised is *bona fide* and it had not been raised earlier for good reasons. The discretion lies with the Appellate Commissioner with respect to permitting or not permitting the respondent/assessee from raising an additional ground.

38. A perusal of the *CIT(A)* order dated 30th March 2022 would incontrovertibly bear out that *CIT(A)* not only assessed the grounds which had been raised relating to *Section 13(2)* of the IT Act, but also dealt with the claim for exemption under *Section 10(23C)(iv)* of the IT

Act by the respondent/assessee. Relevant paragraph where the *CIT(A)* dealt with this, is extracted herein below:

> *"Without prejudice to the submissions made on the other grounds and supporting the main argument that the assessee is entitled to the benefit of exemption u/s 10(23-C)(iv) for that matter proceeding to sections 11 and 12 wrongly invoked, the AO could not have denied the benefit on the entire surplus/income, but should have restricted it to the income which had forfeited exemption for a proved violation."*

39. *CIT(A)* had also sought the remand report from the *AO,* which was provided to the respondent/assessee for his counter comments. In particular, it was stated in the objections that *AO* had not offered any comments on the judgments of the Apex Court and the jurisdiction of High Court where there was a history of tax assessments conducted over the last few decades and there was no appreciable change in the factual and legal position. The Assessment Orders for *AYs 2014-2015* and *2015-2016* were also adverted to. *CIT(A)* noted the appellant/Revenue's advertence to the decision of the Supreme Court in ***Goetze (India) v. CIT*** (2006) 284 ITR 323 in that no claim can be made otherwise than by filing a revised return which cannot be entertained by the *AO* during the pendency of an assessment proceeding. *CIT(A)* however, relied upon other decisions *inter alia* ***CIT v. Mithesh Impex*** 270 CTR (Guj) 66, ***CIT v. Rajasthan Fasteners*** (P) Ltd. 266 CTR (Raj.) 401 as also ***Jute Corporation*** *(supra)* to reach the following conclusion:

> "*The law developed, post Goetz (India)'s case, has made it abundantly clear that an assessee is entitled to make fresh claim for deduction or relief before the Appellate Authorities, during the course of the Appellate proceedings,*

> *irrespective of the claim not being made by revising the Return of Income before the Assessing Officer during the course of assessment proceedings. The decision in Goetze (India)'s case has not prohibited such claim before the Appellate Authorities further these judicial precedents cited and reproduced above make it amply clear that an assessee is otherwise eligible for a particular deduction/exemption then the same cannot be denied to him or it simply on the of the grounds that this claim was not made by the assessee in his return of income. In the instant case, at the outset, the appellant has been claiming that it is duly eligible for exemption as per provisions of section 10(23C) (IV) of the Act. In the remand report, the AO has also not commented that the appellant trust is not eligible for exemption u/s. 10(23C)(iv) of the Act. The AO simply emphasized that this claim was made in the return of income.*"
>
> (emphasis added)

40. *ITAT* also accepted the view taken by the *CIT(A)* and did not displace the order of *CIT(A)* in this regard. Though the appellant/Revenue has filed the present appeal against the *ITAT* order, this ground has not been taken up in the appeal filed before this Court and no question of law to that effect has been proposed in the appeal.

41. The limited grounds which have been taken up relate to application of *Section 13(2)(b)* read with *Section 13(3)* and other aspects in that context. Considering that appellant/Revenue did not raise these grounds in their appeal before us, the Court would not normally deliberate on the question, considering, that the issue has been settled through decisions *inter alia* ***Jute Corporation*** *(supra)* and ***NTPC*** *(supra)* as noted earlier. Further, this view taken by *CIT(A)* has been upheld by the *ITAT*. In this support, reference may be made to decision of Division Bench of this Court in ***International Tractors Ltd. v. Dy. CIT (LTU) &***

Anr. 2021 435 ITR 85 where the Court was dealing with a plea for remand and opined that "*in any event, we are of the view that if claim is otherwise sustainable in law, and the appellate authority has power to entertain the same*" and "*fresh claims made by the assessee, as allowed by the CIT(A) will have to be sustained*". In this case, the *ITAT* had directed a remand and the *ITAT's* order was set aside by the Court.

42. To our mind, this issue does not require any further deliberation. Not only was the respondent/assessee entitled to raise the issue before the Appellate Authority, but also the Appellate Authority had the power to entertain the issue and make a determination, rather than remanding it back simplicitor to the *AO*.

Determination under Section 11 and 12 of the IT Act

43. Respondent's/assessee's reliance on the following judgments with regard to scope of enquiry by the High Court, when there is no such question of law proposed, is apposite. In ***K Ravindranath Nair v. CIT*** (2001) 1 SCC 135 the Court emphasized that the High Court is to answer the question of law that is placed before it. Relevant extract from the decision is as under:

> *"7. The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the*

> *findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it.*
> *8. The only jurisdiction of the High Court in a reference application is to answer the questions of law that are placed before it. It is only when a finding of the Tribunal on fact is challenged as being perverse, in the sense set out above, that a question of law can be said to arise."*
>
> (emphasis added)

44. In ***Mangalore Ganesh Beedi Works v. CIT*** (2016) 2 SCC 556 the Court expresses its view over the same issue relying on ***K Ravindranath*** (*supra*) as under:

> *"18. We are not at all impressed with the submission of learned counsel for the Revenue. There is a clear finding of fact by the Tribunal that the legal expenses incurred by the Assessee were for protecting its business and that the expenses were incurred after 18th November, 1994. There is no reason to reverse this finding of fact particularly since nothing has been shown to us to conclude that the finding of fact was perverse in any manner whatsoever. That apart, if the finding of fact arrived at by the Tribunal were to be set aside, a specific question regarding a perverse finding of fact ought to have been framed by the High Court. The Revenue did not seek the framing of any such question."*
>
> (emphasis added)

45. As regards the issue of residential accommodation for trustees and the family members for nominal rent, the respondent/assessee claimed through its reply that the institution's own residential property had been given to the senior trustee on rent as per terms of his employment with *Hamdard Laboratories (India)* and a license fee of *Rs.45,000/-* per month was being charged. It was stated that "*due to his seniority in the institution's employment, for the last more than 40 years, and the*

services being rendered by him, the usage of a portion of the company's property on a rent of Rs.45,000/- is fully justified". The respondent/assessee further certified that the residential accommodation was provided to the two trustees namely, *Mr. Hammad Ahmed* and *Mr. Abdul Mueed Sahib*, in accordance to the service rules of the respondent/assessee and the license fee recovered from them during the year is about *Rs. 5.4 lakhs* (*Rs. 45,000/-* per month). It was stated by the respondent/assessee that "*property owned by us that had been given to the trustees on license fee, as per terms of employment for the last more than 40 years*".

46. It was emphasized that onus to prove that undue benefits had been passed on to the specified persons under *Section 13(3)* of the IT Act was on the Appellant/revenue. The *AO* noting this, stated that the respondent/assessee has not furnished any comparable market rates of the properties to justify the reasonableness of the rent received from the trustees. The *AO* cursorily noted as under:

> *"11. Online inquiries with regard to market price of rental in respect of space at Kautilya Marg had given illustrative results available at various online portals. On perusal of data available at makaan.com, the quotation for semi furnished accommodation for area of 3300 sq ft is Rs. 5 lakhs per month against the security deposit of Rs. 15 Lakhs whereas the assessee has charged consolidated rent of Rs. 45,000 per month from the trustees for the use of said property."*

47. *AO* therefore reached the conclusion as under:

> *"13. The property at 25 Kautilya Marg. New Delhi and 13 Rajdoot Marg. New Delhi are properties belonging to the trust and hence leasing out the same for use by trustees and*

their family is covered by section 13(2)(b) of the Act and hence the assessee was asked to justify reasonableness of consideration/rent received for such use by the trustees and their family members.

..

17. That the trustees and their family belong to the prohibited category within the meaning of section 13(3)(cc) and 13(3)(d) and since property of the institution had been provided an rent to such persons during the previous year relevant to assessment years without adequate rent, the legal fiction in subsection (2) of section 13 would come into play and the income or property of the institution shall, for the purpose of section 13(1)(d), be deemed to have been applied for the benefit of the prohibited category of persons under sub-section (3). Consequently, the benefit of exemption under section 11 was lost by reason of section 13(1)(c)(ii). Thus, the exemption u/s 11 & 12 of the Act is denied to the assessee."

48. The *CIT(A)* found merit in respondent/assessee's claim that its case is not covered under *Section 13(2)* read with *Section 13(3)* of the IT Act as no undue benefits were passed on to the specified persons under *Section 13(3)* of the IT Act. *CIT(A)* stated that the facts as mentioned, make it clear that the trust is not providing any benefit to the trustees and there is no violation of *Section 13(2)* of the IT Act, in this regard. It noted the submission of the respondent/assessee that trustees are functioning in a dual capacity, i.e. as trustees and also as employees and their educational, technical qualifications and experience help the respondent/assessee in achieving a good turnover over a period of time. The respondent/assessee also submitted that the properties shown by the appellant in the screenshot were furnished or semi-furnished and were either independent houses or independent floors with covered area much

larger than the covered area of the property at *25 Kautilya Marg* and the comparison was not justified.

49. Respondent/Assessee further contended that the family members of the erstwhile *Chief Mutawalli, late Abdul Mueed Sahib*, occupied a part of the premises at *25 Kautilya Marg*, i.e. ground floor, with a covered area of *401.12 sq.mt.* free of rent, entirely on compassionate grounds. As regards property at *13 Rajdoot Marg*, the respondent/assessee submitted that it is not owned by the respondent/assessee, but by *Hamdard National Foundation* ***(HNF)***, which leased it out to the respondent/assessee since 2007, and part of it is occupied by *Mr. Abdul Majeed* since 2010-2011, as per the terms of his employment with the respondent/assessee since 1995.

50. The *CIT(A)* noted that the law required the *AO* to bring on record cogent evidence to justify the invocation of Section 13 of the IT Act to deny exemption, and the material collected from the internet cannot be termed as corroborative piece of evidence. Comparison made with the online inquiries, done by the *AO*, was not tenable.

51. The *CIT(A)* relied upon the decisions in ***Kishore Trust v. ADIT (1996) 59 ITD 137 (Calcutta), CIT v. Bharat Sewa Sansthan (2013) 36 taxsman.com 539 Allahabad, Ragubhir Saran Charitable Trust v. ITO (1987) 22 ITD 11 (Delhi)***, to buttress the point that merely because of a difference in rental value of property, it cannot be said that undue benefit was passed on to a trustee or a specific trustee under *Section 13(2)* and *Section 13(3)* of the IT Act. The *ITAT* confirmed the findings of the *CIT(A)*, and noted the decision of the Court in ***CIT (Exemption) v. Hamdard National Foundation*** (2022) 4 HCC (Del) 428, which dealt

with a similar issue of substantial concession in rent given to ***Hamdard Dawakhana*** (***Wakf***).

52. In ***CIT v. HNF*** *(supra)*, *AO* had relied upon an enquiry made from various real estate sites including *makaan.com*, *99acres.com*, *magicbricks.com* and held that the properties had been let out by the respondent/assessee at a much lower rate as compared to the market rate and invoked provisions of *Section 13(2)(b)* read with *Section 13(3)*. The *CIT(A)* allowed the appeal of the respondent/assessee but the *ITAT* remanded it back, stating that it did not contain reasons. Upon such a remand, the appeal preferred by the respondent/assessee was dismissed by the *CIT(A)* and it was appealed before the *ITAT*. The *ITAT* allowed the appeal in favour of the respondent/assessee stating that the assessing officer could not have invoked *Section 13(2)(b)* read with *Section 13(3)* of the IT Act and directed grant of exemption. The Court, in its opinion, relied upon the principle of consistency and stated that in the absence of any material change, unless the appellant/revenue is able to establish compelling reasons for a departure from the said position, the proceedings should not be allowed to be reopened, unless, the *AO* is able to justify taking a different view of the matter. The Court further stated that the burden of showing that the rent charged by the respondent/assessee was not "*adequate*" was on the appellant/Revenue, unless the price/rent was such as to shock the conscience of the Court and to hold that it cannot be a reasonable consideration, it would not be possible to hold that the transaction is bereft of adequate consideration. Relevant paragraph in this context is extracted under for ease of reference:

> ***"20.2*** *Under section 13(2)(b), the burden of showing that the rent charged by the respondent/assessee was not 'adequate' is on the revenue. Unless the price/rent was such as to shock the conscience of the Court and to hold that it cannot be the reasonable consideration at all, it would not be possible to hold that the transaction is otherwise bereft of adequate consideration. It is necessary for the Assessing Officer to show that the property has been made available for the use of any person referred to in sub-section (3) of section 13 otherwise than for adequate consideration. In order to determine the same, the context of the facts of the particular case needs to be appreciated. For determining "Adequate" consideration/rent, however, market rent or rate is not the sole yardstick; other circumstances of the case also need to be considered."*
>
> (emphasis added)

53. The Court then noted that the *ITAT* had observed that the appellant/Revenue had failed to bring on record cogent evidence to show that the rent received was *inadequate*. The material was effectively collected from internet, as well as, estate agents and cannot be termed as a corroborative piece of evidence. The Court then noted that they did not find any perversity in the findings of the *ITAT*.

54. The issue therefore, may not be *res integra* considering, this Court has previously in ***CIT (Exemption) v. HNF*** *(supra)* has already made an assessment with respect to the allegation of undue benefits being granted to specified persons. In this matter as well, the *AO* had relied upon online platforms to justify that the value at which properties have been provided to the trustees is inadequate and therefore amounts to undue benefit.

55. The other important aspect which is to be noted is that these properties have been given to the trustees as part of their employment with the respondent/assessee for about *40 years* and some part was given

to the family members of the erstwhile *Chief Mutawalli* entirely on compassionate grounds.

56. In these circumstances, the Court does not find any reason to allow the appeal and does not find any infirmity in the order passed by the *ITAT*. Indeed, no substantial question of law arises in the present appeal and the same is accordingly dismissed.

57. Pending application is rendered infructuous.

58. No order as to costs.

59. Judgement be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

(NITIN WASUDEO SAMBRE)
JUDGE

SEPTEMBER 10, 2025 /SM/*sp*