IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946

ITA NO. 20 OF 2023

AGAINST THE ORDER DATED 17.03.2022 IN ITA NO.12/COCH/2021 OF INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH, COCHIN

APPELLANT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX, (CENTRAL) KOCHI, KANDOMKULATHY TOWERS, KOCHI-682016 ON BEHALF OF THE COMMISSIONER OF INCOME TAX (EXEMPTION) KOCHI

BY ADVS.
SRI.JOSE JOSEPH, SC
SRI.P.K.RAVINDRANATHA MENON (SR.)

RESPONDENT:

LAST HOUR MINISTRY
VIII/182 KARIKKAN VILLA, MEENTHALAKKARA, MANJADI P.O
THIRUVALLA , KERALA, PIN - 689101

BY ADVS.
SRI.SIVARAMAN, SR.
SRI.N.KRISHNA PRASAD
SRI.P.SHANES METHAR(K/968/2004)

THIS INCOME TAX APPEAL HAVING COME UP FOR FINAL HEARING ON 03.03.2025, ALONG WITH ITA.23/2023, 29/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946

ITA NO. 23 OF 2023

AGAINST THE ORDER DATED 17.03.2022 IN ITA NO.14/COCH/2021 OF INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH, COCHIN

APPELLANT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX, (CENTRAL) KOCHI, KANDOMKULATHY TOWERS, KOCHI-682016 ON BEHALF OF THE COMMISSIONER OF INCOME TAX (EXEMPTION) KOCHI

BY SRI. JOSE JOSEPH, SC

RESPONDENT:

AYANA CHARITABLE TRUST, 303/THENGUMTHARAYIL
KUTTAPUZHA P.O.,
THIRUVALLA,KERALA, PIN - 689101

BY ADVS.
SRI.SIVARAMAN,SR.
SRI.N.KRISHNA PRASAD
SRI.P.SHANES METHAR(K/968/2004)
SRI.PUSHPARAJ.K.P(K/1098/2012)

THIS INCOME TAX APPEAL HAVING COME UP FOR FINAL HEARING ON 03.03.2025, ALONG WITH ITA.20/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946

ITA NO. 29 OF 2023

AGAINST THE ORDER DATED 17.03.2022 IN ITA NO.13/COCH/2021 OF INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH, COCHIN

APPELLANT/RESPONDENT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX, (CENTRAL) KOCHI, 2ND FLOOR, C.R. BUILDING, I.S.PRESS ROAD, KOCHI-682018

BY ADVS.
SRI.JOSE JOSEPH
SRI.P.K.RAVINDRANATHA MENON (SR.)

RESPONDENT/APPELLANT:

BELIEVERS EASTERN CHURCH, THOMAS NAGAR KUTTAPPUZHA P.O, THIRUVALLA, KERALA., PIN - 689101

BY ADVS.
SRI.SIVARAMAN, SR.
SRI.N.KRISHNA PRASAD
SRI.P.SHANES METHAR(K/968/2004)
SRI.PUSHPARAJ.K.P(K/1098/2012)

THIS INCOME TAX APPEAL HAVING COME UP FOR FINAL HEARING ON 03.03.2025, ALONG WITH ITA.20/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946

ITA NO. 34 OF 2023

AGAINST THE ORDER DATED 17.03.2022 IN ITA NO.15/COCH/2021 OF INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH, COCHIN

APPELLANT/RESPONDENT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX, (CENTRAL) KOCHI, KANDOMKULATHY TOWERS, KOCHI-682016 ON BEHALF OF THE COMMISSIONER OF INCOME TAX (EXEMPTION) KOCHI

BY ADVS.
SRI.JOSE JOSEPH, SC
SRI.NAVANEETH.N.NATH
SRI.SUSIE B VARGHESE(K/1300/2019)

RESPONDENT/APPELLANT:

BELIEVERS EASTERN CHURCH
THOMAS NAGAR, KUTTAPPUZHA P O,THIRUVALLA, KERALA,
PIN - 689101

BY ADVS.
SRI.SIVARAMAN, SR
SRI.N.KRISHNA PRASAD
SRI.P.SHANES METHAR(K/968/2004)
SRI.PUSHPARAJ.K.P(K/1098/2012)

THIS INCOME TAX APPEAL HAVING COME UP FOR FINAL HEARING ON 03.03.2025, ALONG WITH ITA.20/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

DR. A.K.Jayasankaran Nambiar, J.

The revenue is in appeal before us in these I.T. Appeals aggrieved by a common order dated 17.03.2022 in I.T.A.No.12/Coch/2021, I.T.A.No.13/Coch/2021, I.T.A.No.14/Coch/2021, and I.T.A.No.15/Coch/2021, preferred by the respondent-assessee against an order of the Principal Commissioner of Income Tax under Section 12AA of the Income Tax Act, 1961, cancelling the registration granted to the assessee under Section 12A of the Income Tax Act.

2. The brief facts necessary for the disposal of these I.T. Appeals are as follows:

Pursuant to a survey conducted in relation to the activities of the respondent-assessee on 26.02.2020 and a search conducted in the premises of the assessee on 05.11.2020, show-cause notices were issued under Section 12AA(3) /(4) of the Income Tax Act to the assessee proposing to cancel the registration granted to them under Section 12A of the Income Tax Act. Although the assessee preferred a detailed reply to the show-cause notices on 15.12.2020, by an order dated 31.12.2020, the Principal Commissioner of Income Tax rejected the contention raised by the assessee and confirmed the proposal for cancellation of the registration. The order of the Principal Commissioner contained detailed reasons as to why, in the opinion of the Principal Commissioner, the registration granted to the assessee under Section 12A of the Income Tax Act had to be cancelled.

3. At any rate, aggrieved by the order of the Principal

Commissioner, the respondent-assessee preferred appeals before the Appellate Tribunal. The Appellate Tribunal, on a consideration of the appeals, passed the order impugned before us by the revenue in these appeals, finding that the order cancelling the registration granted to the assessee was passed prematurely by the Principal Commissioner of Income Tax. The reasons that weighed with the Appellate Tribunal to allow the appeals preferred by the respondent-assessee are contained in paragraph 5 of the impugned order, which reads as follows:

> “5. We have considered the rival submissions. A perusal of the order cancelling registration wherein various reasons have been given as mentioned earlier apparently show that these reasons would at best give rise to violations u/s.13(1)(c) and 13(1)(d) of the Act which would result in additions in the assessment and reassessment. Such violations, if any to be assessed as income taxable at the marginal rate.
>
> A perusal of the provisions of Section 12AA(4) shows that the cancellation of registration is permissible in respect of trust/institution which has been granted registration if the activities of the trust or the institution are being carried out in a manner that the provisions of Section 11 and 12 do not apply to exclude either the whole or any part of the income of such trust or institution due to the operation of sub-section(1) of Section 13 or the trust or the institution has not complied with the requirements of any other law.
>
> Reading of the provisions of Section 12AA(4) shows that there has to be primarily an order saying that the activities of the trust or the institution are being carried out in the manner that the provisions of Section 11 and 12 do not apply. That order primarily has to be done by the AO, who is a quasi-judicial authority. This is because it is the AO, who makes the assessment after examining all

the evidences after putting the assessee to show cause and it is that assessment order itself which becomes the subject matter of appeal at various stages which could result in the confirmation of the assessment, reduction or modifications of the additions made.

The cancellation of registration without such an order is effectively precluding the AO to do the assessment in a free and fair manner. Admittedly, the Ld.CIT(E) is an Administrative Commissioner and once he gives a specific direction as he has made in the order cancelling the registration, the hands of the assessing authority gets tied down. The independence of the assessing authority gets infringed. This is not permissible. In fact reading of the provisions of Section 12AA(4) clearly shows that it is only after the quasi-judicial authority has completed its part, the violations can be even claimed to be there. In regard to the violation of any other law, the provisions of Section 12AA(4) clearly and categorically says that such violation or recording of such violation should have attained finality. Allegations *per se* cannot be the ground for the cancellation of registration. On this ground itself, the order passed by the Ld.CIT(E) is liable to be quashed and we do so.

Even otherwise, reading of proviso to Section 12AA(4) shows that there is liberty available with the assessee to show that there was reasonable cause for the activities to be carried out in the said manner. This proviso clearly shows that the assessee could reply or show reasonable cause only after the quasi-judicial authority being the assessing authority questions the assessee during the course of assessment. Further, the reading of 2^{nd} proviso to Section 153A clearly shows that assessments/re-assessments which are pending for a period of six assessment years abates. This clearly shows that even assuming proceedings had been initiated for the purpose of completing an assessment or re-assessment as a consequence of the survey, even those proceedings would stand abated as on the date of search. Thus clearly there is no assessment order nor any evidence specifically conclusively found or established against the assessee on the issues raised by the Ld.CIT(E) by an order of any quasi-judicial authority nor has the violation of any other law reached finality. On this ground also the cancellation of exemption by the Ld.CIT(E) is liable to be quashed as the same is premature and we do so."

4. It is aggrieved by the said findings of the Appellate Tribunal that the revenue is before us in these I.T. Appeals raising the following substantial questions of law:-

1. Whether on the facts and in the circumstances of the case and on an interpretation of the relevant provision of the lT Act is not the order of the Commissioner in accordance with law and within jurisdiction?

2. Whether on the facts and circumstances of the case, the Hon'ble Tribunal was right in quashing the order of Commissioner of Income Tax (Exemption) cancelling the registration of Trusts u/s.12AA of the Income Tax Act in the backdrop of violation of statutory provisions, accounting principles and registered objectives as detected during Survey action and enquiries conducted by the Commissioner of Income Tax u/s.135 of the Act ?

3. Whether on the facts and circumstances of the case, the Hon'ble Tribunal was right in holding that Assessing Officer's (AO's) order is required before the cancellation of Registration of Trusts by the Commissioner of Income Tax when the provisions u/s.12AA of Income Tax Act make no mention of the same?

4. Whether on the facts and circumstances of the case, the Hon'ble Tribunal was right in holding that in absence of

assessment order or any order of any quasi-judicial authority the cancellation of registration by Commissioner of Income Tax (Exemption) is liable to be quashed whereas as per the specific provisions of Section 12AA(1) of the Act the Commissioner of Income Tax is the authority for granting registration to the Trusts and as per Section l2AA(4) the Commissioner only is the authority for cancellation of registration so granted?

5. Whether on the facts and circumstances of the case, the Hon'ble Tribunal was right in holding that the 2nd proviso to Section 153A will assume cancellation of registration of Trust proceedings as well requiring even such proceedings to abate whereas the 2nd proviso is specific to assessment or reassessment only and not to the proceedings before Commissioner of Income Tax for granting or cancelling registration to Trusts u/s.12AA of Income Tax Act?

6. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in holding that "these reasons would at best give rise to violations under Sec. 13(1)(c) and 13(1) (d) of the Act which would result in additions in the assessment and reassessment . Such violations, if any to be assessed as income tax above at the marginal rate" and are not the findings wrong and reliance on the same irrelevant, arbitrary extraneous and besides the issue and hence perverse?

7. Whether on the facts and in the circumstances of the case are not the reasons relied on and the conclusion arrived at by the lTAT perverse and quixotic?

5. We have heard Sri. Jose Joseph, the learned Standing counsel for

the Income Tax Department, and Sri.Sivaraman, the learned Senior counsel for the respondent-assessee, who appears before us through video conference.

6. On a consideration of the rival submissions and without going into the merits of the issue that was to be considered by the Appellate Tribunal, namely, the legality of the order passed by the Principal Commissioner cancelling the registration granted to the respondent-assessee under Section 12A of the Income Tax Act, we find that the Appellate Tribunal in the impugned order, proceeded on a mistaken assumption with regard to the order passed by the Principal Commissioner. The Appellate Tribunal erroneously found that the powers of the Principal Commissioner under Section 12AA of the Income Tax Act could not be exercised without a prior determination by the Assessing Authority as to whether or not the assessee had occasioned a breach of the statutory provisions or conducted themselves in violation of the objects of the Trust concerned. In our view, the provisions of Section 12AA independently empower the Principal Commissioner to consider whether or not the circumstances mentioned in Section 12AA(3) and 12AA(4) of the Income Tax Act exist as a pre-condition for directing a cancellation of the registration that was granted to the Trust under Section 12A of the Income Tax Act. The statutory provisions do not require the Principal Commissioner to await a decision of the Assessing Authority concerned before passing an order cancelling the registration granted to an assessee under Section 12A of the Income Tax Act. The assumption by the Appellate Tribunal that the determination of relevant facts by an Assessing Officer was a pre-condition to the Principal Commissioner exercising his powers under Section 12AA, or that the exercise of power by the Principal Commissioner under Section 12AA

would preclude an independent assessment by the Assessing Officer, as he would be bound by the determination by the Principal Commissioner under Section 12AA, is in our view flawed since the statutory provisions do not admit of any such interpretation.

In the result, we set aside the impugned order of the Appellate Tribunal and remand these appeals back to the Appellate Tribunal for a fresh consideration on the merits of the appeals preferred by the assessee against the order of the Principal Commissioner. We make it clear that in the hearing of the appeals before the Appellate Tribunal, it would be open to the respondent-assessee to raise all contentions, and also bring to the notice of the Appellate Tribunal the subsequent developments in the case, such as the approach made by the assessee to settle the matter through the Settlement Commission. The Appellate Tribunal shall endeavor to pass fresh orders in the matter, consequent to the remand from this Court, within an outer time limit of six months from the date of receipt of a copy of this judgment. These I.T. Appeals are therefore allowed by way of remand by answering the questions of law raised in favour of the department and against the respondent-assessee.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

EASWARAN S.
JUDGE

mns

APPENDIX OF ITA 23/2023

PETITIONER ANNEXURES

Annexure A	**TRUE COPY OF THE COMMISSIONER OF INCOME TAX UNDER SEC.12AA OF THE INCOME TAX ACT.**
Annexure B	**CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL IN ITA .14/COCH/2021 DATED 17-03-2022**
Annexure C	**TRUE COPY OF THE ADDENDUM TO ANNEXURE B. DATED 5-01-2021**
Annexure D	**TRUE COPY OF THE CORRIGENDUM TO ANNEXURE B DATED 5-01-2021**

APPENDIX OF ITA 29/2023

PETITIONER ANNEXURES

Annexure A	**TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX UNDER SEE.12AA OF THE INCOME TAX ACT DATED 01-01-2021**
Annexure B	**CERTIFIED COPY OF THE ORDER OF THE LNCOME TAX APPELLATE TRIBUNAL DATED 17-03-2022 IN LTA. NO.13/COCH/2021.**
Annexure C	**TRUE COPY OF THE ADDENDUM, TO ANNEXURE B DATED 05-01-2021**

APPENDIX OF ITA 34/2023

PETITIONER ANNEXURES

Annexure A	**TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX UNDER SEC.12AA OF THE INCOME TAX ACT DATED 01 -01 -2021.**
Annexure B	**CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL. DATED 17-03-2022**
Annexure C	**TRUE COPY OF THE ADDENDUM OF ANNEXURE B DATED 05-01-2021 DATED 05-01-2021.**
Annexure D	**TRUE COPY OF THE CORRIGENDUM OF ANNEXURE B DATED 05-01-2021.**

APPENDIX OF ITA 20/2023

PETITIONER ANNEXURES

Annexure A	**TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX UNDER SEC. 12AA OF THE INCOME TAX ACT. DATED 01.01.2021**
Annexure B	**CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 17-03-2022.**
Annexure C	**TRUE COPY OF THE ADDENDUM TO ANNEXURE B. DATED 5-01-2021**
Annexure D	**TRUE COPY OF THE CORRIGENDUM TO ANNEXURE B. DATED 5-01 -2021**