



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L)NO.7587 OF 2026

- 1 The Chamber of Tax Consultants,]
through its President Mr. Jayant Gokhale]
having its office at 3, Rewa Chambers, Ground]
Floor, 31, New Marine Lines, Mumbai 400 020.]
- 2 Bombay Chartered Accountants' Society]
through its Secretary Mrinal Mehta, having its]
office at 7, Jolly Bhavn No.2, Ground Floor,]
New Marine Lines, 7, New Marine Lines,]
Mumbai 400 020.]
- 3 Mahesh J. Parikh Charitable Trust, a]
Public Charitable Trust, having its office at 1/3]
Shilpa, Vrindavan Society, N S Mankikar Marg,]
Sion Chunabhatti, Mumbai 400 022.]
- 4 Dadar Bhagini Samaj, a Public Charitable Trust,]
having its office at Hindu Colony 3rd Land,]
Dadar, Mumbai 400 014.]
- 5 Dr. Y N Ajinkya East Bombay Lion's Hospital]
Society Trust, a Public Charitable Trust, having]
its office at 32 Pandita Ramabai Road,]
Mumbai 400 007.]
- 6 Dilasa Medical Trust and Rehabilitation Centre,]
a Public Charitable Trust, having its office at]
201, Happy Home Plot No.551, Tps Iii 8th Road]
Old Khar, Khar (W), Mumbai 400 052.]
- 7 Gaud Brahman Samaj, a Public Charitable Trust]
having its office at 24, Madhunam Premises]
Co.op. Society Ltd. S. V. Road, Goregaon (W),]
Mumbai 400 062.]

Digitally signed
by SMITA
RAJNIKANT
JOSHI
Date:
2026.03.18
15:45:16 +0530

- 8 Gavankar Education Trust Saraswati High School]]
Yeshwant Sadan, Public Charitable Trust, having]
its office at S M Jadhav Marg, Naigaum,]
Dadar (E), Mumbai 400 014.].. Petitioners.

Versus

- 1 The Commissioner of Income Tax (Exemptions)]
having his office at Room No.601, 6th Floor,]
Cumballa Hill MTNL TE Building]
Peddar Road, Mumbai 400 026.]
- 2 Principal Chief Commissioner of Income]
Tax, Delhi, having his office at Room No.]
2503, 25th Floor, E2 Block, Civic Centre,]
Minto Road, New Delhi, Delhi 110 002.]
- 3 The Central Board of Direct Taxes,]
Department of Revenue, Ministry of]
Finance, Government of India, North]
Block, New Delhi 110 001.]
- 4 Union of India, through the Secretary,]
Department of Revenue, Ministry of]
Finance, Government of India, North]
Block, New Delhi 110 001.].. Respondents.

Mr. Percy Pardiwalla, Sr. Advocate with Mr. Dharan Gandhi and Ms. Aanchal Vyas, Advocates for the Petitioners.

Mr. Arjun Gupta, for the Respondents.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: MARCH 09, 2026

ORAL JUDGEMENT:-

1. **Rule.** Rule made returnable forthwith. Respondents waive service. By consent of the parties, the Writ Petition is taken up for final disposal at this stage itself.

2. The Petitioners before us represent a cross-section of charitable trusts and bodies representing the tax-practising community. Petitioner No. 1, i.e., The Chamber of Tax Consultants, is a society established in 1926. It is one of the oldest voluntary non-profit organisations of tax practitioners, and its members are advocates, chartered accountants and tax practitioners. It is formed with the object of spreading education in tax laws and making representations to authorities on issues of public interest. Petitioner No. 2, i.e., the Bombay Chartered Accountants' Society, was established in 1949, and is a voluntary organisation of Chartered Accountants with over 11,500 members. It is actively involved in the dissemination of knowledge and regularly makes representations on public interest issues concerning tax laws. Petitioner Nos. 3 to 8 are public charitable trusts registered under the Maharashtra Public Trusts Act, 1950 ("MPT Act"). These trusts have been enjoying registration under sections 12A and 12AB of

the Income-tax Act, 1961 ("the Act") for several years and are the aggrieved parties whose applications for renewal of registration are rejected by Respondent No. 1.

3. This Writ Petition, filed under Article 226 of the Constitution of India, basically challenges the action of Respondent No.1, the Commissioner of Income Tax (Exemptions), in rejecting applications for renewal of registration under section 12AB of the Act. The Petitioners impugn the rejection orders passed against Petitioner Nos. 3 to 8 and also seek broader reliefs for all similarly situated trusts.

4. The core issue arising for our determination revolves around a view taken by Respondent No. 1 (which the Petitioners allege is untenable) while processing renewal applications filed in Form 10AB under the registration regime effective from 1st April 2021 in terms of section 12AB of the Act. Respondent No. 1 has rejected the applications for renewal of registration of Petitioner Nos. 3 to 8, primarily, on two grounds:

- a. the trust deed or instrument constituting the concerned entities does not contain an explicit clause stating that the trust is "irrevocable" and/or providing for the manner of dissolution;

Page 4 of 48
MARCH 09, 2026

S.R.JOSHI

b. the applicants, in their online Form 10AB, were compelled to answer "Yes" to the question in Row 6, viz., "*Whether the trust deed contains clause that the trust is irrevocable?*". Since, the trust deeds were silent on this aspect, Respondent No. 1 has treated this reply as furnishing "false or incorrect information," which constitutes a "specified violation" in terms of clause (g) of the Explanation below section 12AB(4) of the Act.

5. Being aggrieved by the rejection orders and the systemic issue affecting a large number of charitable trusts, the Petitioners have approached this Court invoking its jurisdiction under Article 226 of the Constitution of India.

6. Mr. Percy Pardiwalla, the learned Senior Advocate appearing for the Petitioners, has made the following submissions in support of the Petition:

a. Neither Section 12AA nor section 12AB of the Act requires the presence of an explicit "*irrevocability clause*" as a condition precedent for granting registration. Section 12AB(1)(b) of the Act requires

the Principal Commissioner to call for such documents or information from the concerned trust or institution and make such inquiries in order to be satisfied about the genuineness of activities of the trust or institution, and compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects. The presence of a clause relating to the dissolution or irrevocability is not a condition precedent for grant of registration. By insisting on such a clause, Respondent No. 1 is acting without jurisdiction and imposing a condition not found in the statute, which action is impermissible in law.

- b. The trusts were initially granted registration under the earlier regime, i.e., (sections 12A/12AA) inspite of such clauses not being present. The conditions for grant of registration have not materially changed in section 12AB, and hence, initially in 2021 the trusts were also granted registration under section 12AB in similar circumstances. There is no change in facts or law to warrant this new interpretation adopted by Respondent No. 1.
- c. Reliance by Respondent No.1 on sections 60 to 63 in support of his conclusion is misplaced. These sections are anti-avoidance provisions and provide for the

inclusion of income in the hands of the transferor in a case of a "*revocable transfer*." These sections do not apply for the purpose of registration but are applicable, if at all, only at the time of grant of exemption under section 11 of the Act. Assuming the provisions apply, the effect thereof is that pursuant to a revocable transfer, the income arising from such assets that were the subject of such transfer is chargeable to tax in the hands of the transferor, and consequently, the transferee to whom such income arises is not taxable. Thus, the issue of claiming exemption in the assessment of the trust/ institution can never arise.

- d. In any event, section 63 itself defines a transfer as "*revocable*" only if the instrument contains a provision for re-transfer or gives the transferor a right to re-assume power over the assets. Since, the trust deeds are silent, they do not fall within this definition.
- e. It is a settled principle of law that a trust (whether private or charitable) is irrevocable unless the trust deed expressly reserves a power of revocation. The test to be applied is the *presence* of a revocation clause, not the *absence* of an irrevocability clause.
- f. The Petitioner trusts are registered under the Maharashtra Public Trusts Act, 1950 ("MPT Act").

Sections 22(3A) and 22(3B) of the MPT Act provide a specific mechanism for de-registration and transfer of funds to the Public Trusts Administration Fund *inter alia* in a case where the trust is revocable and is specifically revoked. Further, Section 55 provides for the application of the cy-pres doctrine upon dissolution. The combined effect is that the assets of a public charitable trust in Maharashtra can never revert to the settlor and must be transferred to another trust with similar objects. This makes them inherently irrevocable by operation of law.

- g. The utility that drives the submission of the online form compels an applicant to make a declaration that is not correct in order to upload its form, which, then, is perversely used as a ground for rejection. In response to the question in Row 6, *"Whether the trust deed contains clause that the trust is irrevocable?"*, the trusts are forced to click on "Yes". Because if "No" is clicked, then the form does not get uploaded and a message appears *"Approval/ Registration is not allowed if the applicant being a trust does not have an irrevocable clause"* as was demonstrated to us in the course of hearing. Where there is no irrevocability clause, and if "Yes" is clicked in response to the query in Row no. 6, Respondent No.1 has considered this as a ground to deny registration. Respondent No. 1 has

considered the reply “Yes” as furnishing “*false or incorrect information*,” which constitutes a “*specified violation*” in terms of clause (g) of the Explanation below section 12AB(4) of the Act. This is a high-handed and arbitrary approach, penalising assesseees for a flaw in the department's own system.

- h. This Court in ***CIT vs. Tara Educational & Charitable Trust*** (Income Tax Appeal No. 247 of 2015) vide its judgment dated 31.07.2017 has held that the absence of a dissolution clause is not a ground for rejecting registration. In fact, the Ministry of Finance, in its reply to the Public Accounts Committee regarding a Comptroller and Auditor General of India (‘CAG’) Report, had itself stated that in States like Maharashtra and Gujarat, where specific legislation bars reversion of assets, the inclusion of a dissolution clause is “*neither necessary nor legal*.” Thus, neither the existence of a dissolution clause nor the irrevocability clause are necessary ingredients for grant of registration.
- i. The Act already contains adequate safeguards in section 13 (viz., denial of exemption in case the income is applied for the benefit of an interested persons), section 115TD (exit tax on dissolution), and the power to impose conditions in the registration certificate, which prevents any misuse of assets. In

fact, while granting registration under section 12AB(1)(a) for the first time under the amended regime, specific conditions were imposed, *inter alia*, including one that prohibited a transfer of assets to the founder/ settlor on a dissolution of the trust.

7. For the aforesaid reasons, Mr. Pardiwalla, submitted that both grounds for rejection of registration under section 12AB of the Act are incorrect, baseless and cannot be relevant grounds for grant/ rejection of registration. Consequently, he submitted that the reliefs sought in the above Petition be granted.

8. Per contra, Mr. Gupta, the learned counsel for the Respondents, first of all tendered an Affidavit in Reply affirmed by Respondent No. 1 on 3rd March, 2026. He defended the impugned orders by making the following submissions:

- a. Section 12AB allows for examination of the issue of revocability before granting registration. The Commissioner has to be satisfied not only regards the genuineness and objects of the trust but the compliance of other laws as well such as the MPT Act which envisages de-registration of a public trust

if it is revocable and is revoked. Hence, it is incumbent upon the Commissioner to be satisfied also about the revocability of a public trust before he grants registration.

- b. Sections 60 to 63 envisage revocable and deemed revocable transfers and section 11 is made subject to these provisions. Since public trust property is public property, revocability has to be decided at the time of grant of registration itself. Also, there is nothing arbitrary in requiring revocability to be considered during the process of grant of registration if it is allowed under section 12AB.
- c. An irrevocable trust is a condition precedent for grant of registration and exemption. The property of a public trust is public property once endowed and row number 6 in Form No. 10AB simply seeks to carry out or implement the law. There is a direct nexus between the legal principle of not allowing revocable trusts to claim exemption and how the Revenue seeks to achieve that by obligating trusts to have irrevocability clauses in their trust deeds. Hence, there can be nothing arbitrary if only the law is being upheld by virtue of row number 6 in Form No. 10AB.

-
- d. Section 332 of the Income-tax Act, 2025 provides that an exemption will be available only to an irrevocable trust which means that only an irrevocable trust can be considered for the purposes of registration of a public trust.
- e. Once the MPT Act envisages revocability of a public trust, and the Act also makes the exemption under section 11 subject to sections 60 to 63, there is every possibility, in view of these statutory provisions, that public trusts may contain revocable clauses in their trust deeds. To obviate such a situation, row number 6 of Form No. 10AB requires every public charity to have an express irrevocability clause. Therefore, there is nothing arbitrary with this requirement. In fact, it seeks to cure the mischief of not allowing revocability clauses in public trust deeds for grant of registration and exemption.
- f. Several trusts have already submitted applications to the Charity Commissioner for amendment of their trust deeds to insert irrevocability clauses therein. Registration has been granted and/or renewed for such public charities.
- g. The assertion made at paragraph 4.7 of the petition, that for a trust to be considered as revocable, the *sine qua non* is that the Trust Deed should contain a

provision for re-transfer or it in any way gives the transferor a right to reassume power over the income and assets, is also misconceived. Such an assertion ignores the language used in section 63(a) (ii) of the Act which states that a transfer shall be deemed to be revocable if it, in any way, gives the transferor a right to resume a power, directly or indirectly, over the whole or any part of the income or assets. Clearly the absence of a specific clause of irrevocability in respect of even part of the assets, indirectly gives the transferor a right to reassume power (directly or indirectly) over the whole or part of the income or assets of the trust. Accordingly, the non obstante clause at the beginning of section 11 is a sufficient statutory requirement of having a specific irrevocability clause in the trust deed, and does not require the same to be stated in any other way in the Act.

- h. The Commissioner is duty-bound to satisfy himself about the objects and genuineness of the trust. Ensuring that the trust is irrevocably dedicated to public purposes is a core part of this satisfaction. It is not feasible for the Commissioner to examine the various recitals of every trust deed to infer irrevocability; an express clause is necessary for administrative clarity and to prevent litigation.

- i. The assertion in the petition that revocability of a trust implies a dissolution of trust, is entirely misplaced and misleading. They are entirely two different things. Whereas revocability of a trust can be even partial with respect to the income or assets of a trust, dissolution implies complete loss of identity of the trust.
 - j. Insofar as the rule of consistency of approach to be adopted in the light of the previous approval has been canvassed, it was submitted that there is no estoppel against a statute. A registration granted incorrectly will not act as an estoppel, and Respondent No.1 will be justified in acting in consonance with the specific provisions of the Act.
 - k. The assertion that Form No. 10AB was not getting filed online in the absence of a “No” response is also irrelevant to the issue, because even during the registration proceedings, the applicants have falsely specifically stated before Respondent No.1 that their trust deeds contain a specific irrevocability clause, whereas the deeds are silent on this issue.
9. He, accordingly, submitted that the Petition is without merit and ought to be dismissed.

10. We have heard the learned counsel for the parties and have perused the papers and proceedings. The entire controversy in the present Petition hinges on whether the absence of an explicit *"irrevocability clause"* in a trust deed renders a public charitable trust *"revocable"* in law, thereby justifying the rejection of its registration.

11. At the outset, a plain reading of section 12AB of the Act reveals that the conditions for grant of registration are an objective satisfaction on the part of the Principal Commissioner regarding (i) the objects of the trust, (ii) the genuineness of its activities, and (iii) compliance with other material laws. The section does not contain any condition that the trust deed must have an explicit clause stating that it is irrevocable before registration is granted, and in our view, such a condition cannot be implied also. Respondent No.1, therefore, is attempting to read a condition into the statute which does not exist. The entire case of Respondent No.1 is built on the premise that section 11 is *"subject to sections 60 to 63"* and, hence, a specific clause as to irrevocability is a must for grant of registration. However, this approach overlooks the fact that the Legislature in its wisdom only made the

grant of exemption under section 11 subject to sections 60 to 63 and did not provide for any such similar provision in section 12AB of the Act.

12. Be that as it may, let us first examine the case of Respondent No. 1 regarding the revocability of trusts. Respondent No. 1 has presumed a trust to be revocable absent an express irrevocable clause. For this purpose, Mr. Gupta has relied upon Sections 61 and 63 of the Act. Section 61 deals with the taxability of income from a *"revocable transfer of assets."* Therefore, the key issue to be determined is what constitutes a *"revocable transfer."* The definition of *"revocable transfer"* is to be found in section 63(a) of the Act, which reads as under:

"a transfer shall be deemed to be revocable if—

*(i) it **contains any provision** for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or*

*(ii) it, in any way, **gives the transferor a right to re-assume power** directly or indirectly over the whole or any part of the income or assets;"*

(emphasis supplied)

13. The language of section 63 is clear and unambiguous. Section 63 creates a fiction, and like all fictions, it must be strictly

construed. For a transfer to be revocable, the instrument must contain a positive provision for re-transfer or a provision which gives a right to the transferor to re-assume power over the assets or income. There is no ambiguity in this regard. The statute does not enact that the mere absence of an irrevocability clause makes a trust revocable. On the contrary, it implies that a trust is irrevocable (which is the normal principle in all transfers) unless it is expressly made revocable. Silence in the deed implies irrevocability, not revocability. The interpretation to the contrary placed by Respondent No.1 turns section 63 on its head. Such an interpretation is completely misplaced. The reliance on section 63(a)(ii) is also misplaced. We cannot understand as to how an absence of any irrevocability clause can be construed as giving the transferor a right to reassume power over the assets or income. Even section 63(a)(ii) contemplates a specific provision which gives the transferor a right to re-assume such power.

14. Our interpretation is further fortified by the provisions of the MPT Act, under which the Petitioner trusts are registered. It is a fundamental principle of public trust law that once property is

dedicated to a public charitable purpose, the dedication is complete and the settlor is divested of the property. The assets can never revert to the settlor. It is regard, it is relevant to note a judgement of this Court in ***Controller of Estate Duty, Vidarbha vs. Smt. Mangala [(1983) 143 ITR 491 (Bom)]***, wherein a Division Bench of this Court held as follows:-

"There is thus unanimity in the view that in the case of a charitable endowment or trust once the dedication is completed there is no power of revocation left with the settlors. Even though in a given case the settlor has reserved the power to revoke the trust, in our view such a reservation would be wholly invalid and the power cannot be invoked so as to undo the settlement."

15. A later judgment of this Court in ***Smt. Virbala K. Kewalram & Ors. Vs. Shri. Ramchand Lalchand & Ors. reported in 1996(4) ALL MR 490***, had laid down the same principle as follows:

"12. In the instant case, the trust created by executing a trust deed which was registered under the Registration Act on the same day i.e. on 31st May, 1963 and a trust came to be registered as a Public Charitable Trust only in November, 1965 and the Trust came to be registered under the Bombay Public Trusts Act, 1950 as Public Charitable Trust late in November, 1965. It is submitted that before the trust registered as a Public Charitable Trust, the Trustees by executing a trust Deed deleted one property out of the two properties in favour of widow and the daughter of the settlor of the trust."

Therefore, the question is whether the trustees are competent to do so. In my view, as observed above, "no". The Trust Deed of the settlor is like a last wish-will of the settlor. Once a Trust is created, it is irrevocable unless it is expressly desired by the settlor himself. In view of the admitted fact that two properties mentioned in the trust deed were intended to be the trust properties and the income out of that properties to be utilised for the purpose of fulfilling the object of the trust and in another words, as desired by the settlor. The source of income of the trust is only the properties coming under the Trust Deed. The Trustees are the custodian of the trust property and they were required to manage the property as per the wish expressed in the Trust Deed. Therefore, it is held that the previous trustees were not at liberty to change the documents by moving the deed of rectification relating to the properties of the trust as described in the Trust Deed. Therefore, the amendment in the said deed of trust properties carried out in pursuance to the said deed of rectification is bad and the order passed by the Dy. Charity Commissioner dated 22nd November, 1965 is bad. Therefore, the Charity Commissioner modified that order while exercising the revisional jurisdiction u/s.70-A after lapse of time, is not in any manner bad-in-law. Under Section 70-A, the Charity Commissioner has been conferred even suo motu revisional power and no limitation is there for the purpose of exercising the revisional power.

(emphasis supplied)

16. Thus, from the above, it can be deduced that once a property is dedicated to a public charitable purpose, the settlor is divested of the property and such property can never revert back to the settlor.

17. It is now pertinent to note two provisions of the MPT Act. First of all, reference may be made to sections 22(3A) and 22(3B) of the MPT Act which are reproduced hereunder:

“(3A) The Deputy or Assistant Charity Commissioner may, after such detailed and impartial inquiry and following such procedure as may be prescribed, de-register the trust on the following grounds :—

(a) when its purpose is completely fulfilled ; or

(b) when its purpose becomes unlawful ; or

(c) when the fulfillment of its purpose becomes impossible by destruction of the trust- property or otherwise ; or

(d) when the trust, being revocable, is expressly revoked ; or

(e) when the trustees are found not doing any act for fulfilling object of the trust:

Provided that, no trust shall be de-registered under clause (e) unless its trustees have committed default in reporting the change under sub-section (1), in submission of the audited accounts as prescribed by sub-section (2) of section 33 or sub-section (1A) of section 34 or in making any other compliance prescribed by or under this Act for a period of five years from the last date of reporting the change, submission of the accounts or making the compliance, as prescribed by or under this Act or the rules made thereunder, as the case may be.

(3B) The Deputy or Assistant Charity Commissioner may take over the management of properties of the trust de-registered under sub-section (3A) and pass such necessary orders for the same as he deems fit and may, if he considers it expedient, dispose them of by sale or otherwise and deposit the sale proceeds in the Public Trusts Administration Fund established under section 57.”

(emphasis supplied)

18. From a plain reading of these provisions, two things emerge very clearly. First, even section 22(3A)(d) refers to “*trust, being*

revocable, is expressly revoked”; meaning thereby that in order that a trust is a revocable trust, a power to revoke is essential. In other words, the Trust Deed should have an express clause enabling the settlor to invoke the same and revoke the trust. In the absence of any revocability clause, a trust cannot be revoked. This is in line with settled law that when a person transfers property to another, either by way of gift or by way of a settlement, and on the acceptance of such transfer by the donee or the settlor, as the case may be, there is a complete transfer of ownership of property and the transferor is denuded of all right, title and interest in the property, unless the transfer is explicitly made conditional on the happening of some event. Absent any such specific clause, the fulfillment whereof either results in transfer of ownership of property to the transferee, or on the transferor being able to revoke the transfer, the transfer is absolute. The interpretation that unless there is an irrevocability clause, the trust is revocable, is completely contrary to law and has no legs to stand on. Secondly, the provisions of sections 22(3A) and (3B) are clear as to the consequences where a trust is revocable, and is revoked. In such a scenario, the Deputy or Assistant Charity Commissioner will first de-register the trust, then, he may take over the management of the properties of the trust de-registered, and

thereafter, dispose them of by sale or otherwise, and deposit the sale proceeds in the Public Trusts Administration Fund established under Section 57 of the MPT Act. Thus, the assets of a trust, which is registered under the MPT Act, would never come back to the settlor. They are sold on revocation and the funds are deposited in the Public Trusts Administration Fund. Once that is the case, then such trusts can never be termed as revocable trusts in terms of section 63(a) of the Act. Section 63(a) of the Act provides that a trust is revocable if the Trust Deed has a provision for re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or where such provision in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets. The same is impossible in case of a trust registered under the MPT Act. This is for the simple reason that in the case of a revocable trust, if the same is revoked, then the assets or proceeds from sale would never go the settlor. Thus, the reasoning of Respondent No. 1 is completely baseless and unfounded.

19. It is also pertinent to refer to section 55 of the MPT Act which provides for the application of the doctrine of cy-pres. Section 55 of the MPT Act is reproduced hereunder for better understanding:

“55. Cypres.— (1) If upon an application made to him or otherwise, the Assistant or Deputy Charity Commissioner is of opinion that,—

(a) the original object for which the public trust was created has failed ;

(b) the income or any surplus balance of any public trust has not been utilized or is not likely to be utilised;

(c) in the case of a public trust other than a trust for a religious purpose, it is not in public interest expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the public trust or the object for which the public trust was created and that the property or the income of the public trust or any portion thereof should be applied to any other charitable or religious object; or

(d) in any of the cases mentioned in sections 10 to 13 or in regard to the appropriation of the dharmada sums held in trust under section 54, the directions of the Charity Commissioner are necessary then,

the Assistant or Deputy Charity Commissioner shall pass appropriate orders after making an enquiry and make a report to the Charity Commissioner.

(2) The Charity Commissioner may suo motu or on the report of Assistant or Deputy Charity Commissioner, give directions and in giving such direction, he shall give effect to the original intention of the author of the public trust or object for which the public trust was created.

(3) The Charity Commissioner may direct the property or income of the public trust or any portion thereof to be applied cypress to any other charitable or religious objects. In doing so, it shall be lawful for the Charity Commissioner to alter any scheme already settled or to vary the terms of any decree or order already passed in respect of the public trust or the conditions contained in the instrument of the public trust.

(4) An appeal shall lie against the decision or order passed by the Charity Commissioner under sub-section (2) or, as the case may be, sub-section (3) of this section to this section to the Court, as if such order was a decree passed by the District Court from which an appeal lies, within sixty days from the date of the said order, which shall otherwise be final.”

20. A plain reading of the above provisions makes it very clear that on the occurrence of the events specified in section 55(1) of the MPT Act, where the Trust assets/ properties cannot be used for the objects specified in the Trust Deed, then, the Office of the Charity Commissioner, by following the process laid down in section 55 of the MPT Act, can pass an order directing the property or income of the public trust or any portion thereof to be applied cypres to any other charitable or religious object. This, therefore, also further strengthens the proposition that once an asset is settled for charitable purposes, such an asset can either be used for the purposes for which it is settled or for other similar purposes in terms of section 55 of the MPT Act, but such assets and properties can never revert back to the settlor of the trust.

21. Not only are the provisions of the MPT Act clear, but the interpretation placed by the Ministry of Finance in this regard is also

germane. It would be pertinent to bring out the reply of the Ministry of Finance to the CAG and to the Public Accounts Committee of the Lok Sabha as brought out in the 27th Report which was presented to the Lok Sabha and laid before the Rajya Sabha on 16.12.2015 with regard to the provisions of the MPT Act. The relevant extract of the reply of the Ministry of Finance to CAG which is brought out in a Press Release dated 17-12-2013, is as under:

“2.9 The Ministry stated (May 2013) that in Mumbai & Gujarat, Bombay Public Trust Act, 1980 ensure that no amount can go back to any founder etc. because properties are transferred with the permission of the Charity Commissioner only to other Trusts having similar objects. Thus inclusion of dissolution clause in the deed is neither necessary nor legal in States where specific legislation bars such reversion.”

(emphasis supplied)

22. Further, the relevant reply of the Ministry of Finance to the Public Accounts Committee of the Lok Sabha is as under:

“ Further as already explained earlier (May 2013) in Mumbai & Gujarat, Bombay Public Trust Act, 1980 ensures that no amount can go back to any founder etc. because properties are transferred with the permission of the Charity Commissioner only to other Trusts having similar objects. Thus, inclusion of dissolution clause in the deed is neither necessary nor legal in States where specific legislation bars such reversion. In Rajasthan also from where many cases are reported, the position is similar.”

(emphasis supplied)

23. Once the Ministry of Finance is of the above opinion, then, Respondent No.1, who functions under the administrative authority of such Ministry, cannot take a contrary stand.

24. The above discussion clearly demonstrates that Respondent No. 1 has completely misapplied the legal position. He has not understood the provisions of the Act and the MPT Act in their correct perspective. His apprehensions, if any, are completely unfounded. There cannot be any presumption that in the absence of an irrevocability clause, a trust is revocable and there is a possibility that the assets settled by the settlor would revert back to him. On the contrary, as explained earlier, unless there is any revocability clause, the trust is irrevocable and even in case of a revocable trust registered under the MPT Act, the assets would never revert back to the settlor.

25. Section 78 of the Indian Trusts Act, 1882, is also apposite in this regard. Undoubtedly, it is true that by virtue of section 1 of the Indian Trusts Act, 1882 the provisions thereof do not apply to public or

private religious or charitable endowments, but nevertheless, the provisions of section 78 codify a well settled principle in law that would equally apply to a public charitable or religious trust absent any provision contrary thereto in the MPT Act. Section 78, in so far as it is relevant for the present purpose, provides that a trust created otherwise than by way of a will can be revoked only, *inter alia*, by the consent of all beneficiaries who are competent to contract or in exercise of a power of revocation expressly reserved to the author of the trust. In so far as a public charitable trust is concerned, the first condition can never be fulfilled because there is no question of obtaining the unanimous approval of all members of the public. The second condition is analogous to what is provided for in section 22(3A) of the MPT Act, viz., that there has to be a specific power of revocation expressly reserved in the author of the trust and a specific exercise of such power. Absent the aforesaid circumstances, a trust is clearly irrevocable. In other words, it is virtually impossible to say that a charitable trust can be revocable because it does not contain an irrevocability clause.

26. At this stage, it would be apposite to deal with the argument of the Respondent that what if the Trust Deed has a specific revocability clause for reverting the property settled to the settlor. The statutory framework referred to hereinabove unambiguously provides that if a public trust, registered under MPT Act, is revocable, and is revoked, then the assets/ properties of the trust would never go back to the settlor and that the assets would be disposed of and sale proceeds of the same would be deposited in the Public Trusts Administration Fund. Thus, any clause in the Trust Deed to the contrary would naturally be of no effect. There cannot be any doubt that any clause in a contract cannot be contrary to the express provisions of the MPT Act. Thus, even this apprehension is ill founded.

27. The above position in law, including the statutory framework, the precedents and the interpretation of the Ministry of Finance, makes it legally impossible for the assets of a public charitable trust in Maharashtra to be re-transferred to the settlor. Therefore, the condition for revocability under section 63 of the Act can never be met.

28. Another angle to the above issue would be to consider the rights and liabilities of trustees of a public charitable trust registered under the MPT Act. Section 36A of the MPT Act deals with powers and duties of, and restrictions on, trustees. The same is reproduced hereunder:

“36A. Powers and duties of, and restrictions on, trustees.— (1) A trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the terms of the trust, usage of the institution and lawful directions which the Charity Commissioner or court may issue in respect thereof, and exercise the same care as a man of ordinary prudence does when dealing with such affairs, funds or property, if they were his own.

(2) The trustee shall, subject to the provisions of this Act and the instrument of trust, be entitled to exercise all the powers incidental to the prudent and beneficial management of the trust, and to do all things necessary for the due performance of the duties imposed on him.

(3) No trustee shall borrow moneys (whether by way of mortgage or otherwise) for the purpose of or on behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner, and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust.

Provided that, the Charity Commissioner or the Joint Charity Commissioner, as the case may be, shall decide the application for borrowing money from the Bank or Financial Institution forthwith and preferably within a period of fifteen days, if the Bank or the Financial Institution has provisionally sanctioned the loan.

(3A) Notwithstanding anything contained in sub-section (3), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (3) result in hardship to the trust, beneficiary or bona fide third party, the Charity Commissioner may grant ex-post-facto sanction to borrow moneys from any nationalized bank or the Scheduled Bank, by the trustees.

(4) No trustee shall borrow money for his own use from any property of the public trust of which he is a trustee :

Provided that, in the case of a trustee who makes a gift of debentures or any deposit in his business or industry the trustee shall not be deemed to have borrowed from the trust for his own use."

(emphasis supplied)

29. A trustee acting in a fiduciary capacity indubitably has to act only as per the instructions provided for in the Trust Deed by the Settlor with the exceptions that he has to comply with the orders of the authorities under the MPT Act and orders of the Courts. Section 36A(1) is very clear that a trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the terms of the trust. The trust property has to be applied by the trustees in terms of the Trust Deed. Thus, when the Trust Deed does not contain any clause as to revocability, the trustee cannot allow the trust property to be re-transferred to the settlor. Though not very relevant, similar are the provisions in Chapter III of the Indian Trusts Act, 1882 as to the rights, duties and responsibilities of a trustee. This also supports the case that once there is no revocability clause, the trust is irrevocable as the trustee cannot act in defiance of the provisions of the Trust Deed.

30. At this stage, it will be apt to bring out the distinction between a revocable trust and a revocable transfer. A trust itself may be irrevocable in its nature, but it can receive a donation that is revocable. For instance, if a donor contributes funds with a condition that they will revert to him if a specific charitable object is not fulfilled within a certain time, the income from that specific donation may be clubbed in the hands of the donor in accordance with section 61 and such income cannot be considered as income of the trust. This is the intended scope of the interplay between sections 11 and 60 to 63, and the use of the words “subject to the provision of sections 60 to 63” in the opening part of section 11 in no manner questions the fundamental irrevocable nature of the public trust itself. Further, such income once taxed in the hands of the transferor, cannot be included as income of the transferee trust, and consequently, no exemption can be claimed by the Trust under section 11 of the Act.

31. Mr. Pardiwalla is also right when he contends that the conditions for grant of registration remain the same both under sections 12AA and 12AB of the Act. When considering the same Trust

Deed, registration was granted both under section 12AA and section 12AB(1)(a) of the Act (new regime as well), there is no reason forthcoming to take a different stand when an application is made for renewal of registration. It may be pertinent to note that there are various trusts who are more than 20-30 years old and some also 50 years old. They were, with the same Trust Deed and same set of activities, granted registration earlier. There is no logic, when the conditions for renewal remain the same in section 12AB as compared to the earlier provisions i.e., section 12AA, then, why different criteria are applied today to deny registration. On this ground of the Petitioner as raised in the petition, nothing has been commented in the reply affidavit. However, in his argument, Mr. Gupta contended that there is no estoppel in law. Such an argument cannot be countenanced. There being no change in the requirements for grant of registration, a completely new condition cannot be invoked to put at naught the entire provisions dealing with grant of exemption to charitable trusts at the threshold by denying registration, leave aside the grant of exemption. This is also one of the reasons to interfere with the orders passed by Respondent No. 1.

32. It would be pertinent to refer to the decision of this Court in *CIT vs. Tara Educational & Charitable Trust (Income Tax Appeal No. 247 of 2015)*, as relied upon by the Petitioners, wherein this Court vide its judgement dated 31.07.2017 has held as follows:

“4 The registration of the Trust has to be done on compliance of the provisions of Section 12AA of the Act. The authority is required to consider the genuineness of the activities of the Trust and the section does not lay down that unless and until the clause of dissolution of the Trust is incorporated in the Trust Deed, the Trust cannot be registered.

5 The statute takes care of the apprehension as is shown by the Director of Income Tax (Exemptions). The authority has observed that in case the objects / activities of the Trust cannot be carried out and it has to be dissolved, the corpus and properties remain on the date of the dissolution transferred. The absence of the clause of dissolution in the Trust Deed would be in no manner an impediment in the operation of the statute. Section 55 of the Maharashtra Public Trust Act takes care of such contingency. The Tribunal in its order has considered the scope of Section 12A of the Act and has rightly passed the order.”

(emphasis supplied)

33. Thus, this Court has categorically held that the absence of a dissolution clause in the Trust Deed is not a valid ground for rejecting registration under section 12AA, as first of all there is no such requirement in section 12AA of the Act, and even otherwise, the provisions of section 55 of MPT Act take care of such a contingency. The substantive conditions for registration under section 12AB are no

different from section 12AA in this regard, and this binding precedent is fully applicable in the present context as well.

34. In this connection, one may profitably refer to the reply of the Ministry of Finance, to the Public Accounts Committee, as brought out in paragraph 20 of the report, which is reproduced hereunder:

“The Office Manual on the basis of which this objection is purportedly raised only states that it should be ensured that in case of dissolution the trust assets do not revert to funder's account. It does not stipulate that dissolution clause be insisted upon. However, such dissolution clause is generally being insisted upon since under the Indian Trust Act, the Trust can be dissolved and there is no bar on the assets reverting to the founder account.

*In the absence of any specific provision in Income Tax Act with respect to dissolution clause, rejection of application for registration on this account is **neither enforceable nor legally sustainable**.*

Further the judicial decisions too are not in favour of the Department on this issue. Some of these cases are as under:

Tara Educational and Charitable Trust vs DIT (ITA no 1247/Mum/2013 dated July 18, 2014).

Shree Prantij Dash Shrimali Vanik Gyanti Trust vs. DIT (ITA no 407/Ahd/2013 dated June 21, 2013). In this case, the Hon'ble ITAT has relied on the case of Shree Chargam Dash PorwadMahamandal vs. DIT.”

(emphasis supplied)

35. Thus, the Ministry of Finance has categorically opined, and in no uncertain terms, that in the absence of any specific provision in the Act with respect to the existence of a dissolution clause, rejection of an application for registration on this account is neither enforceable nor legally sustainable. Moreover, while justifying the same, reliance was placed on a decision of the Mumbai Bench of the Income-tax Appellate Tribunal in the case of Tara Educational and Charitable Trust. It is relevant to note that it is the same decision of the Tribunal which was affirmed by this Court in Income Tax Appeal No. 247 of 2015 vide the judgment dated 31.07.2017. Thus, it can be seen that absence of a dissolution clause in the Trust Deed was not considered to be a relevant criteria for grant of registration under section 12AA of the Act. As already noted above, the conditions for grant of registration have not materially changed under section 12AB of the Act in so far as this aspect is concerned. Therefore, the aforesaid judgement of this Court and the interpretation of Ministry of Finance in this regard, as set out above, are equally relevant in the context of a registration under section 12AB of the Act.

36. The reliance by Respondent No.1 on the Income Tax Act, 2025 is entirely misplaced and cannot justify actions taken under the current Act. Be that as it may, even under the said provisions, the stand of the Respondent cannot be sustained. The provision relied upon is as under:

“332 Application for registration.

(1) ..

(2) A person referred to in sub-section (1) shall be eligible for registration, if—

(a) such person is constituted or registered or incorporated in India for carrying out one or more charitable purposes, as referred to in section 2(23) or one or more public religious purposes; and

(b) the properties of such person are held for the benefit of the general public under an irrevocable trust—

(i) wholly for charitable or religious purposes in India; or

(ii) partly for charitable or religious purposes in India, if such person was constituted or registered or incorporated prior to the commencement of the Income-tax Act, 1961 (43 of 1961).”

(emphasis supplied)

37. It can be seen that even under the new Act what has to be demonstrated as a condition for grant of registration is that the trust is irrevocable, which could be established by indicating the absence of any clause empowering the settlor to revoke the trust. There is a difference

between a trust being irrevocable and insisting on an irrevocability clause in the Trust Deed. What section 332(2)(b) requires is that the trust is irrevocable. As already discussed earlier, in the absence of a specific revocability clause, a public charitable trust is always irrevocable. Further, absence of any specific clause of revocability makes the trust irrevocable. Thus, we don't find that the conditions of section 332(2) of the Income Tax Act, 2025 would not be fulfilled on account of a mere absence of an irrevocability clause in the Trust Deed.

38. Another pertinent point raised by the Petitioners is that the Act already contains adequate safeguards like section 13(1)(c) which deals with denial of exemption where income or assets are used for benefit of interested persons and section 115TD which provides for exit tax on dissolution on non-fulfillment of certain conditions. To appreciate this contention, it would be appropriate to bring out the relevant provisions of Section 13 hereunder:

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

...

(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):

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970.

...

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

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

(b) any person whose total contribution to the trust or institution, during the relevant previous year exceeds one lakh rupees, or, in aggregate up to the end of the relevant previous year exceeds ten lakh rupees, as the case may be;

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

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

(d) any relative of any such author, founder, 4[***] member, trustee or manager as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (c), (cc) and (d) has a substantial interest.”

(emphasis supplied)

39. From a reading of the above referred provisions, it is evident that the intention of the legislature is clear that it is at the time of considering the claim of exemption, that the issue of transfer of any asset to any transferor has to be looked into. In fact, provisions of section 13(1)(c) are very widely worded and a plain reading of the same reveals that it provides for sufficient safeguards to deter any transfer of assets to, or use of trust income for the benefit of, persons specified in section 13(3), which includes the settlor. Even this contention of the Petitioners provides an answer to the apprehension, though unfounded, of Respondent No. 1 regarding reverting of the assets back to the settlors.

40. It is also relevant to note that while granting registration under the new regime, various conditions were imposed in the

registration certificate, which prevent any misuse of assets. While granting registration under section 12AB(1)(a) for the first time under the amended regime, specific conditions were imposed towards dissolution and revocation of assets to founder/ settlor. The same can be verified from the conditions of approval in case of Petitioner No. 3 in Form 10AC which is at Exhibit C-3, some of which are brought out hereunder:

“10 Conditions subject to which registration is being granted. The registration is granted subject to the following conditions:-

...

b. In the event of dissolution, surplus and assets shall be given to an organization, which has similar objects and no part of the same will go directly or indirectly to anybody specified in section 13(3) of the Income -tax Act, 1961.

c. In case the trust/institution is converted into any form, merged into any other entity or dissolved in any previous year in terms of provisions of section 115TD, the applicant shall be liable to pay tax and interest in respect of accreted income within specified time as per provisions of section 115TD to 115TF of the Income Tax Act, 1961 unless the application for fresh registration under section 12AB for the said previous year is granted by the Commissioner.”

41. It is brought to our notice that these conditions are common in almost all the registrations granted to the trusts. The Petitioners are, therefore, right when they contend that there are adequate safeguards put in the conditions for grant of registration to protect the Revenue

qua the issue raised by Respondent No. 1. In fact, this is also what was suggested by the Ministry of Finance to the Public Accounts Committee of the Lok Sabha in paragraph 21 of the Report (supra).

42. This takes us to the next contention raised on behalf of Respondent No. 1, viz., that it is not feasible for a Commissioner to examine various recitals of every Trust Deed to confirm irrevocability, and therefore, an express clause is necessary for administrative clarity and to prevent litigation. In this regard, it would be relevant to reproduce paragraph 11 of the Affidavit in reply as under:

"11. The Petitioners have also contended that a public charitable trust is irrevocable by operation of law and, therefore, absence of an explicit irrevocability clause in the trust deed cannot be a ground for rejection. It is contended that the trust is deemed irrevocable. It is submitted that a deed of trust may contain several recitals. Now, if the trust deed is silent as to revocability i.e there is no express revocable clause in the trust deed, but there is a recital in any form for provision of re-transfer of the trust assets or income or property to the settlor, then the trust is deemed to be revocable within the meaning of Sections 60-63 of the Act. In such circumstances, the trust cannot be granted registration since it is hit by Sections 60-63 of the Act read alongwith section 11 of the Act which makes the said sections have overriding effect before any exemption is granted under Section 11. The PCIT cannot examine in each case the nature of the various recitals or whether there is any scope of retransfer of trust assets which is highly litigious and that is why a legal duty is placed upon the trust to contain an express irrevocability clause failing which no registration can be granted. In the absence of a specific and express clause in the instrument of

trust affirming the irrevocable nature of the Trust, satisfaction cannot be formed by the authority granting registration."

(emphasis supplied)

43. Mr Pardiwalla, the learned Senior Counsel for the Petitioners, was rightly very concerned about the said averment of Respondent No. 1. We find substance in his submission. Section 12AB(1)(b) mandates the Commissioner to, inter alia, call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust or institution. This would necessarily mean that the Commissioner has to examine the Trust Deed. It is his job to go through the Trust Deed which is the very basic document to determine the objects of the trust. Therefore, we are not impressed with the said reasoning of Respondent No. 1 in the affidavit in reply, which was strenuously relied upon by Mr. Gupta in the course of his arguments.

44. Now, we come to the second ground for rejection, namely furnishing "*false information*". It is undisputed that in Row No. 6 of

Form No. 10AB, an applicant was required to answer the question "*Whether the trust deed contains clause that the trust is irrevocable?*" in either of two forms 'Yes' or 'No'. It is also not disputed that the trusts making the application are compelled to answer "Yes" if they want the form to be uploaded. If this question was answered in the negative, then the system does not allow the form to be filed at all. During the course of hearing, Mr. Pardiwalla, showed us a screenshot of the portal wherein, when "No" was ticked, there was an error displayed on the screen with the comment "*Approval/ Registration is not allowed if the applicant being a trust does not have an irrevocable clause*". As we have already discussed earlier, this is not the correct position in law. In any event, the system cannot be designed in a manner so as to not allow an applicant to file an application with correct particulars. It is pertinent to note that there is a verification clause at the end of the form and the person signing the form declares that the details given in the form are true and correct to the best of his knowledge and belief. If one is forced to answer any question in any particular fashion which is not correct, then, certainly the verification clause is violated. This is completely arbitrary. The problem does not end here. An applicant is forced to write "Yes" to Row number 6 despite there being no specific

irrevocability clause and this is considered by Respondent No. 1 to be furnishing "*false or incorrect information*," constituting a "*specified violation*" under clause (g) of the Explanation below section 12AB(4) of the Act. There cannot be any justification to this at all. To penalise an Assessee for a situation created by a utility designed by the Department itself is in violation of all legal principles. A procedural form cannot be used as a tool to coerce applicants into making declarations that are then used to their detriment. Therefore, we are of the view that the Respondents will have to change their system in this regard and the least which can be done is not to use this as a ground to deny registration. The argument of the Respondents that even subsequently, the trusts have asserted that they are irrevocable, which is also false, does not merit any acceptance. First of all, that is not the reason as stated in the impugned order to deny registration. At this stage, such orders cannot be improved upon. Moreover, since the Deed has no revocability clause, and, thus, the trusts have, under a bonafide belief, submitted that the trusts are irrevocable. In fact, their belief is correct and this, therefore, cannot be considered to be false or incorrect information at all.

45. In summary, we hold that a public charitable trust is deemed irrevocable by operation of law unless the instrument of trust expressly provides a power of revocation. The absence of an explicit irrevocability clause is not a ground for rejecting an application for registration or renewal under section 12AB of the Act. Even if the Deed provides for any revocability clause, due to operation of sections 22(3A) and 22(3B) of the MPT Act, such trusts which are registered under the MPT Act, would be irrevocable insofar as the Income-tax Act is concerned but we leave this issue open to be decided in an appropriate case. The action of Respondent No. 1 is therefore, contrary to the plain language of the statute, binding judicial precedents of this Court, and is manifestly arbitrary. Such action, as rightly pointed out by the Petitioners, have shaken the entire ecosystem of functioning of the charitable trusts. It cannot be forgotten that the trusts are contributing to nation building by doing charitable activities and that too voluntarily and, thus, must be treated with a fair and reasonable approach by the revenue.

46. In the result, the Writ Petition is allowed. Due to the peculiar facts, as presented by the Petitioners, we pass the following order:

- (i) The Respondents shall refrain from rejecting applications for registration/renewal under section 12AB solely on the ground of the absence of an explicit irrevocability and/or dissolution clause in the Trust Deed/instrument.
- (ii) The Respondents shall not treat the answer "Yes" to Row 6 of Form 10AB, in the absence of any explicit clause of irrevocability, as furnishing "*false or incorrect information*" constituting a "*specified violation*". Further, this shall not be a ground to reject an application for registration under section 12AB of the Act.
- (iii) The Respondents shall also amend the utility of Form 10A/10AB to allow applicants to correctly state their position regarding the irrevocability clause without being forced to make an incorrect declaration. This should be done as soon as possible.
- (iv) Question number 6 in Form 10AB should be modified to read thus, "*Is the trust/institution revocable?*".

- (v) The impugned orders passed in the case of Petitioner Nos. 3 to 8 rejecting registration under section 12AB of the Income-tax Act, are hereby quashed and set aside.
- (vi) All such orders where renewal of registration under Section 12AB has been rejected on the grounds discussed above, are also hereby quashed and set aside.
- (vii) Further, it is also directed that all consequential orders passed denying registration under section 80G of the Act, where such rejection is on the ground that once registration under section 12AB is denied, registration under section 80G also cannot be granted, are also hereby quashed and set aside. This would, of course, apply only to a case where registration under section 12AB has been rejected on the grounds discussed above. The above order that we pass is to avoid any multiplicity of litigation so as to not require the trusts to challenge the orders passed by Respondent No. 1 denying registration under section 12AB and 80G of the Act on the grounds as discussed in this order.
- (viii) Respondent No.1 shall decide the applications of the Petitioners and all other similarly situated trusts, whose orders are hereby quashed, afresh and in accordance with the law and the ratio laid down in this judgment, within a period of six weeks from today. Any order so

passed shall be deemed to come into effect from 1st April, 2026.

47. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

48. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]