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

INCOME TAX APPEAL NO. 4320 OF 2009

The Commissioner of Income Tax-IV, Pune … Appellant

Versus

Dr. Kasliwal Medical Care & Research Foundation, Solapur. …Respondent

Mr. A.K. Saxena for the appellant.
Mr. Gopal Mundhra a/w. Mr. Rajath Bharadwaj i/b. Economic Laws Practice for the respondent.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

Date : 21 October, 2024

Judgment (Per G. S. Kulkarni, J.):

1. This appeal under Section 260 of the Income-Tax Act, 1961 (for short "**I.T. Act**") filed by the revenue is directed against an order dated 28 March, 2008 passed by the Income-tax Appellate Tribunal, Pune Bench (for short **"Tribunal"**) whereby the respondent/assessee's appeal arising from an order dated 15 September, 2006 passed by the Commissioner of Income-tax-IV, Pune (for short ("**CIT**)) under Section 12AA read with Section 12A of the I.T. Act has been allowed. By the impugned order, the Tribunal has held that as the CIT did not pass an order granting or refusing registration of the assessee

under Section 12A(1) within a period of six months as prescribed under Section 12AA(2) of the I.T. Act, the assessee is deemed to have been granted a registration. The Tribunal accordingly held that the order of CIT refusing registration was a nullity requiring it to be quashed and set aside. The assessment year in question is A.Y. 2005-06.

2. By an order dated 6 June, 2011, the present appeal came to be admitted on the following question of law:

> "Whether on the facts and in the circumstances of the case and in law, the ITAT is justified in granting the assessee a deemed registration under section 12AA of I.T. Act, 1961, when there is no such specific deeming provision in the I.T. Act, 1961."

3. The relevant facts are required to be noted. The assessee is a public trust running a pediatric hospital at Pune. On 6 February, 2006, the assessee filed an application in Form No. 10A requesting registration of the assessee under Section 12A of the I.T. Act. On such application of the assessee, the CIT-IV, Pune passed an order under Section 12AA on 15 September, 2006 refusing registration to the assessee. Being aggrieved by the said order, the assessee preferred an appeal before the Tribunal. The Tribunal by an impugned order has allowed the appeal referring to an earlier decision of the Tribunal in the case of **Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust [2007] 17 SOT 281(SB)(Del.)**. The premise on which the

Tribunal allowed the assessee's appeal is considering that the date of assessee's application seeking registration under Section 12A was 6 February, 2006 and the decision on the same of its rejection was rendered on 15 September, 2006, which was beyond the prescribed period of six months as stipulated under Section 12AA(2). On such reasoning, the Tribunal directed the Commissioner to grant registration to the assessee with effect from 1 April, 2005, namely, first day of the Financial year in which the application was made, considering the provisions of Section 12A(a)(ii). The relevant observations of the Tribunal are required to be noted, which reads thus:

> "3. On hearing the submissions of both the sides, we have noticed that the admitted position was that the requisite application on Form No. 10A seeking registration u/s. 12A was moved by the assessee on 6.2.2006, however, the impugned order passed u/s. 12AA was dated 15.09.2006. These dates are not in dispute as accepted by both the sides. The ld. Commissioner in the impugned order has declined to register the Trust as prescribed u/s. 12A of I.T. Act thereupon. Form No. 10A application was rejected. Since the dates are not in dispute, then the cause of grievance appears to be correct because admittedly, the registration application was moved in the month of February, 2006, thus according to Section 12AA(II), it should have been disposed of before the expiry of six months, i.e., August 2006, however, it was disposed of by an order dated 15.09.2006. This issue is squarely covered by the cited decision Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust (supra) wherein held as under, reproduced head note:
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> > "Section 12AA was introduced to provide for the procedure for registration, enquiry into the claim and a time-limit for passing the order. Therefore, while exercising such an important power, the Commissioner should also pass an order within the time-limit provided. It would be incongruous to hold that conducting an enquiry into the claim for registration is an important excise of the power, whereas passing of the order within the time-limit provided is not and it can be done at any time.

> Therefore, it was to be held that in a case where the Commissioner does not pass the order granting or refusing of registration of trust within the period laid down in section 12AA(2), i.e., within six months from the end of the month in which the application for registration under section 12A was filed, the registration would be deemed to have been granted to the trust or institution automatically on expiry of period specified in section 12AA(2).
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> Therefore, the order of the Commissioner refusing registration was a nullity and was, to be quashed. The registration to the assessee would be deemed to have been granted as applied for by the assessee.

Up-to this stage, the issue appears to be covered, however, by the decision of the Special Bench, ld. A.R. has also fairly placed on record that though the Trust was created earlier but the application was moved on 6.2.2006, therefore, in terms of Section 12A(i)(a)(ii) registration can only be granted from the first day of the Financial Year in which the application is made. This aspect was not considered by the ld. Commissioner and requires proper legal adjudication. For this limited purpose, we hereby revert back it to the ld. Commissioner to grant registration with effect from 1.4.2005 if the prescribed conditions are fulfilled.

4. In the result, appeal is allowed pro-tanto."

4. It is against the aforesaid order passed by the Tribunal, the revenue has filed the present appeal.

5. Mr. Saxena, learned counsel for the revenue has made elaborate submissions. It is his submission that the view taken by the Tribunal in fact is opposed to the very content and wording of sub-section (2) of Section 12AA of the I.T. Act, which does not make any provision or allowance for a deemed registration to be granted, when it prescribes that '*Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application*

was received under clause (a) of Section 12A'. Mr. Saxena has submitted that once the Legislature itself has refrained from expressly providing a deeming provision qua grant of a registration after the expiry of six months, it would not be appropriate to read in the said provisions any deeming fiction, as read by the Tribunal in the provisions of sub-section (2) of Section 12AA. In supporting his submissions, Mr. Saxena has placed reliance on the decision of the Full Bench of Allahabad High Court in **Commissioner, Income Tax vs. Muzafar Nagar Development Authority**[1] in which the Full Bench observed that Section 12AA(2) does not "at all" provide for such legal fiction. It was observed by the Full Bench that the Parliament has carefully and advisedly not provided for a deeming fiction to the effect that an application for registration would be deemed to have been granted, if it is not disposed of within six months. Mr. Saxena has submitted that the decision of Full Bench of Allahabad High Court in **Muzafar Nagar Development Authority** *(supra)* was thereafter followed by a decision of the Division Bench of Allahabad High Court in the case of **Commissioner of Income-tax vs. Harshit Foundation Sehmalpur** [2] where following the law as laid down, the appeal filed by the revenue was allowed. Mr. Saxena has submitted that in such decision, the Division Bench has referred to a prior decision of the Allahabad High Court in the case of **Society**

1 AIR 2015 Allahabad 76

2 [2022] 139 taxmann.com 55 (All.)

for Promotion of Education, Adventure Sport & Conservation of Environment vs. Commissioner of Income-tax.[3] wherein the Division Bench had recognized the applicability of a deeming fiction under Section 12AA(2). It is submitted that, however, the Division Bench observed that the decision of the Division Bench in **Society for Promotion of Education** *(supra)* was declared to be not a good law by the Full Bench of the Allahabad High Court in **Muzafar Nagar Development Authority** *(supra).* Mr. Saxena submits that the Division Bench of the Allahabad High Court also considered the assessee's submission that the decision of the Division Bench in ***Society for the Promotion of Education*** *(supra)* was carried to the Supreme Court, which was confirmed by the Supreme Court while disposing of the appeal. Hence, a contention was raised before the Division Bench that such orders of the Supreme Court need to be considered recognizing a position in law that a provision of deemed grant of registration is inherent in Section 12AA(2). Mr. Saxena would submit that, however, such contention on the part of the assessee was not accepted by the Division Bench on the premise that the Supreme Court in its judgment in ***Commissioner of Income Tax vs. Society for Promotion of Education, Allahabad***[4] has clearly held that all other questions of law were left open, meaning thereby question of law raised by the CIT in the appeal was not

[3] (2015) 372 ITR 222 (All.)

[4] (2016) 382 ITR 6 (SC)

decided, but left open.

6. Mr. Saxena would submit that on the other hand the decision of the Allahabad High Court in **Harshit Foundation Sehmalpur** *(supra)* which followed the law laid down by the Full Bench in **Muzafar Nagar Development Authority** *(supra)* was carried to the Supreme Court by the assessee in the proceedings of Special Leave Petition (C) No. 26978 of 2017 dated 22 April, 2022 wherein the assessee's Special Leave Petition, was dismissed confirming the observations of the Division Bench in **Harshit Foundation Sehmalpur** *(supra).* It is in these circumstances, the submission of Mr. Saxena is that in view of the decision of Supreme Court in **Harshit Foundation Sehmalpur** *(supra)* wherein the Supreme Court has duly considered the position in law, to hold that Section 12AA(2) of the I.T. Act does not make any provision, to the effect that non-deciding of the registration application under Section 12AA(2) within a period of six months, brought about a deemed registration by approving the view taken by the Full Bench of Allahabad High Court in **Muzafar Nagar Development Authority** *(supra)* as also the decision in **Harshit Foundation Sehmalpur** *(supra)* is the position in law which needs to be accepted. Mr. Saxena would accordingly submit that the question of law needs to be answered in favour of the revenue and the appeal be allowed.

7. On the other hand, Mr. Mundhra, learned counsel for the assessee in opposing the revenue's appeal has made the following submissions:

8. At the outset, Mr. Mundhra's submission is that the contentions as urged on behalf of the revenue relying on the decision of Supreme Court in **Harshit Foundation Sehmalpur** (supra) ought not to be accepted, inasmuch as there is a prior decision of the Supreme Court in the case of **Commissioner of Income Tax, Kanpur & Ors. vs. Society for the Promotion of Education, Allahabad** *(supra*) wherein the Supreme Court while confirming the orders passed by the Allahabad High Court, has approved a view that once an application is made under the provisions of Section 12AA of the I.T. Act and in case, the same is not responded within six months, it would be taken that the application is registered under the said provision. It is hence Mr. Mundhra's submission that the view taken by the Supreme Court in **Society for the Promotion of Education** *(supra)* being a prior view and although not expressly considered by the Supreme Court in the subsequent decision in **Harshit Foundation Sehmalpur** *(supra)*, it would be binding on the revenue being the law of the land. It is also his submission that the Court needs to apply the prior decision of the Supreme Court in **Society for the Promotion of Education** *(supra)* and not the subsequent decision in **Harshit Foundation Sehmalpur** *(supra)* is the

settled position in law. In support of such contention, Mr. Mundhra has placed reliance on the decisions of the Supreme Court in **Sundeep Kumar Bafna vs. State of Maharashtra**[5], **National Insurance Company Ltd. vs. Pranay Sethi**[6] and in **Union Territory of Ladakh vs. Jammu and Kashmir National Conference**[7].

9. Mr. Mundhra would therefore submit that this is a clear case where there are two diametrically opposite views of the Supreme Court, one in the case of **Society for the Promotion of Education** *(supra)* and other in the case of **Harshit Foundation Sehmalpur** *(supra),* and as per the position in law as canvassed by him, the prior decision would be applicable and would hold the correct legal view on the point.

10. Mr. Mundhra, in the alternative, has pointed out that in such a situation the position in law also would also be that this Court can follow the decision which seems to be more correct, whether the said decision is a latter or the earlier one as held by the Full Bench of this Court in **Kamleshkumar Ishwardas Patel vs. Union of India & Ors.**[8], which follows the decision of the Constitutional Bench of the Supreme Court in **Atma Ram vs. The State of Punjab & Ors.**[9]. It is submitted that a similar view has been taken by the

5 2014) 16 SCC 623
6 (2017) 16 SCC 680
7 2023 SCC OnLine SC 1140
8 (1994) 2 Mah LJ 1669(FB)
9 AIR 1959 SC 519

Supreme Court in **Indian Petrochemicals Corporation Ltd. & Anr. vs. Shramik Sena**[10].

11. It is his submission that even applying such principles, the view taken by the Supreme Court in **Society for the Promotion of Education** *(supra)* is the correct view which the Court should apply.

12. Mr. Mundhra has also drawn our attention to a decision of this Court in **Purandhar Technical Education Society vs. Commissioner of Income Tax**[11] in which the Court had noted that there were two different views of the Supreme Court on the issue of deemed registration under the provisions of Section 12AA(2) of the I.T. Act, namely, in **Society for the Promotion of Education** *(supra)* and the view as taken in **Harshit Foundation Sehmalpur** *(supra)*. It is, thus, Mr. Mundhra's submission that this Court hence needs to follow the earlier view of the Supreme Court in **Society for the Promotion of Education** *(supra)* and not the subsequent view. It is accordingly submitted that the revenue's appeal needs to be dismissed.

13. Mr. Mundhara has also drawn our attention to the decision of the Kerala High Court in **Commissioner of Income Tax vs. TBI Education Trust**[12],

10 (2001) 7 SCC 469

11 2024(7) TMI 1021 (Bom.)

12 2018 (7) TMI 1737(Ker.)

decision of Rajasthan High Court in **Commissioner of Income Tax vs. Gettwell Health & Education Samiti**[13] and **Sahitya Sadawart Samiti vs. Commissioner of Income Tax**[14] and the decision of Karnataka High Court in **Director of Income Tax vs. St. Ann's Education Society**[15], which have followed the decision of the Supreme Court in **Society for the Promotion of Education** *(supra)* to the effect that Section 12AA(2) would be required to be read to contain a deeming provision of the application for registration being granted, if the same is not decided within the prescribed period of six months from the date of making of the application.

Analysis

14. In the aforesaid circumstances, as according to the parties, there are two diametrically opposite decisions rendered by the Supreme Court, the question before the Court is whether the revenue would be correct in its contention relying on the decision of the Supreme Court in **Harshit Foundation Sehmalpur** *(supra)* or whether the prior decision in **Society for the Promotion of Education** *(supra)* would be required to be applied needs to be decided in answering the question of law which has fell for consideration in the present

[13] (2019) 419 ITR 353 (Raj)
[14] (2017) 396 ITR 46 (Raj.)
[15] (2020) 425 ITR 642 (Kar.)

proceedings.

15. At the outset, we may refer to the decision of the Full Bench of this Court in **Kamleshkumar Ishwardas Patel** *(supra)* wherein the Court was confronted with a conflict in two decisions (of the two Judges Bench's) of the Supreme Court in **Santosh Anand v. Union of India**[16] and the decision in **Raj Kishore Prasad v. State of Bihar**[17]. The issue before the Full Bench had arisen under the provisions of Section 11 of the 'The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('COFEPOSA Act').' The Court observed that in the former decision the Supreme Court had held that failure on the part of the detaining authority to consider and decide a representation was fatal to the order of detention, though according to the latter, such failure was not be fatal, if in fact and in effect, the same was finally been considered by an appropriate authority specified under the relevant law. It is in these circumstances, the Court delved on the position in law as to what should be the course to be followed by the High Court, when confronted with contrary decisions of the Supreme Court, emanating from Benches of co-equal strength. The Full Bench considering several decisions and the decision of the Constitution Bench of the Supreme Court in **Atma Ram vs The State Of**

16 (1981) 2 SCC 420

17 [1982] 3 SCC 10

Punjab And Ors.[18] held that in a situation when there is a conflict between the two decisions of the Supreme Court, the Court would be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one. The observations of the Full Bench are required to be noted which read thus:

> **"13.** We have given the matter our best and anxious-most consideration and we have felt that there is some amount of conflict between the decisions in *Santosh Anand* (supra) and in *Raj Kishore Prasad* (supra), as according to the former the failure on the part of the detaining authority to consider and decide the representation is fatal to the order of detention, though according to the latter, such failure may not be fatal *if in fact and in effect* the same has finally been considered by an appropriate authority specified under the relevant law. As we have already noted, in the case at hand, even assuming that there was a failure on the part of the officer making the order of detention to consider and decide the representation, the representation has nevertheless been considered and decided by the Finance Minister, who is undoubtedly an appropriate authority for the purpose of consideration of the representation and decision thereon.
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> **14.** It has been pointed out by one of us, while speaking for a Special Bench of the Calcutta High Court in *Bholanath* v. *Madanmohan*, AIR 1988 Cal 1 at p. 5-7, on the question as to the course to be followed by the High Court when confronted with contrary decisions of the Supreme Court emanating from Benches of co-equal strength, as hereunder:—
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> > "…. When contrary decisions of the Supreme Court emanate from Benches of equal strength, the course to be adopted by the High Court is, firstly, to try to reconcile and to explain those contrary decisions by assuming, as far as possible, that they applied to different sets of circumstances. This in fact is a course which was recommended by our ancient Jurists — "*Srutirdwaidhe Smritirdwaidhe Sthalaveda Prakalapate*" — in case there are two contrary precepts of the Sruties or the Smritis, different cases are to be assumed for their application. As Jurist Jaimini said, contradictions or inconsistencies are not to be readily assumed as

[18] AIR 1959 SC 519

they very often be not real but only apparent resulting from the application of the very same principle to different sets of facts — "*Prayoge Hi Virodha Syat*". But when such contrary decisions of co-ordinate Benches cannot be reconciled or explained in the manner as aforesaid, the question would arise as to which one the High Court is obliged to follow."

"One view is that in such a case the High Court has no option in the matter and it is not for the High Court to decide which one it would follow but it must follow the later one. According to this view, as in the case of two contrary orders issued by the same authority, the later would supersede the former and would bind the subordinate and as in the case of two contrary legislations by the same Legislature, the later would be the governing one, so also in the case of two contrary decisions of the Supreme Court rendered by Benches of equal strength, the later would rule and shall be deemed to have overruled the former. P.B. Mukharji, J. (as His Lordship, then was) in his separate, though concurring, judgment in the Special Bench decision of this Court in *Pramatha Nath* v. *Chief Justice*, AIR 1961 Cal 545 at p. 551, para 26, took a similar view. S.P. Mitra, J. (as His Lordship then was) also took such a view in the Division Bench decision of this Court in *Sovachand Mulchand* v. *Collector, Central Excise*, AIR 1968 Cal 174 at p. 186, para 56. To the same effect is the decision of a Division Bench of the Mysore High Court in *New Krishna Bhavan* v. *Commercial-tax Officer*, AIR 1961 Mys 3 at p. 7 and the decision of the Division Bench of the Bombay High Court in *Vasant* v. *Dikkaya*, 1980 Mah LJ 229 : AIR 1980 Bom 341 at p. 345. A Full Bench of the Allahabad High Court in *U.P. State Road Transport Corpn.* v. *Trade Transport Tribunal*, AIR 1977 All 1 at p. 5 has also ruled to that effect. The view appears to be that in case of conflicting decisions, by Benches of matching authority, the law is the latest pronouncement made by the latest Bench and the old law shall change yielding place to new."

> "The other view is that in such a case the High Court is not necessarily bound to follow the one which is later in point of time, but may follow the one which, in its view, is better in point of law. Sandhawalia, C.J. in the Full Bench decision of the Punjab and Haryana High Court in *Indo-Swiss Time Ltd.* v. *Umarao*, AIR 1981 Punj. and Har. 213 at pp. 219-220 took this view with the concurrence of the other two learned Judges, though as to the actual decision, the other learned Judges differed from the learned Chief Justice. In the Karnataka Full Bench decision in *Govinda Naik* v. *West Patent Press Co.*, AIR 1980 Kant 92, the minority consisting of two of the learned Judges speaking through Jagannatha Shetty, J. also took the same view (supra, at

p. 95) and in fact the same has been referred to with approval by Sandhawalia, C.J. in the Full Bench decision in *Indo-Swiss Time* (supra)."

"This later view appears to us to be in perfect consonance with what our ancient Jurist Narada declared — *Dharmashastra Virodhe Tu Yuktiyukta Vidhe Smrita* — that is, when the Dharmashastras or Law Codes of equal authority conflict with one another, the one appearing to *be reasonable*, or more *reasonable* is to be preferred and followed. A modern Jurist, Seervai, has also advocated a similar view in his Constitutional Law of India, which has also been quoted with approval by Sandhawalia, C.J. in *Indo-Swiss Time* (supra, at p. 220) and the learned Jurist has observed that "judgments of the Supreme Court, which cannot stand together, present a serious problem to the High Courts and Subordinate Courts" and that "in such circumstances the correct thing is to follow that judgment which appears to the Court to state the law accurately or more accurately than the other conflicting judgment."

"It appears that the Full Bench decision of the Madras High Court in *R. Rama Subbarayalu* v. *Rengammal*, AIR 1962 Mad 450, would also support this view where it has been observed (at p. 452) that "where the conflict is between two decisions pronounced by a Bench consisting of the same number of Judges, and the subordinate Court after a careful examination of the decisions came to the conclusion that both of them directly apply to the case before it, it will then be at *liberty to follow that decision which seems to it more correct*, whether such decision be the later or the earlier one". According to the Nagpur High Court also, as would appear from its Full Bench decision in *D.D. Bilimoria* v. *Central Bank of India*, 1943 NLJ 569 : AIR 1943 Nag 340 at p. 343, in such case of conflicting authorities, "the result is not that the later authority is substituted for the earlier, but that the two stand side by side conflicting with each other", thereby indicating that the subordinate Courts would have to prefer one to the other and, therefore, would be at liberty to follow the one or the other."

> "Needless to say that it would be highly embarrassing for the High Court to declare one out of the two or more decisions of the Supreme Court to be more reasonable implying thereby that the other or others is or are less reasonable. But if such a task falls upon the High Court because of irreconcilable contrary decisions of the Supreme Court emanating from Benches of co-ordinate jurisdiction, the task, however uncomfortable,

has got to be performed."

> **"We are inclined to think that a five-judge Bench of the Supreme Court in *Atma Ram* v. *State of Punjab*, AIR 1959 SC 519, has also indicated (at p. 527) that such a task may fall on and may have to be performed by the High Court. After pointing out that 'when a Full Bench of three Judges was inclined to take a view contrary to another Full Bench of equal strength', 'perhaps the better course would have been to constitute a larger Bench', it has, however, been observed that for 'otherwise the subordinate Courts are placed under the embarrassment of *preferring one view to another*, both equally binding on them'. According to the Supreme Court, therefore, when confronted with two contrary decisions of equal authority, the subordinate Court is not necessarily obliged to follow the later, but would have to perform the embarrassing task "of preferring one view to another."**
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> "… We are, however, inclined to think that no blanket proposition can be laid down either in favour of the earlier or the later decision and, as indicated hereinbefore, and as has also been indicated by the Supreme Court in *Atma Ram* (supra), the subordinate Court would have to prefer one to the other and not necessarily obliged, as a matter of course, to follow either the former or the later in point of time, but must follow that one, which according to it, is better in point of law. As old may not always be the gold, the new is also not necessarily golden and ringing out the old and bringing in the new cannot always be an invariable straight-jacket formula in determining the binding nature of precedents of co-ordinate jurisdiction."
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> (emphasis supplied)

16. It is seen from the observations of the Full Bench that the Court adverted to the law as enunciated by the Constitution Bench of the Supreme Court in **Atma Ram vs The State Of Punjab And Ors.** (supra) in which the Constitution Bench held when there arises conflict created by two decisions, a

situation arises that both the decisions become binding. In such circumstances, the Courts can prefer one view to another, as both the decisions are equally binding on it.

17. In **Indian Petrochemicals Corporation Ltd. Vs. Shramik Sena** (supra) the Supreme Court held that when the High Court was facing diametrically two opposite decisions of the Supreme Court, it is expected of the High Court to decide the case on merit, according to its own interpretation of the judgments.

18. However, in **Sundeep Kumar Bafna Vs. State of Maharashtra** (supra) the Supreme Court observed that it was often encountered in High Courts, that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar and in such situation the inviolable recourse is to be applied to the earlier view as the succeeding one would fall in the category of *per incuriam.* The observations of the Supreme Court in this context are required to be noted which read thus:-

> "19. It cannot be overemphasized that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the *per incuriam* rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be *per incuriam* any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its *ratio* with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the *per incuriam* rule is strictly and correctly applicable to the *ratio decidendi* and not to *obiter dicta*.

> It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of *per incuriam*."

19. There is, however, another set of judicial opinion in such context as seen from the decisions of a recent origin. The Constitution Bench of the Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi** (supra) in dealing with a cleavage of opinion in **Reshma Kumari and others v. Madan Mohan and anr**[19] and **Rajesh and others v. Rajbir Singh and ors**[20], both three Judges Bench decisions, was considering an issue in the context of computation of compensation under Section 163-A and 166 of the Motor Vehicles Act, 1988 and the methodology for computation of future prospects. The Constitution Bench referring to the decision in **Jaisri Sahu Vs. Rajdewan Dubey**[21] approved the practice that the earlier decision to be followed and not the later. The relevant observations of the Supreme Court are required to be noted which read thus :-

> "16. In *State of Bihar* v. *Kalika Kuer*, (2003) 5 SCC 448, it has been held : (SCC p. 454, para 10)
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> "*10*. … an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say

19 (2013) 9 SCC 65

20 (2013) 9 SCC 54

21 AIR 1962 SC 83

that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. …"

The Court has further ruled : (SCC p. 454, para 10)

"*10*. … Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

18. In this regard, we may refer to a passage from *Jaisri Sahu* v. *Rajdewan Dubey*, AIR 1962 SC 83] : (AIR p. 88, para 10)

"*10*. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision [*Dasrath Singh* v. *Damri Singh*, 1925 SCC OnLine Pat 242 : AIR 1927 Pat 219] given by a Bench is not brought to the notice of a Bench [*Ram Asre Singh* v. *Ambica Lal*, AIR 1929 Pat 216] hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in *Gundavarupu Seshamma* v. *Kornepati Venkata Narasimharao* [*Gundavarupu Seshamma* v. *Kornepati Venkata Narasimharao*, 1939 SCC OnLine Mad 367 : ILR 1940 Mad 454] that the decision of a Court of Appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in *Halsbury's Laws of England*, 3rd Edn., Vol. 22, Para 1687, pp. 799-800:

'1687. … the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.'

In *Katragadda Virayya* v. *Katragadda Venkata Subbayya*[*Katragadda Virayya* v. *Katragadda Venkata Subbayya*, 1955 SCC OnLine AP 34 : AIR 1955 AP 215] it has been held by the Andhra High Court that

> under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in *D.D. Bilimoria* v. *Central Bank of India* [*D.D. Bilimoria* v. *Central Bank of India*, 1943 SCC OnLine MP 97 : AIR 1943 Nag 340] . The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court."
>
> 19. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforestated pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline."

20. In a recent decision of **Union Territory of Ladakh Vs. Jammu and Kashmir National Conference**[22], the aforesaid position in law was reiterated by the two Judges Bench of the Supreme Court when it was held that in any case when faced with conflicting judgments by Benches of equal strength of the Supreme Court, it was the earlier one which is to be followed by the High Courts as held in **National Insurance Company Ltd.** (supra). The observations of the Supreme Court are required to be noted which read thus:

> "35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will

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> proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Company Limited* v. *Pranay Sethi*, (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."

21. Having noted the aforesaid position in law which would arise when there are two conflicting decisions, we would deliberate whether such principles need to apply in the facts of the present case. In such endeavour, we would discuss the legal position as brought about by the decision of the Supreme Court in **CIT Vs. Society for Promotion of Education** (supra) being the earlier decision as also the subsequent decision in **Harshit Foundation Sehmalpur Vs. CIT** (supra), to find out whether there is any conflict between these two decisions as contended at the Bar. In considering this question, some background in regard to the aforesaid decisions is required to be noted which we discuss hereinafter.

22. In such context, we would first note the relevant provisions of law, around which the controversy in the present proceedings would revolve namely Section 12A of the IT Act which provides for "*conditions as to registration of trusts, etc.*" and Section 12AA which provides for the "*procedure*

for registration" being the provisions around which the controversy revolves in the present proceedings:

> **12A. Conditions as to registration of trusts, etc.—**
>
> The provisions of Section 11 and Section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—
>
> (*a*) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the[* * *] Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under Section 12-AA:
>
> **Provided** that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of Sections 11 and 12 shall apply in relation to the income of such trust or institution,—
>
> (*i*) from the date of the creation of the trust or the establishment of the institution if the[* * *] Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;
>
> (*ii*) from the 1st day of the financial year in which the application is made, if the [* * *] Commissioner is not so satisfied;
>
> (*b*) where the total income of the trust or institution as computed under the Act without giving effect to the provisions of Section 11 and Section 12 exceeds fifty thousand rupees in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the *Explanation* below sub-section (2) of Section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.
>
> (*c*) [* * *]"

> **12-AA. Procedure for registration.—**
>
> (1) The [* * *] Commissioner, on receipt of an application for registration of a trust or institution made under clause (*a*) of Section 12-A, shall—

(*a*) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(*b*) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(*i*) shall pass an order in writing registering the trust or institution;

(*ii*) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,and a copy of such order shall be sent to the applicant:

Provided that no order under sub-clause (*ii*) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1-A) All applications, pending before the Chief Commissioner on which no order has been passed under clause (*b*) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Commissioner and the Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under clause (*b*) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (*a*) of Section 12-A.

(3) Where a trust or an institution has been granted registration under clause (*b*) of sub-section (1) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

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

(emphasis supplied)

23. Before the Allahabad High Court, in the case of **Society for Promotion of Education Vs. Commissioner of Income Tax** (supra) the Division Bench of the Allahabad High Court held that non consideration of the application for registration within the time fixed by Section 12AA(2) would amount to a deemed grant of registration. The Division Bench made the following

observations in paragraph 19 of its judgment which read thus:

> "19. Considering the pros and cons of the two views, we are of the opinion that by far the better interpretation would be to hold that the effect of non-consideration of the application for registration within the time fixed by section 12AA(2) would be a deemed grant of registration. We do not find any good reason to make the assessee suffer merely because the Income Tax Department is not able to keep its officers under check and control, so as to take timely decisions in such simple matters such as consideration of applications for registration even within the large six month period provided by section 12AA(2) of the Act."

24. After the aforesaid decision was rendered by the Division bench, another Division Bench of the Allahabad High Court in **Muzafar Nagar Development Authority**'s case questioned the correctness of the view taken by the Division Bench in **Society for Promotion of Education** (supra). Consequent thereto, a reference was made to the Full Bench of the Allahabad High Court on which a decision was rendered by the Full Bench in **Commissioner of Income Tax vs. Muzafar Nagar Development Authority** (supra). The Full Bench formulated the following two questions for its decision:-

> "(i) Whether the non-disposal of an application for registration, by granting or refusing registration, before the expiry of six months as provided under section 12AA(2) of the Income-tax Act, 1961, would result in deemed grant of registration ; and
>
> (ii) Whether the Division Bench judgment of this court in the case of Society for the Promotion of Education, Adventure Sport and Conservation of Environment v. CIT (2008) 216 CTC (All) 167 ; [2015] 372 ITR 222 (All) (Appendix) holding that the effect of non-consideration of the application for registration within the time fixed by section 12AA(2) would be deemed grant of registration, is legally correct."

25. The Full Bench considering the scheme of the provisions of Sections 11, 12, 12A and 12AA of the IT Act, was not persuaded to accept the line of reasoning which weighed with the Division Bench in **Society for Promotion of Education** (supra), in holding that the consequence of the non consideration of an application for registration, within the time fixed by Section 12AA(2), would confer a deemed grant of registration on the assessee. The Full Bench accordingly answered the reference, by holding that the non disposal of the application for registration by granting or refusing registration, before the expiry of six months as provided under Section 12AA(2) of the IT Act, would not result in a deemed grant of registration. It was also held that the judgment of the Division Bench in **Society for Promotion of Education** (supra) did not lay down the correct position of law. The learned Chief Justice speaking for the Bench held as under:

> "15. We are unable to accept the line of reasoning which weighed with the Division Bench of this court in Society for the Promotion of Education Adventure Sport and Conservation of Environment (supra). The Division Bench in holding that the consequence of the non-consideration of an application for registration within the time fixed by section 12AA(2), would be a deemed grant of registration, placed reliance on the following considerations:
>
> (i) Unlike the decision of the Supreme Court in Chet Ram Vashist (supra) which dealt with the sanctioning of a lay-out plan where an element of public interest is involved, no such public element or public interest is involved and reading a breach of section 12AA(2) as leading to a deemed grant of registration may, "at the worst", cause some loss of revenue to the Department;
>
> (ii) On the other hand, taking a contrary view and, if a deemed grant of

registration is not read into the statute, the assessee would be left at the mercy of the Income-tax authorities since no remedy has been provided in the Act against a failure to decide;

(iii) An irreversible situation is not created by the grant of a deemed registration because it is always open to the Revenue to cancel the registration under sub-section (3) of section 12AA prospectively. The only adverse consequence is a loss of revenue if the deemed registration is cancelled subsequently with prospective effect ; and

(iv) a purposive interpretation of the statute should be adopted.

16. We are not inclined to accept this line of reasoning which has found favour with the Division Bench. For one thing, it would be inappropriate for the court to accept, as a first principle of law, a proposition that there is no public element involved in the collection of revenue as legislated upon by Parliament or by the State Legislature. Proper collection of the revenues of the State is a matter of public interest since public revenues are utilised for public purposes. But such general considerations cannot override the duty of the court to give plain meaning and effect to the language used in a taxing statute. The duty of the court first and foremost is to construe the words of the taxing statute in question as they stand and the intention of the Legislature has to be construed with reference to the language of the words used. While interpreting the provision, the court cannot legislate a new provision or introduce a deeming fiction where none has been provided. Similarly, even as a matter of first principle, a casus omissus cannot be supplied by the court unless there is a case of clear necessity and when reason is found within the statute itself (Padmasundara Rao (Dead) v. State of Tamil Nadu (2002) 255 ITR 147 (SC) ; AIR 2002 SC 1334, paragraphs 8A and 14, Union of India v. Rajiv Kumar, AIR 2003 SC 2917, paragraph 23 and Unique Butyle Tube Industries (P.) Ltd. v. U. P. Financial Corporation (2003) 113 Comp Cas 374 (SC) ; (2003) 2 SCC 455, paragraph 14.).

17. A similar view to that of the Division Bench was adopted in a judgment of the Delhi Bench of the Income-tax Appellate Tribunal in Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust v. CIT (2007) 17 SOT 281 (Delhi) [SB] ; (2008) 299 ITR (AT) 161 (Delhi) [SB]. The Tribunal, as indeed the Division Bench of this court, in the earlier decision, observed that on the balance and though the questions presented some difficulty, it was inclined to take the view supporting the plea of deemed registration, otherwise the assessee would be left without a remedy. The assessee, in our view, is not without a remedy since a delay on the part of the Commissioner to consider an application can be remedied by recourse to the jurisdiction under article 226 of the Constitution. If the Commissioner has delayed in passing an order on an application for registration under section 12AA, recourse to the remedy under article 226 is always available to order an

expeditious decision thereon.

19. We may also note at this stage, that the provisions of sub-section (2) of section 12AA of the Act have been construed in a judgment of a Division Bench of the Madras High Court in CIT v. Sheela Christian Charitable Trust (2013) 354 ITR 478 (Mad) ; (2013) 32 taxman.com 242 (Mad). The Division Bench in that case has held that the Tribunal was not right in holding that the failure to pass an order in an application under section 12AA within the stipulated period of six months would automatically result in granting registration to the trust. The same view has been reiterated by a Division Bench of the Madras High Court in CIT v. Karimangalam Onriya Pengal Semipu Amaipu Ltd. (2013) 354 ITR 483 (Mad) ; (2013) 32 taxman.com 292 (Mad).

20. There can be no dispute about the basic principle of law that where a legal fiction has been created, it must be given full force and effect. As Lord Asquith J. observed in East End Dwellings Co. Ltd. v. Finsbury Borough Council (1951) 2 All ER 587 page 599 B-D ; [1952] AC 109 (HL), "where the statute says that you must imagine a certain state of affairs ; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs". The point, however, in this matter is that section 12AA(2) does not provide for a legal fiction at all. Parliament has carefully and advisedly not provided for a deeming fiction to the effect that an application for registration would be deemed to have been granted, if it is not disposed of within six months. Legislative fictions are what they purport to be : acts of the legislating body. The court cannot create one, where the Legislature has not provided a deeming fiction.

22. In the circumstances, we answer the questions referred to the Full Bench for reference in the following terms:

(i) non-disposal of an application for registration, by granting or refusing registration, before the expiry of six months as provided under section 12AA(2) of the Income-tax Act, 1961, would not result in a deemed grant of registration ; and

(ii) the judgment of the Division Bench of this court in Society for the Promotion of Education Adventure Sport and Conservation of Environment (supra) does not lay down the correct position of law."

(emphasis supplied)

26. The aforesaid decision of the Full Bench of the Allahabad High Court was rendered on 5 February 2015. It so happened that the decision of the Division Bench in **Society for Promotion of Education** (supra) was carried to the Supreme Court by the Revenue in the case **CIT, Kanpur Vs. Society for Promotion of Education** (supra), which came for consideration before the two Judges Bench of the Supreme Court when the proceedings filed by the Revenue came to be rejected in terms of the following judgment of the Supreme Court:-

> "1. Leave granted.
>
> 2. There is no appearance on behalf of the sole respondent despite service of notice and adjournment sought for on a couple of occasions earlier.
>
> 3. The short issue is with regard to the deemed registration of an application under Section 12AA of the Income Tax Act. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.
>
> 4. The learned Additional Solicitor General appearing for the appellants, has raised an apprehension that in the case of the respondent, since the date of application was of 24.02.2003, at the worst, the same would operate only after six months from the date of the application.
>
> 5. We see no basis for such an apprehension since that is the only logical sense in which the Judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under Section 12AA of the Income Tax Act in the case of the respondent shall take effect from 24.08.2003.
>
> 6. Subject to the above clarification and leaving all other questions of law open, the appeal is disposed of with no order as to costs."

27. As urged on behalf of the revenue as also apparent from the orders passed by the Supreme Court, the decision of the Full Bench of the Allahabad High Court in **Muzafar Nagar Development Authority** (supra) wherein the Full Bench had declared the decision of the Division Bench in **Society for Promotion of Education** (supra) did not lay down the correct position in law, was not placed for consideration of the Supreme Court.

28. The conundrum, however, has arisen in view of the subsequent set of proceedings which also has arisen before the Allahabad High Court, in the case **Harshit Foundation Sehmalpur** (supra) wherein the Division Bench of the Allahabad High Court in an appeal filed under Section 260A of the IT Act, was confronted with a similar question, namely, whether non-disposal of an application for registration within a period of six months resulted in a deemed grant of registration under Section 12AA(2) of the IT Act. The Division Bench following the decision of the Full Bench in *CIT vs.* ***Muzafar Nagar Development Authority*** (supra) held that the decision of the Division Bench in **Society for Promotion of Education** (supra) was overruled by the Full Bench, hence, the contention of the assessee that non disposal of the application of registration by granting or refusing the registration before the expiry of six months as provided under Section 12AA(2), would not result in

deemed grant of registration. However, what is significant is that, the decision of the Supreme Court in **CIT Vs. Society for Promotion of Education** (supra) which is extracted by us hereinabove, was also placed for consideration of the Division Bench. The Division Bench, however, accepted the contention of the revenue that such decision of the Supreme Court would not assist the assessee on the ground that the question of law itself was kept open by the Supreme Court, as the Supreme Court had disposed of the revenue's appeal on the contention of the Revenue as recorded in paragraphs 5 and 6 of its order. The relevant observations of the Division Bench are required to be noted which read thus:-

> **"9.** Learned counsel for the appellant has also placed before us a copy of Supreme Court judgment, passed in *CIT* v. *Society for the Promn. of Edn.* [2016] 67 taxmann.com 264/238 Taxman 330/382 ITR 6 which was an appeal taken to Supreme Court against the judgment of this Court and therein appeal was decided by Supreme Court by order dated 16th February, 2016 in the following manner :
>
> > "5. We see no basis for such an apprehension since that is the only logical sense in which the judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under section 12AA of the Income-tax Act in the case of the respondent shall take effect from 24-8-2003.
> > 6. Subject to the above clarification and *leaving all other questions of law open*, the appeal is disposed of with no order as to costs."
> >
> > (*Emphasis Added*)
>
> **10. Leaned counsel for the appellant submitted that since judgment of this Court in *Society for the Promn. of Edn.*(*supra*) has been confirmed by Supreme Court while disposing appeal, therefore, it must be now taken that law of deemed grant of registration has been confirmed by Supreme Court.**

> However, we find that Supreme Court in the judgment dated 16-2-2016, has held that all other questions of law are left open, meaning thereby question of law raised in appeal by C.I.T. has not been decided, but left open, hence, it cannot be said that judgment of this Court has merged with the judgment of Supreme Court on the above question of law, which was decided by this Court in *Society for the Promotion of Education*(*supra*)."
>
> (emphasis supplied)

29. Thus, the Division Bench following the decision of the Full Bench in **Muzafar Nagar Development Authority** (supra) and distinguishing the judgment of the Supreme Court in **Society for Promotion of Education** (supra) repelled the assessee's contentions that non consideration of the assessee's application for registration within a period of six months resulted in deemed grant of registration, under Section 12AA(2) of the IT Act. The aforesaid decision of the Division Bench was carried by the assessee to the Supreme Court in the proceedings of **Harshit Foundation Sehmalpur Vs. Commissioner of Income Tax** (supra). As urged on behalf of the Revenue in this case, both issues had fell for consideration of the Supreme Court. Firstly, whether the assessee was correct in its contention that no decision being taken on the assessee's application as made under Section 12A in the context of the applicability of Section 12AA(2) would result in deemed registration, being granted to the assessee. The second issue implicit in the consideration of the proceedings was whether the High Court was right in distinguishing the applicability of the decision of Supreme Court in **Society for Promotion of**

Education (supra), and as to whether such decision held that non-decision on the assessee's application filed under Section 12A within a period of six months would entitle the assessee for grant of a deemed registration under sub-section (2) of Section 12AA. The Supreme Court considering the correctness, legality and validity of the orders passed by the High Court, on these issues, which fell for its consideration, did not accept the assessee's case of a deemed registration under sub-section (2) of Section 12AA, as also on the applicability prior decision in **Society for Promotion of Education** (supra). The Supreme Court rejected the proceedings in terms of the following order:-

> "1. We have heard Mr. Abhinav Mehrotra, learned counsel appearing on behalf of the petitioner and Mr. N. Venkataraman, learned Additional Solicitor General appearing on behalf of the respondent.
>
> 2. The only question which is posed for consideration before the High Court was whether on non-deciding the application for registration under section 12AA(2) of the Income-tax Act, 1961 (for short "the Act") within a period of six months, there shall be deemed registration or not.
>
> 3. **The aforesaid aspect has been dealt with and considered in detail by the Full Bench of the Allahabad High Court in its decision in the case of CIT v. Muzafar Nagar Development Authority* (I. T. A. 348 of 2008).**
>
> **4. After considering in detail the provisions of section 12AA(2) of the Act and having found that there is no specific provision in the Act by which it provides that on non-deciding the registration application under section 12AA(2) within a period of six months there shall be deemed registration, the Full Bench of the High Court has rightly held that even in a case where the registration application under section 12AA is not decided within six months, there shall not be any deemed registration.**
>
> **5. We are in complete agreement with the view taken by the Full Bench of the High Court.**
>
> 6. The special leave petition stands dismissed."
>
> (emphasis supplied)

30. It is clear from the reading of the aforesaid orders passed by the Supreme Court, that the Supreme Court considered the question which fell for consideration of the High Court, namely 'whether on non-disposal of application for registration under Section 12AA(2) of IT Act within a period of six months, would result in deemed grant of registration or not.' Referring to the decision of the Full Bench of Allahabad High Court in **Muzafar Nagar Development Authority** (supra), the Supreme Court in paragraph 4 of the aforesaid order approved the decision of the Full Bench as also the decision of Division Bench, when it held that, even if in a case, where the registration application under Section 12AA is not decided within six months, there shall not be a deemed registration. The Supreme Court expressed complete agreement with the view taken by the Full Bench of the High Court.

31. The aforesaid discussion would go to show that the learned Counsel for the parties in supportig their contentions are relying on two different decisions of the Supreme Court, one in **Society for Promotion of Education** (supra), and the second in **Harshit Foundation Sehmalpur** (supra) *interalia* raising a contention of a conflict in these two decisions. In fact a similar contention of a conflict in these two decisions was made before this Court and noted by a

Division Bench in **Purandhar Technical Education Society Vs. The Commissioner of Income Tax (Exemption), Pune & Ors.**[23]. It was pointed out that one of the decisions, namely, in **Society for Promotion of Education** (supra) was rendered on an appeal involving a merger of the High Court's order in the orders passed by the Supreme Court and the subsequent decision being rendered on a Special Leave Petition, and in such context, what would be the legal position. The Division Bench noted the decision of the Supreme Court in **Sangita Vs. The State of Maharashtra & Anr.**[24] in which the Supreme Court had referred to its decision in **Kunhayammed and others vs. State of Kerala & Anr.**[25]. Considering the position in law, the Division Bench noted the legal position as arising from orders passed by the Supreme Court "in an appeal" and "on rejection of the Special Leave Petition", by a speaking order. The Division Bench in such context observed thus:

> "21. Mr. Naniwadekar submits that the decision of the Supreme Court in Society for Promn. Of Edn. (supra) is a decision rendered on an appeal whereas the order passed by the Supreme Court in Harshit Foundation Sehamalpur (supra) is an order rejecting a petition for Special Leave to Appeal. It is also his submission that this apart, in such decision, the orders passed by the High Court stand merged in the orders passed by the Supreme Court on the appeal. He thus submits that the decision of the Supreme Court in Society for Promn. Of Edn.(supra) being a judgment of the Supreme Court on an appeal, it declares law as laid down by the Supreme Court, within the meaning of Article 141 of the Constitution, and hence, such decision is a binding precedent. In such context as to what

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would be the legal position which would emerge from an order passed by the Supreme Court on an appeal and the orders passed rejecting the Special Leave to Appeal, we usefully refer to a recent decision of the Supreme Court in Sangita Vs. The State of Maharashtra & Anr. [Civil Appeal Nos.4609-4610 of 2024 arising out of SLP(C)Nos.25654-25655 of 2023) Decision Dt. 1/4/2024] wherein the Supreme Court considering the relevant decisions in such context enunciated that when the Supreme Court refuses to grant Special Leave to Appeal, be it even by way of a reasoned order, it was held that such order passed by the Supreme Court, would not attract the Doctrine of Merger. The Supreme Court referring to the three Judge Bench decision of the Supreme Court in Kunhayammed and Ors. Vs. State of Kerala & Anr. [(2000)6 SCC 359] and in Khoday Distilleries Ltd. (Now known as Khoday India Ltd.) & Ors. Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., Kollegal (Under Liquidation) represented by the Liquidator [(2019)4 SCC 376], made the following observations:

> "6. ..... It is well-settled that when this Court refused to grant special leave to appeal, be it even by way of a reasoned order, it will not attract the 'Doctrine of Merger'. That would be an order where this Court, in the facts and circumstances of the case, declined to exercise its jurisdiction under Article 136 of the Constitution. This view, as taken by a three-Judge Bench of this Court in Kunhayammed and others vs. State of Kerala and another, (2000) 6 SCC 359, was reiterated by this Court in Khoday Distilleries Ltd.(supra), as follows:
>
> > "26. From a cumulative reading of the various judgments, we sum up the legal position as under:
> > 26.1. The conclusions rendered by the three-Judge Bench of this Court in Kunhayammed [Kunhayammed v. State of Kerala, (2000) 6 SCC 359] and summed up in para 44 are affirmed and reiterated.
> > 26.2. We reiterate the conclusions relevant for these cases as under: (Kunhayammed case [Kunhayammed v. State of Kerala, (2000) 6 SCC 359], SCC p. 384)
> >
> > > "(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

> (v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.
>
> (vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.
> .....…"
>
> (emphasis supplied)

32. Having considered the legal position, we find, that there is much substance in the contention as urged by Mr. Saxena on behalf of the Revenue that the decision of the Supreme Court in **Harshit Foundation Sehmalpur** (supra) would be required to be held to be the law declared by the Supreme Court under Article 141 of the Constitution, on the interpretation of the interplay between Section 12A and Section 12AA(2) of the I.T. Act on the issue whether sub-section (2) of Section 12AA conceives any deemed grant of registration, if the assessee's application is not decided within six months.

This decision considers the applicability and interpretation of the said provisions and accords an approval to the view taken by the Full Bench of the Allahabad High Court in **Muzafar Nagar Development Authority** (supra) and as followed by the Division Bench in **Harshit Foundation Sehmalpur** (supra), which had also distinguished the applicability of the decision of the Supreme Court in **Society for Promotion of Education** (supra).

33. We find ourselves in agreement with the observations made by the Division Bench of the Allahabad High Court in **Harshit Foundation Sehmalpur** (supra) including to distinguish the applicability of the decision, the Supreme Court in **Society for Promotion of Education** (supra). On a reading of the decision of the Supreme Court in **Harshit Foundation Sehmalpur** (supra) it is clear that the Supreme Court has considered the legal effect which emanated from Section 12AA(2) of the IT Act and as considered by the Full Bench of the Allahabad High Court in **Muzafar Nagar Development Authority** (supra) when it upheld the decision of the Division Bench in **Harshit Foundation Sehmalpur** (supra), while approving the decision of the Full Bench. In this view of the matter, considering the reasoned orders passed by the Supreme Court although in dismissing the SLP applying the principles as laid down in **Kunhayammed and others vs. State of Kerala & Anr.**

(supra), it would be required to be held that the Revenue is right in its contention that the decision of the Supreme Court in **Harshit Foundation Sehmalpur** (supra) is the law declared by the Supreme Court under Article 141 of the Constitution.

34. Having taken the aforesaid view, we are not persuaded to accept the contention as urged by Mr. Mundhra relying on the decision of the Supreme Court in (i) **Sundeep Kumar Bafna Vs. State of Maharashtra** (supra), (ii) **National Insurance Company Ltd. vs. Pranay Sethi** (supra), and (iii) **Union Territory of Ladakh Vs. Jammu and Kashmir National Conference** (supra) as such decisions do not consider the decision of the Supreme Court in **Harshit Foundation Sehmalpur** (supra).

35. We may also observe that having considered both the decisions as rendered by the Supreme Court namely in **Society for Promotion of Education** (supra) and **Harshit Foundation Sehmalpur** (supra) and as held by the Division Bench of the Allahabad High Court, in fact, we do not find that there is any situation that both the said decisions are mutually irreconcilable, for the reasons we have noted hereinabove. In our opinion, accepting Mr. Mundhra's argument that these decisions bring about a mutually irreconcilable legal position, would not be a correct reading of these decisions.

36. Thus, as held by the Supreme Court in **Harshit Foundation Sehmalpur** (supra), the clear position in law is to the effect that Section 12AA(2) of the IT Act does not recognize any deeming fiction, that an application for registration is deemed to be granted, if it is not disposed of within six months, as succinctly held by the Full Bench of the Allahabad High Court in **Muzafar Nagar Development Authority** (supra) when it observed that the Parliament has carefully and advisedly not provided for such deeming fiction and as approved by the Supreme Court in **Harshit Foundation Sehmalpur** (supra).

37. We are, accordingly, inclined to allow the Revenue's appeal in answering the question of law in favour of the Revenue and against the assessee.

38. Disposed of in the aforesaid terms. No costs.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI , J.)