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

% *Date of decision: 12th February, 2026*

+ ITA 115/2026, CM APPL 9203/2026

+ ITA 119/2026, CM APPL 9430/2026

COMMISSIONER OF INCOME TAX – EXEMPTIONAppellant

Through: Mr. Gaurav Gupta, SSC with Mr. Shivendra Singh, JSC, Mr. Yojit Pareek, JSC and Mr. Surya Jindal Adv.

versus

KUSH INNOVATIVE FOUNDATIONRespondent

Through: Mr. Naveen Kumar and Mr. Mohan Chaudhary, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

J U D G M E N T

REPORTABLE

DINESH MEHTA, J. (Oral)

1. In the instant appeals, the following question of law was framed by this Court on 11.02.2026:

“i. Whether in the facts of the present case, the tribunal was justified in directing the CIT Exemption to grant registration under Section 12AB and Section 80G of the Act of 1961 or it should have remanded the matter back to the CIT Exemption?”

2. Mr. Gaurav Gupta, learned Senior Standing Counsel for the appellant firstly invited the Court's attention towards the observation made by Commissioner of Income Tax (Exemption), Delhi (*hereinafter referred to as 'the Commissioner'*) in para nos.1 to 7 of the order dated 26.06.2024 and pointed out that specific queries were raised on 22.02.2024 and subsequently



on 08.03.2024 to produce relevant record, but the respondent/Trust chose not to produce the same and contended that the Commissioner was left with no option but to reject respondent's application for registration.

3. He expressed his concern that despite such finding and fact-situation, the Income Tax Appellate Tribunal 'C' Bench, New Delhi (*hereinafter referred to as 'Tribunal'*) in the impugned order dated 12.02.2025 has simply recorded that documents had been filed by the respondent/assessee and instead of remanding the matter or giving any findings about the genuineness of the activities being carried out by the respondent/Trust, issued a direction to the Commissioner to grant certificate of registration under Section 12AB and 80G of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*). He argued that the Tribunal at the best could have remanded the matter to the Commissioner to examine the application afresh, after considering the material so produced.

4. Mr. Naveen Kumar, learned counsel for the respondent/Trust, on the other hand submitted that a perusal of the order of the Tribunal reveals that the respondent/Trust had furnished various documents, which led the Tribunal to conclude that respondent/Trust is a genuine entity and thus, no fault can be found in the impugned order.

5. Heard.

6. On sifting through the order of the Commissioner dated 26.06.2024, we find that he had practically expressed his helplessness, because the respondent/Trust had neglected to respond or rather chose to withhold the information or documents which were called for.

7. A simple look at para nos.1 to 7 of the order of the Commissioner dated 26.06.2024 reveals that multiple opportunities were granted to the



respondent/Trust and though various letters/notices were sent but no document was furnished before him, for the reasons best known to the respondent/Trust. Hence, rejection of respondent's application for seeking registration under Section 12AB and 80G of the Act of 1961, did not suffer from any infirmity, as he could not have allowed the same without the requisite information and scrutiny.

8. Surprisingly, while hearing the appeal, the Tribunal recorded that the respondent/Trust has produced various documents, which show that the activities of the Trust are genuine. A view has been taken that at the time of registration, the Commissioner is required to examine the genuineness of the Trust and not the Income of the trust for charitable/religious purposes, but such findings or view of the Tribunal is *ex-facie* erroneous.

9. While allowing the appeals, the Tribunal has relied upon its order dated 29.03.2019 in the case of ***Mata Parvati Educational and Innovative Society v. CIT(E)*** being ITA No. 2296/DEL/2018. Firstly, said order of the Tribunal can be held justified, when application for registration is being considered for the first time, as was in the case before the Tribunal in the matter of ***Mata Parvati Educational and Innovative Society (supra)***, but when the respondent was already having provisional registration for more than 2 years, the inquiry as proposed by the Commissioner was imperative, as the subject application was not for provisional registration but was for registration under Section 12A(1)(ac)(iii), which is filed prior to the period of expiry of the provisional registration.

10. The issue involved in the present case cannot be appropriately adjudicated unless we take note of Sections 12A and 12AB of the Act of 1961.



11. As per the existing scheme, while Section 12A is a basic provision stipulating conditions of applicability of Sections 11 and 12, Section 12AB of the Act of 1961 provides for procedure for Registration for 5 years and for Provisional Registration.

12. So far as Section 12AB(1)(b) is concerned, it provides for Registration for 5 years while Section 12AB(1)(c) is meant to give Provisional Registration for a period of 3 years. It will not be out of context to reproduce relevant part of Sections 12AB(1) and 12A of the Act of 1961 so as to make a comparative analysis:

| | FRESH REGISTRATION [FOR 5 YEARS] | PROVISIONAL REGISTRATION [FOR 3 YEARS] |
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| <u>Application</u> | Application under Section 12A(1)(ac)(iii) [as applicable in the present case]: ... (iii) where the trust or institution has been provisionally registered under section 12AB [or provisionally approved under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10], at least six months prior to expiry of period of the provisional registration [or provisional approval, as the case may be,] or within six months of commencement of its activities, whichever is earlier; ... | Application under Section 12A(1)(ac)(vi)(A): (vi) in any other case, where activities of the trust or institution have— (A) not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought; ... |
| <u>Enquiry</u> | Enquiry under Section 12AB(1)(b) [as applicable in the present case]: | Enquiry under Section 12AB(1)(c): [c) where the application is |



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| | <p>.....(b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) [or item (B) of sub-clause (vi)] of the said clause,—</p> <p>(i) 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—</p> <p>(A) the genuineness of activities of the trust or institution; and</p> <p>(B) the 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;</p> | <p><i>made under item (A) of sub-clause (vi) of the said clause or the application is made under sub-clause (vi) of the said clause, as it stood immediately before its amendment vide the Finance Act, 2023, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought,]</i></p> |
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13. In the case in hands, the application was filed by the Respondent under Section 12A(1)(ac)(iii) which is covered under Section 12AB(1)(b) of the Act of 1961. Hence, the Tribunal was required to undertake the requisite inquiry and then record a finding about genuineness of activities of the respondent/Trust so also regarding the compliance under other laws to be made by the respondent/Trust in order to achieve its objects. And since such finding has not been recorded by the Tribunal and a sweeping direction granting registration under Section 12AB and 80G of the Act of 1961 has been given, the order impugned cannot be sustained.

14. That apart, when it comes to registration under Section 80G of the Act of 1961, the situation is starkly different. Because, it entails a benefit of deduction to the extent of 50% of the donation to the payer and for such purpose, the genuineness of the trust's activities is certainly a mandatory requirement and not simply a relevant consideration. In absence of an



inquiry and finding as to whether the activities being carried out by the Trust are *bonafidely* charitable, the registration under Section 80G of the Act of 1961 cannot be granted.

15. We, therefore, answer the question of law framed by this Court in negative and hold that the Tribunal was not justified in issuing directions to grant registration under Section 12AB and Section 80G of the Act of 1961, the impugned order dated 12.02.2025 of the Tribunal is, therefore, set aside.

16. The matter is remanded to the Commissioner to decide the respondent's application for registration under Sections 12AB and 80G of the Act of 1961 in accordance with law and to inquire into the activities of the Trust within the parameters of relevant provisions of the Act of 1961.

17. Needless to observe that we have not commented upon merit or otherwise of the entitlement or the nature of the activities of the respondent Trust, which shall naturally be considered by the Commissioner in accordance with law. The needful exercise be completed preferably within a period of three months of receiving a certified copy of this order, which the respondent/Trust may place before the concerned Commissioner.

18. The appeals stand disposed of in the aforesaid terms along with pending applications.

**DINESH MEHTA
(JUDGE)**

**VINOD KUMAR
(JUDGE)**

FEBRUARY 12, 2026/nk