

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं  
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।  
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER  
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**

**आयकरअपील सं./ ITA No. 2885/Chny/2024  
(निर्धारणवर्ष / Assessment Year: Nil )**

**&**

**आयकरअपील सं./ ITA No.2886/Chny/2024  
(निर्धारणवर्ष / Assessment Year: 2024-2025 )**

Hajee Osman Mahomed  
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Chennai 600 034.

**[PAN:AACTH 9580L]**

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यर्थी की ओर से /Respondent by

**Vs.** The Commissioner of Income Tax,  
Exemptions,  
Chennai

(प्रत्यर्थी/Respondent)

: Shri Varadarajan, CMA

: Ms E. Pavuna Sundari, CIT.

सुनवाई की तारीख/Date of Hearing : 06.02.2025

घोषणा की तारीख /Date of Pronouncement : 24.02.2025

**आदेश / ORDER**

**PER MANU KUMAR GIRI (Judicial Member)**

These appeals by the assessee are against the orders of the Commissioner of Income Tax (Exemptions), Chennai [in short 'the CIT(E)'] dated 13.09.2024. The issue contended by the assessee in these appeals pertains to the CIT(E) rejecting the applications in Form No.10AB u/s 12(1)(ac)(vi)(B) and approval u/s 80G(iv)(B) of the Income Tax, 1961 (the Act).

2. The assessee has not commenced the activities and the Bank Account of the Trust was opened on the Month of May, 2024. Hence, the assessee filed applications in Form No.10AB u/s 12(1)(ac)(vi)(B) and seeking approval u/s 80G(iv)(B) registration on 31.03.2024 and in the said applications has selected the wrong section code under which the registration or approval is sought for. The CIT(E) rejected the said applications stating as under:-

*'4.1 As explained in the Show Cause Notice issued to the applicant, it has filed its application u/s.12A(1)(ac) (vi) (B). This section is applicable for those trusts/institutions who have commenced their activities and no income or part thereof has been excluded from the total income u/s.10(23C)(iv), (v).(vi), (via) or u/s.11 or 12 for any previous year ending on or before the date of such application, at any time after the commencement of such activities.*

*4.2 Rule 17A of the Income Tax Rules, 1962, prescribes the list of documents which are mandatorily required to be submitted by the applicant. As per this Rule 17A, the application shall be accompanied by various documents from clause (a) to (k).*

*The pre-condition for filing application under this section is the applicant should not claim exemption as stated above and should have commenced the activities. This has been informed to the applicant vide questionnaire dated 11.07.2024 & SCN dated 02.09.2024.*

*In response to the Show Cause Notice dated 02.09.2024, the reply of the applicant is as follows:*

*"We have not commenced any activity till date and same was also shown in financials of trust, we can attract "Donars" only after 80G Approval."*

*Thus, as per the financials and the reply of the applicant, it is very clear that the applicant has not commenced its activities, till date. Hence, it is not eligible for granting registration u/s.12AB of the Act.*

*In view of the above facts, the application filed by the applicant is not maintainable and as such deserves for rejection.*

*4.3 As explained in para 1 of this order, as per the provisions of section 12AB (1)(b) clause (ii) (B) of the I.T.Act, 1961, if the application is made under item (B) of sub-clause(vi) of the said section 12A(1)(ac) and the Principal Commissioner or Commissioner is not satisfied, he/she can reject the application of the trust/institution. Hence, the application filed by the applicant on*

*31.03.2024 in Form No. 10AB u/s 12(1)(ac)(vi) B seeking registration u/s.12AB of the I.T. Act, 1961 is rejected”.*

*'3.1 As explained in the Show Cause Notice issued to the applicant, it has filed its application u/s 80G(5)(iv) B. This section applicable for those institutions/funds who have commenced their activities and no income or part thereof has been excluded from the total income u/s.10(23C)(iv), (v).(vi), (via) or u/s.11 or 12 for any previous year ending on or before the date of such application, at any time after the commencement of such activities.*

*3.2 The pre-condition for filing application under this section is the applicant should not claim exemption as stated above and should have commenced the activities. This has been informed to the applicant vide questionnaire dated 12.07.2024 & SCN dated 02.09.2024.*

*In response to the Show Cause Notice dated 02.09.2024, the reply of the applicant is as follows:*

*"We have not commenced any activity till date and same was also shown in financials of trust, we can attract "Donars" only after 80G Approval."*

*Thus, as per the financials and the reply of the applicant, it is very clear that the applicant has not commenced its activities, till date. Hence, it is not eligible for granting approval u/s.80G of the Act.*

*3.3 In view of the above facts, the application filed by the applicant in section code 80G(5)(iv) B in Form 10AB is not maintainable as such deserves for rejection.*

*4.0 Considering the above and as explained in para 1 of this order regarding the second proviso to sub section of section (5) of section 80G of the I.T. Act, 1961, if the application is made under sub-clause (ii) or sub-clause (iii) or clause B of clause (iv) of section (5) of section 80G of the I.T. Act and the Principal Commissioner or Commissioner is not satisfied, he can reject the application.*

*Therefore, the application dated 31.03.2024 filed in Form No. 10AB under clause (iv) B of first proviso to section 80G(5) of the Income Tax Act, 1961 seeking approval u/s. 80G is not maintainable for the reasons stated in para 3.1 to 3.3 of this order and hence, the same is rejected’.*

3. The Id. AR submitted that the assessee while filing the Form 10AB has inadvertently mentioned the wrong sections as u/s 12(1)(ac)(vi)(B) instead of under clause (v) of first proviso of section 12A(1). Similarly, while Form 10AB inadvertently

mentioned the wrong section as sub-clause (B) of clause (iv) of first proviso to sub-section (5) of section 80G instead of section clause (iii) of first proviso to subsection (5) of section 80G. The Id. AR further submitted that the assessee although explained the error before the CIT(E) however, the Id. CIT(E) has rejected the applications as mentioned supra. The Id AR relied on the decision of the Hyderabad Bench of the Tribunal in the case of *Telangana State Chapter Indian Radiological & Imaging Association, Hyderabad vs ITO (E) ITA No.255/Hyd/2023*.

4. Per Contra, the Id. DR relied upon the impugned order of the Id.CIT(E).

5. We have gone through the impugned order and find that in the similar circumstances the Co-ordinate Bench in the case of *M/s. Sri Jeyamkonda Choleeswara Soundaranayaki Amman Kumbhabisheka Malar Kuzhu Vs ITO (E) ITA No.: 978/CHNY/2023 dated 31.01.2024* held as under:

*'5. After hearing both the sides and going through the facts, it is noted that the assessee has simpliciter made a technical mistake in applying u/s.12A(1)(ac)(ii) instead of 12A(1)(ac)(iii) of the Act. It was informed to the Bench by the Id.counsel for the assessee that even now the assessee has filed fresh Form No.10AB seeking registration u/s.12A(1)(ac)(iii) of the Act, which can also be considered. In our view, the same purpose will be served by adjudicating the same application. Hence, we set aside the order of CIT(Exemption) and remand the matter back to his file for fresh adjudication, either considering the subsequent application of assessee u/s.12A(1)(ac)(iii) of the Act or he can call a fresh application from the assessee. In term of the above, matter restored back to the file of the CIT(Exemption).*

*6. In the result, the appeal filed by the assessee is allowed for statistical purposes'.*

6. Therefore, in the light of the above order of the Co-ordinate Bench referred supra, we are of the considered opinion that the respondent is duty bound to give an opportunity to rectify the mistake, if any, done by the assessee. Hence, we also

set aside the both orders of CIT(Exemption) and remand the both matters back to his file for fresh adjudication, either considering the subsequent applications of assessee under clause (v) of first proviso of section 12A(1) and section clause (iii) of first proviso to subsection (5) of section 80G of the Act or he can call a fresh applications from the assessee. In term of the above, matter restored back to the file of the CIT(Exemption).

7. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 24th February, 2025 at Chennai

Sd/-

(मनोज कुमार अग्रवाल)  
**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai:

दिनांक Dated:-24 -02-2025

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

Sd/-

(मनु कुमार गिरि)  
**(MANU KUMAR GIRI)**

न्यायिक सदस्य / JUDICIAL MEMBER