

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.57 & 58/Chny/2025  
निर्धारणवर्ष/Assessment Year: -

Kasi Visvanathar Koviloor- Foundation, 8/11, Second Street, Sekkalai S.O. Sekkalai, Sivaganga-630 002. [PAN: AAKCK 6434 B]	v.	The DCIT/ACIT (Exemptions), Annexure Building, Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.N.V. Lakshmi, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.R. Clement Ramesh Kumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	26.03.2025
घोषणाकीतारीख /Date of Pronouncement	:	05.05.2025

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

These are appeals preferred by the assessee, a 'Section 8 Company' registered under the Companies Act, 2013 against the order of the Learned Commissioner of Income Tax (Exemptions), Chennai, (hereinafter 'the Ld.CIT(E)'), dated 12.11.2024 passed u/s.12AB(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and ITA No.58/Chny/2025 is against the order of the Ld.CIT(E) dated 15.11.2024



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rejecting the application filed by the assessee dated 30.05.2024 in Form No.10AB under Rule 11AB of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules') seeking approval u/s.80G(5)(iii) of the Act.

**2.** At the outset, the Ld.AR of the assessee pointed out that even though the Ld.CIT(E) vide order dated 12.11.2024 has allowed the grant of regular registration u/s.12AB (1) of the Act for five (5) years from AYs 2024-25 to 2028-29, after it was granted provisional registration initially u/s.12AB of the Act vide earlier order dated 28.12.2023, but its grievance is that Ld CIT(E) while granting registration has treated the nature of its activity as "*religious-cum-charitable*" only because the assessee inadvertently mentioned its object/nature of activity as "*religious-cum-charitable*" i.e. in Column-3 of Form 10AB; According to the Ld.AR, the nature of the activity of the assessee is purely charitable in nature and pointed out that there is no religious activity stated anywhere in the objects of the assessee-company. Therefore, the plea of the Ld.AR is that the inadvertent mistakes in Form 10AB as well as in the replies given by it shouldn't be the basis for treating the assessee as "*religious-cum-charitable*" and in order to support such a contention, drew our attention to the 'Memorandum of Association' of the assessee company found kept at Page Nos.1-7 of the Paper Book which was uploaded for perusal of the Ld.CIT(E). Taking us through the 'Memorandum of Association' as well as 'Articles of Association' of the assessee company, the assessee prima



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facie has shown that the assessee doesn't have any objects of religious nature whereas it was formed for discharging charitable activities viz., education to poor, addressing hunger and food insecurity, etc. Thus, according to the Ld.AR, when the assessee company's main objects were only to do charitable activities, it couldn't have been treated as "religious-cum-charitable" organization. Further, according to the Ld.AR, by pronouncing assessee as a "religious-cum-charitable" organization, the Ld.CIT(E) has denied the approval u/s.80G of the Act, which impugned action, the assessee has challenged by filing appeal numbered as ITA No.58/Chny/2025.

**3.** Brief facts are that assessee 'a Section **8** Company' which was formed on 18.11.2023 has been carrying on charitable activities. The objects of 'a Section **8** Company' are, *inter alia*, to establish building and run schools, colleges for primary, secondary and higher education in any field and to help addressing hunger and to provide for deserving public clean nutritious food; to facilitate medical relief to the poor and under privilege public, etc. The assessee is noted to have filed for provisional registration u/s.12AB of the Act which was granted vide order dated 28.12.2023 for three (3) years from AYs 2024-25 to 2026-27 as well as it was granted provisional registration u/s.80G of the Act for the same period. Thereafter, the assessee is noted to have filed online application in Form No.10AB under clause (iii) of section 12A(1)(ac) of the Act



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seeking registration u/s.12AB of the Act and while doing so, the assessee inadvertently mentioned the nature of its activity in Column-3 of Form-No.10AB as "religious-cum-charitable" which was allowed by the Ld.CIT(E) by order dated 12.01.2024 by granting registration to the assessee as "religious-cum-charitable institution", which action is assailed before us. In this respect, the Ld.AR pointed out that despite, the assessee having uploaded the 'Memorandum of Association & Articles of Association' before the Ld.CIT(E) wherein there is not even a word of religious activity, the Ld.CIT(E) on the strength of mistake in the Form as well as certain replies of the assessee granted registration to assessee-company u/s.12AB of the Act as "religious-cum-charitable institution" which impugned action of the Ld.CIT(E) is erroneous, because, the objects of the assessee can't be changed by the assessee company without making amendments as per law i.e. as per Company's Act to its 'Memorandum of Association & Articles of Association'. Therefore, the assessee aggrieved by the impugned action of the Ld.CIT(E) has filed an appeal No.57/Chny/2025 praying that the Ld.CIT(E) be directed to treat the assessee company as Charitable Institution.

**4.** Per contra, the Ld.DR submitted that the Ld.CIT(E) can't be faulted because assessee company itself has filled up the Form 10AB and has even replied initially as it is "religious-cum-charitable". Therefore, even if the assessee later asserted before the Ld.CIT(E) that its object was only



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to do charitable activity, the Ld.CIT(E) has rightly held it to be "religious-cum-charitable" and doesn't want us to interfere.

**5.** Having heard both the parties and after perusal of the records, it is noted that the assessee is 'a Section **8** Company' incorporated in 2023 and has applied for provisional registration u/s.12AB/80G of the Act which was granted for three (3) years vide order dated 28.12.2023 [refer Page Nos.24 to 27 of the Paper Book]. Thereafter, the assessee is noted to have filed an application in Form 10AB for registration u/s.12(1)(ac)(iii) for grant of registration u/s.12AB of the Act for five (5) years and also Form 10AB u/s.80G(5) of the Act for grant of approval for five (5) years [refer Page Nos.28 to 41 of the Paper Book]. Pursuant thereto, the Ld.CIT(E) is noted to have issued a notice to the assessee company wherein initially, the assessee in its Form 10AB [for registration u/s.12AB of the Act], is noted to have inadvertently mentioned its activity in Column-3 as "religious-cum-charitable" and pursuant to the notices issued by the Ld.CIT(E) inter-alia, has filed response/clarified vide letter dated 25.10.2024, wherein, it was explained/clarified that while filling Colum-3 in From No.10AB the nature of the activities was by oversight/inadvertent mistake declared itself as "religious-cum-charitable" and asserted on the strength of the objects of the assessee that it ought to have filled in Column-3 "charitable" only and submitted that the inadvertent error crept in filing Column-3 was due to the complexities



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while filling up the application in online portal and requested to condone the mistake and pleaded for grant of registration as a Charitable Institution and cited case laws of Shri Balkrishna Shudhhadwait Sthanik Mahasabha v. CIT (Exemptions) reported in [2023] 154 taxmann.com 586 (Surat-Trib) [17.07.2023] and Arya Samaj Safdarjung Enclave v. CIT (ITA No.2810/Del/2022), wherein, Tribunal had observed that inadvertent mistake made by the assessee should not be a fetter in the way of substantial justice. However, the Ld.CIT-DR justifying the action of the Ld.CIT(E) was of the view that processing of application and granting of registration are carried out in the ITBA portal and there is no functionality available in the system to change the nature of trust other than what has been applied by the applicant in Form 10AB. According to him, the registration can be granted only on the basis of nature of assessee mentioned in the application filed in Form 10AB. Hence, according to the Ld.DR, the assessee's request for granting registration as Charitable Institution as against "religious-cum-charitable" as applied in Form No.10AB was rightly rejected by the Ld.CIT(E). We don't countenance the impugned action of the Ld.CIT(E) because the classification of assessee as "religious-cum-charitable Trust" happened because of the mistake which crept in Column-3 (Form 10AB) while filling up the electronic online portal, by wrongly choosing the box in Form as "religious-cum-charitable" whereas the nature of activities to be carried out by it as per



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Memorandum of Association obliges it to be classified as "charitable". Therefore, the inadvertent mistake while filing up Column-3 can't be a reasonable ground to grant registration u/s.12AB of the Act by wrongly classifying it as "religious-cum-charitable institution". Hence, we are of the view in the facts and circumstances of the case that it is a bona fide mistake and therefore, such mistakes while filling up Form 10AB, can't change its original character which as per its Memorandum of Association, is *Charitable Institution*. Therefore, we set aside the impugned order of the Ld.CIT(E) and allow assessee to file a physical form of Form 10AB before the Ld.CIT(E) showing the nature of activity as "charitable" and the Ld.CIT(E) to consider the same, and examine the eligibility of it in accordance to law. In this context, we take note of the Hon'ble Supreme Court decision in the case of United Bank of India v. Naresh Kumar AIR 1997 SC 3, wherein, it was observed by their Lordships "*as far as possible, a substantive right should not be defeated on account of a procedural irregularity which is curable*" and in the case of Associated Journals Ltd. v. Mysore Paper Mills Ltd., reported in [2006] 69 SCL 311 (SC), it was observed by the Hon'ble Supreme Court -

*"... Rules of procedure cannot be a tool to circumvent the justice. In fact, the Rules are laid to help for speedy justice ... Technical defects in petition are curable....."*



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**6.** In Owners & Parties interested in MV Vali Perov. *Fernandeo Lopez* AIR 1989 SC 2206, it was observed - Rules of procedure are not by themselves an end but means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the Court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of permissible construction, must be preferred to that which is rigid and negatives the cause of justice. Procedure is meant to subserve and not rule the cause of justice

**7.** In the light of the discussion (*supra*), we direct the Ld.CIT(E) to consider the application as stated (*supra*) and decide on merits granting of registration as Charitable Institution in accordance to law after hearing the assessee.

**8.** Coming to ITA No.58/Chny/2025, the main grievance of the assessee is against action of the Ld.CIT(E) rejecting the application for registration u/s.80G on the ground that since the assessee is "religious-cum-charitable institution", it can't be granted approval u/s.80G of the Act. Since we have already set aside the action of the Ld.CIT(E) (*supra*) back to his file for de novo examination, we set aside the impugned action of the Ld.CIT(E) and direct him to examine the grant of approval u/s.80G



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Kasi Visvanathar Koviloor Foundation

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of the Act after deciding the application for grant of registration u/s.12AB of the Act as Charitable Institution after hearing the assessee. The assessee is directed to file all relevant documents in accordance to law.

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

Order pronounced on the 05<sup>th</sup> day of May, 2025, in Chennai.

**Sd/-**

(जगदीश)

**(JAGADISH)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(एबी टी. वर्की)

**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 05<sup>th</sup> May, 2025.

**TLN**

आदेश की प्रतिलिपि अग्रेषित /**Copy to:**

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