

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No.105 & 106/Bang/2025
Assessment Years : 2025-26

WeVysya, No.59/3, 2 nd Floor, West Anjaneya Temple, ST Gandhi Bazar, Basavanagudi, Bengaluru – 560 004. PAN – AAATW 7642 J	Vs.	The Commissioner of Income Tax (Exemptions), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Dr. N Suresh, C.A
Revenue by	:	Shri Aseem Sharma, CIT (DR)

Date of hearing	:	09.04.2025
Date of Pronouncement	:	13.05.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

These are appeals filed by the assessee against the order passed by the Id. CIT(E), Bangalore both dated 28/12/2024 rejecting the application for registration under section 12AB and 80G of the Act.

First, we take up ITA No. 105/Bang/2025, an appeal by the assessee.

2. The assessee has raised as many as 7 grounds in the memo of appeal which are interconnected and pertains to the rejection of

application filed for regularization of registration under section 12AB of the Act.

3. The facts in brief are that the assessee is a trust established as on 22nd January 2024 through trust deed with the object to empower general public in the field of professionals, entrepreneurship, skill development including social activities such as blood donation, medical camp, providing food, education & medical assistance to needy students.

4. Initially, the assessee obtained provisional registration under section 12A of the Act vide Form 10AC dated 13-02-2024 for a period of 3 years effective from A.Y. 2024-25 to A.Y. 2026-27. Subsequently, the assessee trust filed Form 10AB on 26-06-2024 seeking regularization of registration under section 12AB of the Act. The application was forwarded to the Jurisdictional Assessing Officer (JAO) for necessary verification.

5. The JAO reported that during the financial year ending 31st March 2024, the assessee has received donation of Rs. 49 lakhs out of which only meagre amount of Rs. 3,20,193/- was incurred for the stated objects and majority of amount was incurred towards the administrative expenses. The AO further reported during February and March 2024, there were cash withdrawals of Rs. 50,000/- each from the assessee's bank on multiple time by the person namely Archnana SA. The assessee failed to explain the reason of such withdrawal and their application. Accordingly, the JAO reported that assessee has not carried or incurred expenses toward charitable activity.

6. Based on the verification by the JAO, the learned CIT(E) held that the genuineness of charitable activities by the assessee has not been proved. Hence, the learned CIT(E) in accordance with the provision of section 12AB(1)(b)(i & ii) of the Act, rejected the assessee's application for regularization of registration and cancelled the registration under section 12AB of the Act.

7. Being aggrieved by the order of the learned CIT(E), the Revenue is in appeal before us.

8. The Ld. AR before us submitted that the surplus fund was set-apart for future utilization and to this effect, the declaration in form 10 was filed which has not been considered by the learned CIT exemption. The learned AR before us prayed to set aside the issue to the file of the learned CIT exemption for fresh adjudication as per the provisions of law.

9. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, it is pertinent to refer to the provisions of section 12AB of the Act, which provides for registration of trusts and institutions carrying out genuine charitable activities. Section 12AB(1)(a) mandates that the Principal Commissioner or Commissioner shall satisfy himself about

(i) the genuineness of the activities, and

- (ii) the compliance with applicable laws which are material for achieving the trust's objectives.

10.1 Upon such satisfaction, registration is to be granted; failing which, an opportunity of being heard must be provided before rejection. The scope of inquiry by the Id. CIT(E) at the stage of granting registration has been clarified by the Hon'ble Supreme Court in the case of in the case of Ananda Social and Educational Trust vs. CIT reported in [2020] 114 taxmann.com 693 (SC) wherein it has been held as under:

12. Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust.

10.2 We further note that the Hon'ble Allahabad High Court in the case of CIT vs. Red Rose School reported in [2007] 163 Taxman 19 (All.) held that while granting registration under section 12A of the Act, the Id. Commissioner is not to act as an Assessing Officer and is only required to examine the objects and genuineness of activities based on materials placed before him. The relevant part of the judgment is extracted as under:

33. In regard to the genuineness of the activities of the trust or the institution, whose objects do not run contrary to public policy and are, in fact, related to charitable purposes, the Commissioner is again empowered to make enquiries as he thinks fit. In case the activities are not genuine and they are not being carried out in accordance with the objects of the trust/society or the institution,

of course, the registration can again be refused. But on mere presumptions and on surmises that income derived by the trust or the institution is being misused or that there is some apprehension that the same would not be used in the proper manner and for the purposes relating to any charitable purpose, rejection cannot be made.

34. *Section 12AA, which lays down the procedure for registration, does not speak anywhere that the Commissioner, while considering the application for registration, shall also see that the income derived by the trust or the institution is either not being spent for charitable purpose or such institution is earning profit. The language used in the section only requires that activities of the trust or the institution must be genuine, which accordingly would mean, they are in consonance with the objects of the trust/institution, and are not mere camouflage but are real, pure and sincere, nor against the proposed objects. The profit earning or misuse of the income derived by charitable institution from its charitable activities, may be a ground for refusing exemption only with respect to that part of the income but cannot be taken to be a synonym to the genuineness of the activities of the trust or the institution.*

35. *This is more evident if we see the provisions of section 11, which, while exempting the income given in its various sub-clauses from being included in the total income of the previous year of the person in receipt of the income, for example, in sub-clause (1) says 'income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property.*

10.3 Thus, it is settled law that the extent of spending or surplus generated cannot, by itself, be a ground for doubting the genuineness of activities. We also were of the view that the question with respect to expenses incurred towards the object of the trust is the part of assessment proceedings and not for raising at the time of granting the registration. Regarding this, we find support and guidance from the judgment of Hon'ble Karnataka High Court given in the case of Director of Income Tax (Exemptions) vs. Garden City Educational Trust [2010] 191 Taxman 238 (Karn.), the Hon'ble Karnataka High Court held that registration cannot be refused merely because at the initial stage the trust has not carried out large-scale activities or only incurred administrative expenses. What is relevant is the intention to carry out

charitable activities as reflected from the trust's objects and initial activities. The relevant headnotes of the judgment are as detailed under;

"Section 12A, read with sections 2(15), 11 and 12, of the Income-tax Act, 1961 - Charitable or religious trust - Registration of - Whether so long as a trust has education as one of its objects which is one of enumerated heads which qualifies and comes within scope of charitable purpose as enumerated in section 2(15), it has to be accepted that trust is having a charitable purpose as its object and may qualify for claiming exemption in terms of sections 11 and 12 subject to fulfilling conditions enumerated therein and, if so, grant of registration, so long as procedural requirements are complied with, is inevitable - Held, yes - Whether manner of application of funds and as to whether assessee can claim benefit of exemption in terms of sections 11 and 12 are questions which have to be examined by Assessing Officer at stage when it is urged and not by Commissioner while considering application for grant of registration under section 12A - Held, yes"

10.4 Coming to the facts of the present case, the assessee has placed before the authorities, the trust deed evidencing its charitable objectives. There is no material brought on record by the Id. CIT(E) suggesting that the objectives are non-charitable or that the activities undertaken are not genuine. The allegation regarding cash withdrawals by a trustee, without any evidence of diversion for non-charitable purposes, cannot be held sufficient to deny registration. Further, regarding the allegation that the assessee has only meagre amount out of the gross receipt we find that it is not uncommon, especially in the initial stages, for trusts to incur preliminary administrative expenses for setting up operations, hiring personnel, and laying the groundwork for future charitable activities. It is also pertinent to note that the assessee for the A.Y. 2024-25 has accumulated an amount of Rs. 40 Lakh which constitute 81.55 % of income or receipt towards setting up "free training facility centre for skill development for poor and needy" which strengthened the above view.

10.5 In our considered opinion, the Ld. CIT(E) has adopted a highly technical and pedantic approach by focusing on the mode of expenditure rather than evaluating the genuineness of the objectives and the growing stage of the trust's activities. The assessee's explanation that it is in the process of setting up infrastructure and mobilizing resources for larger projects has not been found to be false or untrue.

10.6 Furthermore, the law prescribes that any violation regarding the actual application of income can be examined during the assessment proceedings, and appropriate action under the relevant sections read with Section 12AB can be taken, but such potential violations cannot be pre-judged at the registration stage.

10.7 Therefore, based on the facts and circumstances of the case, applicable legal provisions, and the judicial precedents referred to above, we hereby set aside the issue to the file of learned CIT(E) for fresh consideration of the assessee's application on in the light of above discussion and judicial precedence. Hence the grounds of appeal raised by the assessee are hereby allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Coming to ITA No. 106/Bang/2025, an appeal by the assessee

12. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the assessee's application for regularization of registration under section

12AB of the Act was also rejected by the learned CIT(E) on the same basis as adopted for rejection of application for regularization of registration under section 80G of the Act. The dispute regarding the rejection of registration under section 12AB of the Act has already been adjudicated vide paragraph No. 10 of this order, in the case of appeal bearing ITA No. 105/bang/2025. We note that the provision of section 12AB of the Act and section 80G(5) of the Act in relation to granting registration are pari-materia. Therefore, the finding given regarding the registration under section 12AB of the Act shall also be applicable on the issue on hand i.e. registration under section 80G(5) of the Act. We have the decided the issue of registration under section 12AB of the Act in the favour of the assessee for statistical purposes vide above mentioned paragraph. Hence following the same, the issue on hand is also allowed in the favour of the assessee for statistical purposes.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

14. In the combined result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in court on 13th day of May, 2025

Sd/-

(SOUNDARARAJAN K)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 13th May, 2025
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore