

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **3233/Chny/2024**
निर्धारण वर्ष / Assessment Year: **2025-26**

RKM Social Welfare Foundation, 52/101, Chamiers Road, R.A. Puram, Chennai – 600 028.	vs.	The Commissioner of Income Tax (Exemption), 121 Mahatma Gandhi Road Nungambakkam, Chennai.
[PAN: AAKCR-3307-A] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. N.C. Ravi Krishnan, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri. Shiva Srinivas, CIT.

सुनवाई की तारीख/Date of Hearing : 25.06.2025
घोषणा की तारीख/Date of Pronouncement : 11.08.2025

आदेश /ORDER

PER S. R. RAGHUNATHA, AM :

This appeal by the assessee is filed against the order of the learned Commissioner of Income Tax (Exemptions), Chennai, vide order dated 29.10.2024 in rejecting the application filed for registration u/s.12AB of the Income Tax Act, 1961 (in short "the Act").

2. The grounds raised by the assessee are as follows:

- 1) *The order rejecting registration under Section 12AB is erroneous and contrary to facts.*
- 2) *The learned CIT erred in holdings that the Appellant does not carry on charitable activities.*

- 3) *The learned CIT(Exemptions) ought to have appreciated that providing employment to local people displaced by a power project and utilising them for the purpose of rural development activities is charitable.*
- 4) *The learned CIT(Exemptions) ought to have appreciated that the activities carried on are of general public utility.*

4. Brief facts of the case are that the assessee is a section 8 company and was incorporated on 30.07.2020 with the object to promote social welfare, education, culture and arts and run programs for such purposes, to design and execute rural development programs, to promote the protection of the environment and undertakes programs for this purpose, eradicate hunger, poverty and malnutrition, promoting healthcare, promotion of education etc. In the Form 10AB dated 30.04.2024 also the foundation has mentioned its objects as relief of poor, education, medical relief, preservation of environment (including watersheds, forest and wildlife) and advancement of any other objects of general public utility. The Id.CIT(E) issued a notice dated 05.08.2024 Seeking certain details in support of the application filed inform 10AB for registration u/s.12AB of the Act. In response the assessee filed it's detailed reply on 04.10.2024 by providing the following details (Page No.15-30 of Paper book):

1. *The objectives of the company*
2. *Activities carried out the company*
3. *Details of the trustees*
4. *The CSR contribution received during the year 2021-22, 2022-23 and 2023-24.*
5. *The copy of provisional registration certificates u/s. 12A of the Act.*
6. *The details of application of fund. Etc.*

5. On perusal of the submissions and the audited financial statements of the assessee, the Id.CIT(E) rejected the application for registration as not maintainable and accordingly the registration u/s.12AB of the Act rejected by passing an order dated 29.10.2024 by holding as under:

*“Thus, it is evident from the above financial data and the submission of the applicant that neither the funding company nor the applicant has carried out any of such social welfare activities or charitable activities for the benefit of the general public but actually engaged in recruiting employees for its funding company **which is the nature of quid pro quo arrangement between the applicant foundation and its funding institution.***

6. From the above analysis, it is seen that the applicant is not engaged in any charitable activities and its activities does not fall under any limb as defined in section 2(15) of the Income Tax Act 1961. For brevity the same is reproduced as under:

The expression “charitable purpose” has been defined under Section 2(15) of the Income Tax Act 1961 to include:

- (a) relief of the poor,
- (b) education,
- (c) yoga,
- (d) medical relief,
- (e) preservation of environment (including water sheds, forests and wild life)
- (f) preservation of monuments or places or objects of artistic or historic interest and
- (g) advancement of any other object of general public utility

Further, the advancement of any other object of general public utility shall not be considered as charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless

- i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

7. The applicant trust activities cannot be held as education as it is not providing any service in the nature of education to general as per the decision of the Hon'ble Supreme Court in the case of Municipal corporation of Delhi Vs Children Book Trust held that the imparting of education must involve public benefit as to fall within the meaning of charitable object. Therefore, education to fall within the limb of "charitable purpose" under section 2(15) should be for advancement of public and not merely for few specific persons.

8. Since, the foundation is actually engaged itself as recruiting agency for its funding company (M/s. RKM Powergen Private Limited) which unable to face the resistance from local population against its coal based power project, the activities of the foundation cannot also be considered as preservation of environment as claimed by it in its written submission.

3.7. No General Public Utility:

Object of general public utility means an object of public utility which available to the general public as distinct from any section. In the instant case, the foundation is actually engaged in recruiting and training people for the benefit of its funding company

RKM Powergen Private Limited which is facing resistance from the local people against its coal based power project in Jangir Champa District, Chattisgarh.

Therefore, the foundation activities cannot also be considered of any other as advancement objects of general public utility. From the above, it can be concluded the applicant trust is not actually engaged charitable activities as defined section 2(15) of the Income Tax Act 1961.

*Considering all the above facts, the provisions of Act and the decision of the various judicial forums, it can be concluded that the applicant trust is not engaged in any charitable activities and has not substantiated its nature of activities as charitable with objects of Relief of poor, Education, **Medical relief, Preservation of environment (watersheds, forests and wildlife) and advancement of any other objects of general public utility.***

3.8. *Moreover, as explained in para 2 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 subclause (ii) or sub-clause (iii) or sub-clause (v) of section 12A(1)(ac) and the Principal Commissioner or Commissioner has not satisfied, he can reject the application as well as cancel the registration of the trust/institution.*

*In view of the above facts and circumstances of the case, the application in Form No. 10AB filed by the applicant on **30.04.2024** is not maintainable for the reasons stated above in para 3.1 to 3.8 of this order and accordingly the application filed by the applicant on 30.04.2024 in Form No. 10AB u/s. 12(1)(ac)(iii) seeking registration u/s.12AB of the I.T. Act, 1961 **is rejected.**"*

9. Aggrieved by the order of the Id.CIT(E), the assessee is in appeal before us.

The Id.AR for the assessee assailing the action of the Id.CIT(E), submitted that the assessee has been carrying out its activities according to the objectives in development of local villages and the people. The Id.CIT(E) has misunderstood the modus operandi of the activities of the trust and concluded that these activities are related to the employee expenditure of the business of the company which has given contributions of CSR funds to the assessee, wherein the trustee of the assessee is also a director of that company. The Id.AR further submitted that as per the CSR initiatives proposed by the CSR contributing company M/s.RKM Powergen Private Limited, the assessee employed the unskilled people residing locally to carry out rural development projects in Uchpinda, Kotmi, Singhtarai and other nearby villages, Jangir of Champa District, state of Chhattisgarh and activities includes afforestation, water conservation by desilting water bodies and tank bunds and repair works has

been carried out schools and dispensaries in and around the power plant and nearby villages.

10. Further, the Id.AR submitted the books of accounts of the assessee has been audited and same has been submitted to both Registrar of Companies and Income Tax department (page No.88 – 167 of the paper book). The Id.AR also stated that the assessee has submitted the complete the details before the Id.CIT(E) about the objectives of the assessee, activities carried out and the CSR initiative proposed by the CSR fund contributing Company (M/s.RKM Powergen Private Limited) as detailed below:

The assessee is funded by R.K.M Powergen Private Limited (RKM), which operated a coal based mega power plant in Jangir, - Champa District, State of Chhattisgarh. The project is unable to employ local people who lack the skills and education required. Such projects often face opposition from the local population, whose lands are acquired, water resources used, traffic on the roads etc without any corresponding benefits to them. It is advised that such projects should provide some employment opportunities to the local community, provide training facilities and undertake small welfare projects in the neighbourhood. RKM therefore funds the Foundation to undertake such projects.

The Foundation has employed a number of people from the neighbouring villages and identifies various carry out Rural Development Projects in Ucchpinda, Kotmi, Singhitarai and other nearby villages, Jangir, - Champa District, State of Chhattisgarh in consultation with the local district and municipal administration. The activities carried on includes afforestation, water conservation by desilting water bodies and tank bunds and repair works has been carried out schools and dispensaries in and around the power plant and nearby villages. The material required for the activities is provided by RKM and the labour is employed by the Foundation.

*While the expenditure of the Foundation is on salaries, these are not administrative expenditure but project expenditure. **The Ministry of Corporate Affairs (MCA) in its website has addressed some of the issues through Frequently Asked Questions (FAQ) about CSR:** "Administrative overheads are the expenses incurred by the company for 'general management and administration' of CSR functions. However, the expenses which are directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme, shall not be included in the administrative overheads. Administrative overheads **generally** comprise of items such as employee costs, utilities, office supplies, legal expenses, etc. **However, expenses which are attributed to the project implementation shall be included in project cost only.** For example, Salary and training for the employees working in the CSR division of a company, stationery cost, travelling expenses, etc. may be categorised as administrative overheads. **However, salary of school teachers or other staff, etc. for education-related CSR projects shall be covered under education project cost**".*

As per Section 2(15) of the Income Tax Act, charitable activities include relief of the poor, education, medical relief, the advancement of any other object of general public utility, and the preservation of the environment. The activities of the Foundation would constitute an object of general public utility.

Details of expenditure and income are given below:

CSR Contribution Received:

(Rs. In '000)

<i>Financial Year</i>	<i>Contribution received</i>	<i>Salaries</i>	<i>Other Expenses</i>	<i>Amount Spent</i>
<i>2021-2022</i>	<i>6,919.78</i>	<i>6900.70</i>	<i>22.81</i>	<i>6923.31</i>
<i>2022-2023</i>	<i>22,973.26</i>	<i>22433.10</i>	<i>107.35</i>	<i>32,540.45</i>
<i>2023-2024</i>	<i>23,529.07</i>	<i>23159.07</i>	<i>410.26</i>	<i>23569.33</i>

Foundation has further carried out Women self-empowerment activities such as conducting Training Program on Costume Jewellery Entrepreneurship, Mushroom farming in Kekarabhat village.

Details of CSR activities carried out in each village during the year Financial year 2022-23 and 2023-24 is attached as Annexure -1

Sample copies of works executed by foundation is attached as Annexure-2.

We shall be pleased to submit further particulars that may be required in this regard."

In light of the above arguments the Id.AR prayed for setting aside the order of the Id.CIT(E) and direct to grant the registration u/s.12AB of the Act.

11. Per contra the Id.DR relied on the order of the Id.CIT(E) and prayed for confirming the same as the Id.CIT(E) has considered the entire gamut of the objectives, activities and the related expenditure spent by the assessee before rejecting the application.

12. We have heard the rival contention perused the materials available on record and gone through the order of the Id.CIT(E) along with paper book filed by the assessee. The assessee is a section 8 company incorporated 30.07.2020 as a 'not for profit' company. The assessee was incorporated with the object to promote social welfare, education, culture and arts and run programs for such purposes, to design and execute rural development programs, to promote the protection of the environment and undertakes programs for this purpose, eradicate hunger, poverty and malnutrition, promoting healthcare, promotion of education etc. We find that the assessee has carried out its activities out of the CSR funds received from M/s.RKM

Powergen Private Limited. The CSR initiative of the company is to provide employment to the people of local and neighbouring villages, where the company is operating a coal based mega power plant in Jangir – Champa District in the state of Chhattisgarh. Since, the company was unable to employ local people who lack the skills and education required and such projects often face opposition from the local population, whose lands are acquired, water resources used, traffic on roads etc. without any corresponding benefits to them. To meet out the purpose providing the basic needs and required infrastructure for local villages, the company had initiated the CSR activities and accordingly the CSR funds have been contributed to the assessee regularly.

13. On perusal of the order of the Id.CIT(E), we find that the Id.CIT(E) has analysed the objects and activities of the assessee along with the nature of expenditure debited by the assessee to the income and expenditure account, project report submitted to the state by the CSR contributing company, common directors in the company and the assessee, came to conclusion that the assessee has engaged in providing the required employees to the CSR contributed company in exchange of contributions. However, we find that there is no evidence to draw such conclusions by the Id.CIT(E) and it is merely based on suspicion and surmises. Further, on perusal of the paper book page Nos.171 to 183, we find that the assessee has submitted the certain details of the activities carried out in respect of village concrete road construction, school building construction etc. and provided the supporting documents for the same.

In view of the above, we are of the considered view that the Id.CIT(E) has erred in drawing such conclusion to reject the application for registration u/s.12AB of the Act for the reason that the activities carried out is not in accordance with section 2(15) of the Act, and hence we are setting aside the order of Id.CIT(E) and remit the issue back

to the files of the Id.CIT(E) for examination of the activities carried out as per the details and documents provided by the assessee and decide the issue in accordance with law.

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

Order pronounced in the court on 11th August, 2025 at Chennai.

Sd/-

(मनु कुमार गिरि)
(MANU KUMAR GIRI)

न्यायिक सदस्य/Judicial Member

Sd/-

(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 11th August, 2025

RL

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF