

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.420 & 424/Lkw/2024
Assessment Year: 2024-25

RIT Incubator Foundation Himalyan Charitable Trust, 8 th Km. Dehradun Road, Puhana Bhagwanpur, Roorkee, Haridwar-247 667 PAN:AAMCR1740H (Appellant)	Vs.	CIT (Exemptions), Lucknow. (Respondent)
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Appellant by	Shri None
Respondent by	Shri Amit Kumar, Addl. CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) These two appeals have been filed by the assessee, against the impugned orders each dated 18/03/2024 passed by learned CIT (Exemptions), Lucknow under section 12AB(1)(b)(ii)(B) and under forth proviso to clause (ii)(b)(B) of section 80G(5) of the Income Tax Act, 1961 ("the Act" for short). The grounds raised by the assessee are as under:

I.T.A. No.420/Lkw/2024

The assessee is a company under the name of 'KIT Incubator Foundation' incorporated under section 8 of the Companies Act, 2013. The objective of the company is to set up and implement the

incubation centres with an objective of supporting innovative technology based startups, encourage research and innovation in the Indian and Overseas ecosystem and encourage creation of new technologies and protection through intellectual property rights.

The company has an incubation centre setup in the premises of roorkee institute of technology college which has been provided by the college itself. Apart from the incubation centre building premises, the internet and other facilities are also being provided by the RIT College. The students bring their own laptops and undertake research and development programmes in the incubation centre. These students come from different academic backgrounds for undertaking research and development in variety of subjects. No expenditure as such is required to be done for the same since the initial stage of innovative start-ups is generating new ideas through interaction and research work. As regards the infrastructure is concerned, for the research work, computer systems and internet facilities are required, which is already there. The commencement of activities of the company has already been done and the company is actively working in accordance with the fulfillment of its objectives. The small expenses relating to operations were expended as required.

The learned AO, without considering the nature of activities and objectives of the company, cancelled the registration on the basis that no expenditure has been incurred by the company and alleged that the activities of assessee are not as per the objects mentioned in Memorandum of Association. In this regard, we shall like to submit that the expenditure is not a pre-requisite for grant of approval under section 12A/80G. It is nowhere written that the approval shall be granted only if the expenditure has been incurred. There should be a commencement of the activities in accordance with the objectives of the institution, which is already being done. As regards the evidence of the same, we have already submitted the photographs of the institution in response to the notice issued by the learned A.O.

The learned AO also alleged that the assessee has failed to file supporting documentary evidences with regard to commencement of charitable activities as per object of Memorandum of association. However, during the course of inquiry, we had duly submitted the photographs of the incubation centre as documentary evidence. The learned AO without considering the above facts, doubted the genuineness of the activities, as per object of the Memorandum of association and assumed the activities are not as per the objects

mentioned in Memorandum of Association. The order passed by the learned AO is purely based on surmises and conjecture, without any verification of facts.

In our application, we had also mentioned to provide us opportunity of being heard in case of adverse inference. But the AO did not provide us any opportunity to explain the facts and establish the genuineness of the company which is working towards building future of the students and the nation as a whole, which is totally against the law of natural justice.”

I.T.A. No.424/Lkw/2024

"The assessee is a company under the name of 'KIT Incubator Foundation' incorporated under section 8 of the Companies Act, 2013. The objective of the company is to set up and implement the incubation centres with an objective of supporting innovative technology based startups, encourage research and innovation in the Indian and Overseas ecosystem and encourage creation of new technologies and protection through intellectual property rights.

The company has an incubation centre setup in the premises of roorkee institute of technology college which has been provided by the college itself. Apart from the incubation centre building Demises, the internet and other facilities are also being provided by the RIT College. The students bring their own laptops and undertake research and development programmes in the incubation centre. These students come from different academic backgrounds for undertaking research and development in variety of subjects. No expenditure as such is required to be done for the same since the initial stage of innovative start-ups is generating new ideas through interaction and research work. As regards the infrastructure is concerned, for the research work, computer systems and internet facilities are required, which is already there. The commencement of activities of the company has already been done and the company is actively working in accordance with the fulfilment of its objectives. The small expenses relating to operations were expended as required.

The learned AO, without considering the nature of activities and objectives of the company, cancelled the registration on the basis that no expenditure has been incurred by the company and alleged that

the activities of assessee are not as per the objects mentioned in Memorandum of Association. In this regard, we shall like to submit that the expenditure is not a pre-requisite for grant of approval under section 12A/80G. It is nowhere written that the approval shall be granted only if the expenditure has been incurred. There should be a commencement of the activities in accordance with the objectives of the institution, which is already being done. As regards the evidence of the same, we have already submitted the photographs of the institution in response to the notice issued by the learned A.O.

The learned AO also alleged that the assessee has failed to file supporting documentary evidences with regard to commencement of charitable activities as per object of Memorandum of association. However, during the course of inquiry, we had duly submitted the photographs of the incubation centre as documentary evidence. The learned AO without considering the above facts, doubted the genuineness of the activities, as per object of the Memorandum of association and assumed the activities are not as per the objects mentioned in Memorandum of Association. The order passed by the learned AO is purely based on surmises and conjecture, without any verification of facts.

In our application, we had also mentioned to provide us opportunity of being heard in case of adverse inference. But the AO did not provide us any opportunity to explain the facts and establish the genuineness of the company which is working towards building future of the students and the nation as a whole, which is totally against the law of natural justice."

(B) The appeal vide I.T.A. No.420/Lkw/2024 pertains to rejection of the assessee's application for grant of registration u/s 12A of the Act. The appeal vide I.T.A. No.424/Lk2/2024 pertains to rejection of the assessee's application u/s 80G of the Act.

(C) At the time of hearing the assessee was represented by none. In the absence of any representation from assessee's side, the learned D.R. was heard and materials on record were perused. The learned D.R. placed reliance on the impugned orders. We take up I.T.A. No.420/Lkw/2024 first. In the grounds of appeal, specific ground has been taken by the assessee

that reasonable opportunity was not given by learned CIT (Exemptions) while passing the impugned order dated 18/03/2024 rejecting the assessee's claim for registration u/s 12A of the I. T. Act. On perusal of the impugned order of learned CIT (Exemptions), it is found that indeed the learned CIT (Exemptions) passed the order without providing reasonable opportunity to the assessee. Therefore, the issue in dispute is restored back to the file of the learned CIT (Exemptions) with the direction to pass de novo order in accordance with law after providing reasonable opportunity to the assessee.

(D) The facts in respect of appeals in I.T.A. No. 424/Lkw/2024 are similar to the facts of aforesaid appeal I.T.A. No.420/Lkw/2024. The facts being same in *pari materia*, the appeal vide I.T.A. No.424/Lkw/2024 is also restored to the file of learned CIT (Exemptions) with the same direction as the same reasoning will apply mutatis mutandis in this appeal also.

(E) In the result, both the appeals are allowed for statistical purposes.

(Order pronounced in the open court on 05/02/2026)

Sd/.
(KUL BHARAT)
Vice President

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:05/02/2026

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. D.R. ITAT, Lucknow