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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 71/2026, CM APPL. 7260/2026**
COMMISSIONER OF INCOME TAX EXEMPTION

.....Appellant
Through: Mr. Gaurav Gupta, SSC, Mr.
Shivendra Singh and Mr. Yojit
Pareek, JSCs, Mr. Surya Jindal and
Ms. Sanya Jindal, Advs.

versus

SUKOON SP FOUNDATION

.....Respondent
Through: Mr. Anil Kumar Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

ORDER
23.04.2026

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CM APPL. 6512/2026 (delay in re-filing)

1. Present application has been filed by the applicant-appellant seeking condonation of delay of 184 days in re-filing the appeal.
2. For the reasons stated, the application is allowed. Delay of 184 days in re-filing the appeal is condoned.

CM APPL. 6511/2026 (delay in filing)

3. Present application has been filed by the applicant-appellant seeking condonation of delay of 98 days in re-filing the appeal.
4. For the reasons stated, the application is allowed. Delay of 98 days in re-filing the appeal is condoned.



ITA 71/2026 CM APPL. 7260/2026 (Stay)

5. By way of present appeal, the appellant has challenged the order dated 26.09.2024 passed by the Income Tax Appellate Tribunal, Bench “G” New Delhi (*hereinafter referred to as the ‘Tribunal’*) in ITA No. 2945 and 2946/Del/2024.

6. The brief facts appertain are that the respondent/assessee is a charitable trust that had filed an application dated 14.11.2023 in Form No.10AB seeking registration under Section 12A(1)(ac)(iii) of the Income Tax Act, 1961 (*hereinafter referred to as the “Act of 1961”*) and approval under Section 80G of the Act of 1961 before Commissioner of Income Tax (Exemption) (*hereinafter referred to as the ‘Commissioner’*).

7. During the course of proceedings, notices and questionnaire dated 21.12.2023, 24.01.2024 and 01.05.2024 were issued to the respondent calling upon it to furnish requisite details and documentary evidence in support of the genuineness of its activities. The Commissioner in his order dated 28.05.2024 noted in paragraph No. 3.1 that the assessee had failed to submit details of beneficiaries and confirmation from the said beneficiaries regarding the hearing-aids provided by the assessee-Trust to them. Consequently, the Commissioner, vide orders dated 28.05.2024 and 29.05.2024, rejected the applications for grant of registration and approval.

8. Aggrieved by the orders passed by the Commissioner, the assessee preferred appeals before the Tribunal, which, vide impugned order dated 26.09.2024, allowed the appeals holding that the replies filed by the assessee were not duly considered and the orders passed by the Commissioner were non-speaking. He however, proceeded to direct grant of registration and approval. Being aggrieved, the Revenue has preferred the present appeal.



9. Mr. Gaurav Gupta, learned Senior Standing Counsel for the appellant at the outset argued that the Tribunal has committed a serious error of law in allowing the appeal and issuing direction to grant registration of the assessee under Section 12AB of the Act of 1961 and approval under Section 80G of the Act of 1961.

10. Learned counsel for the respondent on the other hand submitted that a perusal of the order of the Tribunal reveals that the respondent/Trust had furnished various documents, which led the Tribunal to conclude that respondent/Trust is a genuine entity and thus, no fault can be found in the impugned order.

11. Upon hearing learned counsel for the parties, we feel that the following substantial question of law arises for our consideration in the present appeal:

- (i) *Whether in the facts of the present case, the Tribunal was justified in directing the CIT Exemption to grant registration under Section 12AB and Section 80G of the Act of 1961 or it should have remanded the matter back to the CIT Exemption?*

12. A simple look at para nos.1 to 3.1 of the orders of the Commissioner dated 28.05.2024 and 29.05.2024 reveals that multiple opportunities were granted to the respondent/Trust and though various letters were sent but requisite information was not furnished before him, for the reasons best known to the respondent/Trust. Hence, rejection of respondent's application for seeking registration under Sections 12AB and 80G of the Act of 1961, did not suffer from any infirmity, as he could not have allowed the same without the requisite information and scrutiny.

13. Surprisingly, while hearing the appeal, the Tribunal recorded that the



respondent/Trust has produced various documents, which show that the activities of the Trust are genuine. The view taken by the Tribunal that at the time of registration, the Commissioner is required to examine the genuineness and not whether the Income of the Trust is spent towards charitable/religious purposes is *ex-facie* erroneous.

14. While allowing the appeals, the Tribunal held that the rejection of the assessee's application by the Commissioner was primarily on the ground of non-response to notices and failure to furnish requisite documents. However, it has been recorded by the Commissioner that the assessee had, in fact, responded to the notices dated 24.01.2024 and 01.05.2024. The Tribunal has further held that the orders passed by the Commissioner were non-speaking in nature and that no adverse material had been brought on record to doubt the genuineness of the assessee's charitable activities, particularly in light of the provisional registration already granted under Section 12A of the Act of 1961. On this basis, the Tribunal directed grant of registration and approval under the Act of 1961.

15. The issue at hand has been dealt with by this Court at length in the judgment rendered in the case of ***Commissioner of Income Tax – Exemption v. Kush Innovative Foundation*** [ITA 115/2026 decided on 12.02.2026], the relevant portion of which reads thus:

“10. The issue involved in the present case cannot be appropriately adjudicated unless we take note of Sections 12A and 12AB of the Act of 1961.

11. As per the existing scheme, while Section 12A is a basic provision stipulating conditions of applicability of Sections 11 and 12, Section 12AB of the Act of 1961 provides for procedure for Registration for 5 years and for Provisional Registration.

12. So far as Section 12AB(1)(b) is concerned, it provides for



Registration for 5 years while Section 12AB(1)(c) is meant to give Provisional Registration for a period of 3 years. It will not be out of context to reproduce relevant part of Sections 12AB(1) and 12A of the Act of 1961 so as to make a comparative analysis:

	FRESH REGISTRATION [FOR 5 YEARS]	PROVISIONAL REGISTRATION [FOR 3 YEARS]
<u>Application</u>	Application under Section 12A(1)(ac)(iii) [as applicable in the present case]: ...(iii) where the trust or institution has been provisionally registered under section 12AB [or provisionally approved under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10], at least six months prior to expiry of period of the provisional registration [or provisional approval, as the case may be,] or within six months of commencement of its activities, whichever is earlier;...	Application under Section 12A(1)(ac)(vi)(A): (vi) in any other case, where activities of the trust or institution have— (A) not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought;...
<u>Enquiry</u>	Enquiry under Section 12AB(1)(b) [as applicable in the present case]: (b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) [or item (B) of sub-clause (vi)] of the said clause,— (i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about— (A) the genuineness of activities of the trust or institution; and	Enquiry under Section 12AB(1)(c): [(c) where the application is made under item (A) of sub-clause (vi) of the said clause or the application is made under sub-clause (vi) of the said clause, as it stood immediately before its amendment vide the Finance Act, 2023, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought,].....



	<i>(B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;.....</i>	
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13. In the case in hands, the application was filed by the Respondent under Section 12A(1)(ac)(iii) which is covered under Section 12AB(1)(b) of the Act of 1961. Hence, the Tribunal was required to undertake the requisite inquiry and then record a finding about genuineness of activities of the respondent/Trust so also regarding the compliance under other laws to be made by the respondent/Trust in order to achieve its objects. And since such finding has not been recorded by the Tribunal and a sweeping direction granting registration under Section 12AB and 80G of the Act of 1961 has been given, the order impugned cannot be sustained.

14. That apart, when it comes to registration under Section 80G of the Act of 1961, the situation is starkly different. Because, it entails a benefit of deduction to the extent of 50% of the donation to the payer and for such purpose, the genuineness of the trust's activities is certainly a mandatory requirement and not simply a relevant consideration. In absence of an inquiry and finding as to whether the activities being carried out by the Trust are bonafidely charitable, the registration under Section 80G of the Act of 1961 cannot be granted."

16. In light of the above judgment rendered in ***Kush Innovative Foundation (supra)*** and looking at the factual matrix of the case in hand, which is identical to the issue which has been put to rest in ***Kush Innovative Foundation (supra)***, we answer the question of law framed by this Court in negative.

17. The Tribunal was not justified in granting registration under Section 12A(i)(ac)(iii) and approval under Section 80G of the Act of 1961; it ought to have remanded the matter to the Commissioner to examine the case afresh.



18. The matter is thus remanded to the Commissioner to decide the respondent's/Trust's application in accordance with law after conducting requisite inquiry into the activities of the Trust within the parameters of the Act of 1961. The Commissioner to do the needful, preferably within a period of three months of the date of receipt of a certified copy of the order instant, which the respondent/Trust shall place before the Commissioner.

19. Needless to observe that we have not commented upon merit or otherwise of the entitlement or the nature of the activities of the respondent/Trust, which shall naturally be considered by the Commissioner in accordance with law.

20. The appeal stands disposed of in the aforesaid terms along with pending application.

DINESH MEHTA, J

VINOD KUMAR, J

APRIL 23, 2026/ss