



2026:DHC:9465-DB



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

% ***Date of decision: 15th October, 2026***

CNR No. DLHC010108232026

+ ITA 225/2026 & CM APPLs. 17710/2026, 17712/2026

CNR No. DLHC010108242026

+ ITA 226/2026 & CM APPLs. 17713/2026, 17715/2026

PR COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI
.....Appellant

Through: Mr. Shlok Chandra, SSC with Ms.
Naincy Jain, JSC, Mr. Ujjwal Jain &
Mr. Udit Dad, Adv.

versus

ORIENTALS ARDAAS FOUNDATION DELHI Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr.
Abhishek Singhvi, Adv.

CNR No. DLHC010082042026

+ W.P.(C) 2993/2026

CNR No. DLHC010082632026

+ W.P.(C) 3012/2026

ORIENTALS ARDAAS FOUNDATION Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr.
Abhishek Singhvi, Adv.

versus

COMMISSIONER OF INCOME TAX (EXEMPTIONS), DELHI
.....Respondent

Through: Mr. Shlok Chandra, SSC with Ms.
Naincy Jain, JSC, Mr. Ujjwal Jain &
Mr. Udit Dad, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE DR. JUSTICE ADITI CHOUDHARY



J U D G M E N T

DINESH MEHTA, J. (ORAL)

1. The present appeal under Section 260A of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*), is directed against the order dated 20.08.2025 passed by the Income Tax Appellate Tribunal, Delhi Benches: E: New Delhi (*hereinafter referred to as 'the Tribunal'*) in ITA nos. 5079 & 5078/Del/2024, whereby the Tribunal allowed two appeals filed by the respondent-assessee against orders dated 28.09.2024 passed by the Commissioner of Income Tax (Exemption), Delhi (*hereinafter referred to as 'CIT(E)'*) under Section 12AB(1)(b)(ii)(B) and 80G(5)(iii)(B)(b) of the Act of 1961.
2. The respondent-assessee, a Company incorporated under Section 8 of the Companies Act, 2013, applied for registration under Section 12A(1)(ac)(iii) of the Act of 1961 so also for registration as an eligible institution to receive donations on which deductions under Section 80G(5)(iii) of Act of 1961 is permissible.
3. While rejecting the applications so filed by the respondent-assessee by two separate orders dated 28.09.2024, the CIT(E) had observed that the nature of the activity of the respondent-assessee appears to be of commercial in nature, as the respondent-assessee would be charging rent for the accommodation to be provided to the occupants on rental basis or there shall be outright sale of the units.
4. The Tribunal heard both the appeals together and after dealing with the object clauses, other relevant material and project proposal of the respondent-assessee concluded that the CIT(E) has erred in recording above finding. The Tribunal held that inference drawn by the CIT(E) was incorrect,



inasmuch as, it was too early to draw such an inference regarding the commercial nature of the activities, more particularly, when the activities had not yet commenced.

5. The Tribunal relied upon the material placed on record by the respondent-assessee and set aside the order passed by the CIT(E) and directed the CIT(E) to approve the applications of the respondent-assessee.

6. Mr. Shlok Chandra, learned Senior Standing Counsel for the appellant argued that the Tribunal has committed an error of law in allowing the appeals so filed by the respondent-assessee. He argued that the CIT(E) had rightly rejected the applications filed by the respondent for registration under Section 12A(1)(ac)(iii) of the Act of 1961, inasmuch as the respondent-assessee had taken a stand that it would be charging rental for the accommodation to be provided.

7. He further submitted that the possibility of the respondent outrightly selling the units has also been expressed by the CIT(E), and therefore, the finding that the activities of the respondent-assessee were commercial in nature was correct and infallible. He submitted that the respondent's project is still underway and unless the project is complete and the same is put into place and practice the operations actually commence, it cannot be said with certitude that the respondent-assessee would be operating for charitable purposes.

8. Mr. Ajay Vohra, learned Senior Counsel submitted that objects of an organization has to be gathered from the intentions and motives for which it has been conceived and established. He submitted that the same can be discerned from its memorandum of association, constitution and the project. He added that a project takes years to become a reality and simply because



the representative of the respondent-assessee had stated that they have not fixed the amount to be charged from the occupants, it was not fair to infer that the respondent would be operating on commercial basis.

9. He argued that the findings of the CIT(E) that the respondent would be outrightly selling the units is based on no evidence. He submitted that the respondent-assessee has filed an affidavit/undertaking before this Court that it would not be outrightly selling the units to any of the occupants so as to ward off the possibility or apprehension of the units being sold resulting into commercial activity of any sort.

10. Heard learned counsel for the parties.

11. So far as issue relating to registration under Section 12A(1)(ac)(iii) of the Act of 1961 is concerned, according to us, contention of Mr. Ajay Vohra, learned Senior Counsel, is correct that it has to be seen at the first instance, when the charitable organization or trust is in offing – its objects, project report and the purpose for which it is being established are to be seen. At that stage, the CIT(E) cannot say with certitude as to whether the trust or the non-profit making company would carry on commercial activities or not. The mere fact that some charges would be recovered or some amount would be charged for the accommodation to be provided or services to be rendered does not by itself mean that the operations would be on commercial basis. Charging a partial, subsidised or concessional amount is also a kind of charitable activity, because charitable activity does not necessarily mean that services have to be given for free.

12. The CIT(E) has therefore, erred in rejecting the respondent's applications for grant of registration under Section 12A(1)(ac)(iii) of the Act of 1961, more particularly, when the assessee has filed an undertaking



before us that they would not be outrightly selling the units to the occupants.

13. We therefore reject revenue's appeal so far as the Tribunal's direction *qua* grant of registration under Section 12A(1)(ac)(iii) of the Act of 1961 is concerned.

14. So far as the Revenue's appeal against the Tribunal's order relating to Section 80G(5)(iii) is concerned, we are of the view that the same merits acceptance.

15. The parameters applicable for grant of registration under Section 12A of the Act of 1961 and those applicable for grant of approval under Section 80G of the Act of 1961 are quite different. Registration under Section 12A involves a preliminary examination of the objects of the trust or institution as it only entails registration of trust.

16. Whereas, inquiry under Section 80G is slightly deeper, as the same results in various benefits to a trust such as the donation received by it grants an exemption to the donor under Section 80G of the Act of 1961 and to a trust applied for registration under third proviso of Section 80G(5) of the Act of 1961.

17. The Tribunal in the instant case has dealt with the material available with it which was confined to the project proposal and based on such project proposal, the Tribunal issued direction not only to grant the registration under Section 12A(1)(ac)(iii) but has also issued direction to grant registration under Section 80G(5)(iii) of the Act of 1961, which could not have been granted.

18. Without any inquiry by the competent authority, i.e., the CIT(E), the Tribunal while exercising its appellate powers as a fact-finding authority, could not have done so. There was no material to upturn the finding relating



to exemption under Section 80G of the Act of 1961.

19. Pertinently, the CIT(E) had rejected the application under Section 80G(5)(iii) of the Act of 1961, because he had rejected application under Section 12A(1)(ac)(iii) of the Act of 1961. Rejection of application under Section 12A of the Act of 1961 as a necessary corollary lead to rejection of application under Section 80G of the Act of 1961, but its acceptance does not result in automatic acceptance of application under Section 80G of the Act of 1961. In other words, simply because an application of a trust is accepted under Section 12A, as a sequitur, its application under Section 80G of the Act of 1961 is not going to be allowed. To be entitled to have a registration under Section 80G of the Act, a trust has to fulfil prerequisites under 3rd proviso to Section 80G(5) of the Act of 1961 and unless such inquiry is conducted, a direction, in our view, could not have been issued.

20. We, therefore, set aside the impugned order of the Tribunal dated 20.08.2025 passed in appeal number 5078/Del/2024 relating to Section 80G of the Act of 1961.

21. The matter is thus, restored back to the dockets of the CIT(E). The CIT(E) is directed to decide the application in accordance with law within a period of 30 days of placing a certified copy of the order instant.

22. The assessee shall be free to place a certified copy of the order instant along with a detailed representation placing any other material which it seeks to rely on.

23. The writ petitions filed by the petitioner are disposed of by directing the CIT(E) to grant registration under Section 12A(1)(ac)(iii) of the Act of 1961 forthwith and insofar as application for registration under Section 80G(5)(iii) of the Act of 1961 is concerned, the same be decided as already



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directed hereinabove.

24. Pending applications are also disposed of accordingly.

(DINESH MEHTA)
JUDGE

(ADITI CHOUDHARY)
JUDGE

OCTOBER 15, 2026/sid