

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER
I.T.A. No.343/SRT/2018: Assessment Year:**

Sirvi Samaj Gujarat (Surat), Aai Mata Chowk, Aai Mata Road, B/h Auto Point, Parvat Patia, C/O 2015 North Extension Market, Near Sahara Darwaja, Surat PAN: AABTS 8171M	Vs.	Commissioner of Income-tax (Exemptions) Ahmedabad
Appellant		Respondent

Assessee by	Shri P.C. Choudhary, CA
Revenue by	Shri Prasenjit Singh, CIT(D.R.)
Date of hearing	21.02.2019
Date of pronouncement	25.02.2019

ORDER

PER O. P. MEENA, AM

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Exemptions)-Ahmedabad (in short “ CIT (E)”) dated 27.02.2018 denying the approval under section 80G(5) of Income Tax Act,1961 (of the Act).

2. **Though the assessee trust has raised as many as 6 grounds of appeals, but in sum and substance these states that on the facts and circumstances of the case and as well as in law, the learned Commissioner of Income Tax (Exemption) has erred in rejecting Application in Form No.10G filed on 10.08.2017 and thereby denying the approval under section 80G of the Act on the ground that Notes on Activities was not furnished in application. Though the same was attached as Annexure thereto and same were furnished vide submissions dtd. 24.01.2018.**

3. Succinctly, facts are that the assessee is a Trust was constituted by indenture of Trust Deed and was registered under Bombay Public Trust vide Registration No. F-547/SURAT dated 21.08.1990 and also registered under Society Registration Act with the Charity Commissioner, Surat vide Registration No. Gujarat/642/Surat certificate dated 21.08.1990. The trust is also registered under section 12A of the Act vide Registration No. 110-1519-S/96-97 dated 01.04.1995. The assessee Trust has filed an application for approval under section 80G(5) of the Act on 10.08.2017 in Form No. 10G under Rule 11AA of the Act, before CIT(E) Ahmedabad. The CIT(E) vide letter dated 28.09.2017 has asked the assessee to furnish detailed notes on the activities actually carried out by the Trust as well as the documents/ details. The CIT(E) was of the view that as per provisions of Rule 11AA(2), the assessee has to be submit activities of institution of fund since inception or during last three years. However, the assessee has not furnished any reply on given date. Therefore, one more final opportunity was given vide letter dated 10.01.2018 fixing date of hearing on 23.01.2018. However, the assessee trust made part compliance on 24.01.2018 and 09.02.2018. Therefore, the CIT (E) observed that application is being disposed-off on the basis of material available on record. The CIT(E) has observed that perusal of income and expenditure account shows that rulings expenses debited in F.Y. 2013-14 and 2014-15 are more than 5% of total receipts hence, hit by provisions of section 80G(5B). Further the trust is in receipt of hundi donation but no details furnished Therefore, CIT(E) has concluded that before granting approval under section 80G(5), the CIT(E) has to satisfy himself about the genuineness of the activities of the trust or institute. Reliance was placed in the case of Hardayal Charitable and Educational Trust v. CIT-II, Agra 150 TTJ 384 (Agra). As the applicant has failed to file any documentary evidence to satisfy about the genuineness of the activities and to verify, the activities are in consonance with its object. Accordingly, application in Form No. 10G for approval under section 80G (5) of the Act was rejected.

4. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned Counsel submitted that the CIT (E) rejected the application on the

ground that the assessee has not appeared on given date. However, the main reason for nonattendance was that the said notice was received on the same day when hearing was scheduled; therefore, it was not possible for the assessee to attend the hearing from Surat at Ahmedabad on same day. However, the assessee has appeared and submitted the required details on next day i.e. 24.01.2018 during the year, which is sufficient compliance of the said notice. It was also alleged that application was rejected on the ground that that list of beneficiaries was not submitted but the said list was not specifically called for. The assessee has submitted audited copies of income and expenditure account and balance sheet of last three years showing clearly application of income and same were considered by the CIT(E) in his order. The activities of trust were carried on in accordance with the objects of the trust cited in the constitution and all the activities mentioned were charitable in nature. The CIT(E) need not to go in detail to verify the activities at the time of grant of Recognize under section 80G of the Act and he has to see only whether any object is against charitable purpose. The Ld. CIT(E) has wrongly clarified expenses of religious and hundi collection. The learned counsel for the assessee submitted that the total receipts are at Rs. 29,83,686 for the financial year 2015-16 on which religious expenditure was incurred as Nil. Similarly in F.Y. 2016-17, total receipt were at Rs. 33,24,886 and expenditure incurred was at Rs. 36,340 which comes to 1.09% and during F.Y. 2017-18, total receipts were at Rs. 32,09,547 and religious expenses were at Rs. 40,530 which comes to 1.26% of total receipts. Thus, the religious expenditure were below 5% of total receipts as per provisions of the Act, hence there is no contravention to section 80G of the Act. Thus, receipts were not exceeded but Ld. CIT(E) has considered wrong figure and arrived at incorrect conclusion. Further, there is no restriction on income but restriction of 5% of total receipts is applicable in respect of expenses. The Ld. Counsel, further without prejudice, though expenses exceeded 5% limit in past year, the application of recognition under section 80G is prospective and not be considered at the time of granting registration under section 80G of the Act in current year. The test is applicable for deciding to allow continuation of

exemption in particular year and not for granting fresh recognition under section 80G of the Act. Thus, the assessee trust has complied with the requirement vide letter dated 24.01.2018 and 09.02.2018, therefore, allegation that the assessee has not complied with query letters of the CIT(E) is not seems to be correct. The decision in the case of Hardayal Charitable and Educational Trust v. CIT-II, Agra 150 TTJ 384 (Agra) is not applicable as in that case the trust established for carrying out commercial activities of running school and construction of building which is not the case of the assessee. Therefore, it was contended that while granting registration under section 80G, the CIT(E) is required to see only the object of the assessee trust /society and not to examine the application of income hence, recognition under section 80G(5) could not be denied simply because the assessee did not produce relevant details for verification of its activities.

5. Per contra, learned CIT(D.R.) supported the order of the CIT(E).

6. We have heard the rival submissions and perused the relevant material on record. We find that the CIT(E) has denied the registration under section 80G(5) on the ground that the request details not filed and expenditure exceeded 5% of total receipts. We find that the Trust was constituted by indenture of Trust Deed and it was registered with the Charity Commissioner, Surat. It is also an undisputed fact that the Trust has been registered under section 12A of Income Tax Act. We also notice that the assessee trust has filed income and expenditure account for the last three financial year i.e. 2015-16 to 2017-18 showing that the religious expenditure did exceed the 5% of total receipts as evidenced from details appearing at Paper Book Page No. 56, 61, and 66. Therefore, there is no contravention of provisions of section 80G(5B) of the Act. It appears that the Ld. CIT(E) has seems to have wrongly taken the figures. Even otherwise, if the expenses exceeded 5% limit in past year, the application of recognition under section 80G the same cannot be considered at the time of granting registration under section 80G of the Act in current year being prospective in nature. This test is applicable for deciding to allow continuation of exemption in particular year and not for granting fresh recognition under section 80G of the Act. The

decision in the case of Hardayal Charitable and Educational Trust v. CIT-II, Agra 150 TTJ 384 (Agra) is not applicable as in that case the trust established for carrying out commercial activities of running school and construction of building which is not the case of the assessee. In view of above, we find that recognition under section 80G of the Act does not involve enquiry into the actual activities or application of funds, etc. Therefore, at this stage, the only enquiry required to be conducted was with respect to the object of the trust alone. The details called for by the CIT(E) pertained to matters that may be examined at the stage of assessment. At that stage, if the assessee were to be found to have actually engaged in any non-charitable activity, the benefit of exemption may be denied at that stage in the manner provided by the Act. Our view are supported by the judgement of Hon`ble Supreme Court in the case of CIT v. Babu Ram Education Society [2018] 96 taxmann.com 606 (All) in which SLP has been dismissed by the Hon`ble Supreme Court reported in [2018] 96 taxmann.com 607 (SC) wherein it was held that registration of trust does not involve enquiry into actual activities or application of funds etc. and that stage, only enquiry required to be conducted is with respect to object of trust alone. In the light of above, in our opinion, Ld. CIT(E) was not justified in denying the registration under section 80G(5) of the Act. In view of these facts and circumstances, we direct the Ld. CIT(E) to grant the assessee recognition/ approval under section 80G of the Act from the date of application made by the assessee trust.

7. In the result, the appeal of the assessee stands allowed.

8. The order pronounced in the open Court on 25.02.2019

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 25th February, 2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of
ITAT.

By order

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Assistant Registrar, Surat