

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, AHMEDABAD**

*(Convened through Virtual Court)*

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1917/Ahd/2018

(निर्धारण वर्ष / Assessment Year : NA)

<b>Shree Umiya Mataji Sansthan</b> At & P.O. Rajpur, Ta. Kadi, Dist. Mehsana (NG)	<b>बनाम/</b> Vs.	<b>Commissioner of Income-Tax (Exemptions)</b> Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAETS2892L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri U. S. Bhati, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri O. P. Sharma, CIT.DR

सुनवाई की तारीख / Date of Hearing	15/02/2021
घोषणा की तारीख /Date of Pronouncement	16/06/2021

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the assessee against the order dated 19.06.2018 passed by the Commissioner of Income Tax (Exemptions), Ahmedabad ('CIT(E)' in short), under s. 80G(5) of the Income Tax Act whereby the registration sought under s.80G(5) of the Income Tax Act, 1961 (the Act) for registration of trust was declined.

2. The ground of appeal raised by assessee read hereunder:

- “1.0 *The learned Commissioner of Income-tax (Exemptions) erred in law and on facts in rejecting the application in Form No.10G for approval u/s 80G(5) of the Income Tax Act, 1961.*
- 2.0 *The learned Commissioner of Income-tax (Exemptions) erred in law and on facts in concluding that the appellant trust had incurred more than 5% of its total income in respect of religious purposes from the F.Yr.2014-15 to 2017-18 and therefore trust is not eligible for approval u/s 80G(5) of the Income Tax Act, 1961.*
- 3.0 *The ld. Commissioner of Income-tax (Exemptions) erred in law and on facts in arriving at the conclusion that in absence of complete Form No. 10G, he was unable to satisfy about the genuineness of the activities of the appellant trust and whether the same were in consonance with its object despite the fact that he had himself passed order u/s 12AA in the case of the appellant trust on 12<sup>th</sup> June, 2018.*
- 4.0 *The ld. Commissioner of Income-tax (Exemption) erred in law and on facts in not providing proper opportunity to the appellant trust before disposal of the application.”*

3. Briefly stated, the assessee trust applied for registration under s.12AA of the Act, which was received vide order dated 12.06.2018 from the CIT(E), Ahmedabad. As a sequel thereto, the assessee applied for approval under s.80G(5) of the Act in prescribed Form No. 10G before the CIT(E), Ahmedabad for the purposes of availing exemption under s.80G of the Act. In the course of the proceedings before the CIT(E), it was noticed by him that activity of the assessee are religious in nature and the expenditure incurred in religious activities have exceeded the threshold limit of 5% of the total receipts set out in 80G(5B) of the Act for F.Y. 2014-15, 2015-16 & 2016-17. The CIT(E) also *inter alia* observed that the assessee has failed to adduce documentary evidences to satisfy him about the genuineness of its activities as also whether these activities are in consonance with its stated objects. Consequently,

the CIT(E) came to the conclusion that the trust does not meet the requirements of law for approval under the provisions of Section 80G(5) of the Act. Consequently, the CIT(E) denied the approval under s.80G(5) of the Act sought by the applicant trust.

4. Aggrieved, the assessee trust preferred appeal before the Tribunal.

5. When the matter was called for hearing, the learned counsel for the assessee, Mr. Bhati, submitted that the whole action of the CIT(E) is perfunctory and without due application of mind. Inviting our attention to the impugned order of rejection in challenge, the learned counsel referred para no.3 of its order whereby an averment was made that the main object to the trust is religious in nature claimed to be stated by the assessee. The learned counsel thereafter adverted to a corrigendum to order under s.80G(5) of the Act dated 10.09.2018 wherein the CIT(E) himself has deleted para no.3 of the main order on the grounds of inadvertent mistake. The learned counsel pointed out that when the main order and the corrigendum thereto read in tandem, it will be apparent that a fundamental mistake was committed in the main order and the whole adjudication process was proceeded on the premise that the trust is religious in nature which mistake has a direct bearing on the conclusion drawn adverse to the assessee. While the fundamental mistake in para no.3 was cured by its omission by way of corrigendum, the erroneous conclusion however continued. The learned counsel thereafter referred to a tabulated statement reproduced at page no.3 of the impugned order under s.80G(5) of the Act and pointed out that the nature of expenses incurred by way of Mandir Rasoda expenses (Rs.7.26 Lakhs), Mandir Nibhav expenses (Rs.4.65 Lakhs), Kayami Poonam expenses (Rs.0.84 Lakhs), Pagpada Sangh expense

(Rs.11,000/-) & Stationary expenses (Rs.39,991/-) out of total expenses incurred amounting to Rs.13.37 Lakhs has not been controverted by the CIT(E). It was thereafter submitted that these expenses have been held to be expenses not akin to religious expenses in several judicial precedents. The learned counsel referred to the decision of *Shiv Mandir Devsttan Panch Committee Sanstan vs. CIT-1, Nagpur [ITA No.223/Nagpur/2009 dated 11.10.2012]* for the proposition that free food expenses (Rasoda Expenses), Building maintenance expenses etc. do not fall within the ambit of religious activities. The learned counsel thus submitted that when the proposition laid down in the decision of the co-ordinate bench is applied to the facts of the case, the expenses incurred for religious activities would be less than 5% of income and consequently the request for approval under s.80G of the Act cannot be denied in the facts of the case. The learned counsel finally submitted that registration under s.12AA of the Act granted by the CIT(E) has not been disturbed and is continuing to be effective till date. Thus, the whole purpose of registration would be rendered infructuous sans the approval under s.80G of the Act. The learned counsel accordingly urged for a direction to the CIT(E) to revisit the factual position and grant approval under s.80G of the Act as sought.

6. The learned DR for the Revenue, on the other hand, relied upon the order passed under s.80G(5) of the Act sought to be assailed by the assessee.

7. We have carefully considered the rival submissions and material placed and adverted to in terms of Rule 18(5) Income Tax (Appellate Tribunal) Rules, 1963. As pointed out on behalf of the assessee, para 3 of the order of the CIT(E) seeks to proceed on

premise that assessee trust is religious in nature in exclusion to other activities. However, the CIT(E) himself has dislodged this assumption in the corrigendum issued thereafter. Thus, the very premise that the assessee is religious in nature in pith and substance is shaken to its roots. The findings of the CIT(E) appears to have proceeded on this very premise. Thus, the whole conclusion derived on a shaky ground is damp squib in the absence of any definite fact in this regard. Consequently, the second plea raised on behalf of the assessee that certain expenditure tabulated in page 3 of the CIT(E)'s order fall outside the ambit of religious activity is not being examined at this stage. No such plea has been dealt with by CIT(E). If the plea raised on behalf of the assessee having regard to the nature of expenses is found to be true, the threshold limit of incurred expenditure not exceeding 5% of its total income as stipulated under s.80G(5B) of the Act will not be breached and therefore the adverse inference drawn against the assessee trust would not be sustainable in law.

8. Thus, in totality, it is considered expedient with the order of the CIT(E) dated 19.06.2018 is set aside and the entire matter is restored back to the file of the CIT(E) / Competent Authority for *de novo* consideration in the light of facts available on record as well as fresh facts that may come to the light or pointed out to him by the assessee trust. Needless to say, it shall be open to the assessee trust to place all arguments and evidences in corroboration, as may be deemed necessary, in support of its application for approval 80G of the Act pending before the Competent Authority. Pertinent here to observe that the fair opportunity shall be granted to the assessee trust before coming to the conclusion as directed. The Competent Authority shall make every possible endeavor to dispose of the application for approval under s.80G of the Act in question within 3

months from the date of service of this order. The assessee trust shall extend full co-operation in speedy disposal of the matter without any demur.

9. In the result, appeal of the assessee is allowed for statistical purposes.

**This Order pronounced on 16/06/2021**

Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT

Ahmedabad: Dated 16/06/2021

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

*True Copy*

*S. K. SINHA*

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।