

**In the Income-Tax Appellate Tribunal,
Amritsar Bench, Amritsar**

**Before : Shri Laliet Kumar, Judicial Member And
Dr. Mitha Lal Meena, Accountant Member**

ITA No. 530/Asr/2009

Shirmoni Gurdwara Parbandhak Committee Teja Singh Mundri Hall Sri Amritsar PAN:AANTS1981K (Appellant)	V.S.	CIT – I Amritsar (Respondent)
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Appellant by	Shri Prem Singh, Advocate, Sh GS Syal, CA, Sh TS Aurora, Advocate and ShGunjeet S Syal, Advocate
Respondent by	Smt. Rajindra Kaur, D.R.

Date of Hearing	14.07.2021
Date of Pronouncement	16.08.2021

ORDER

Per Laliet Kumar, J.M.

1. That the present appeal is filed by the Assessee aggrieved by the Order passed by the CIT-1, Amritsar for the following grounds:-

GROUND

1. That the Ld. Commissioner of Income Tax has erred in rejecting application filed u/s

- 80G of Income Tax Act without any justification.
2. That it is wrong to hold that dominant object of SGPC is religious in nature.
 3. That explanations and submissions of the appellant should have been considered in the proper context.
 4. That it is illegal to hold that the appellant was covered under clause (III) of section 80G(v).
 5. That the facts mentioned in the Order u/s 80G are patently wrong and are thus challenged.
 6. That proper opportunity should have been allowed in the legal manner.
 7. That Order is against law and facts of the case.
 8. Any other ground pressed at the time of hearing.
2. At the outset, the Ld. AR for Assessee drawn attention to the Order passed by the CIT-1 and our attention was drawn to the following paragraphs:-
- 2.1 As per application in form no.10G dated 27.12.2007 and the brief introduction on constitution & activities of the SGPC, Amritsar appended thereto, the SGPC is a body created under the Sikh Gurdwara Act, 1925 which was enacted for administration of Sikh Gurdwaras. The Assessee S.G.P.C.' never made a claim for registration under section 12AA of the I.T. Act, 1961 since the income has been claimed to be exempt under section 10(23BBA) of the IT.Act, 1961.

2.2 Based upon above factual matrix, it was argued that the SGPC is engaged' in number of charitable activities. It has been submitted that it has established and/ or aided number of educational institutions, hospitals, langars and sarais, whose objectives are not only to cater to „distinction of caste, colour and creed. In support of their contention, they have provided a list of such institutions and the detail of expenditure incurred by them after getting aid from the SG PC. It was further submitted by them that the SGPC was also maintaining books of account. It was thus argued that S.G.P.C. is entitled to get relief u/s. 80G(S) of the Income-tax Act, 1961.

3.1 I have considered the facts brought on record by the institution. I have also perused the provisions of section 80G of the IT.Act,1961 and the judicial pronouncements. **Though there is no doubt that the institution i.e. SGPC has undertaken many charitable activities e.g. schools colleges and hospitals but the dominant object is that of looking after the Sikh Gurudwaras.**

3.3 Taking at over all view of the preceding discussion, it becomes crystal clear that the applicant SGPC as an institution was created solely for the welfare and managements of Sikh Shrines and the Gurdwaras. **There is no doubt about its other activities relating to educational and health relating fields.** But as long as a dominant object remains that of religious activity, there is a direct conflict with the provisions of section 80-G(5)(iii) and Explanation 3 of section BOG which have already been referred to in this Order.

4.2 The arguments is well taken but cannot be accepted for the reason that the **primary challenge to the benefits** claimed by the SGPC is on account of its objects and **not because of the expenditure incurred by it.** In this context, it is necessary to re-read the provisions of section 80G(5)(iii), which states that "the institution or fund

is not expressed to be for the benefit of any particular religious community or caste." The mandatory provision is irrespective of the expenses incurred on religious activities. The benefit of any particular religious community or caste." The mandatory provision is irrespective of the expenses incurred on religious activities. The benefit of clause 5(B) to section 80G can be taken only in those situations wherein an institution inadvertently incurs certain expenses which **may be religious in nature but such benefits cannot be extended to an institution which is expressed to be for the benefit to any particular religious community.** For this reason alone I am not able to accept the arguments of the applicant.

4.3 Thus, it becomes clear that the overwhelming objective of SGPC is management and administration of Gurdwaras i.e. purely religious affairs. Hence, dominant object of the SGPC is religious in nature. The institution is expressly established for the benefit of Sikh religious community. Accordingly, granting deduction u/s 80-G to such institution is not in accordance with the provisions of section 80G(5) and is covered under prohibitive clause (iii) of the said section of the I.T. Act, 1961 and proscribed by the provisions of Expl. 3 to section 80-G.

3. Based on the above-said Order, it was submitted by the Ld. AR that the Assessee was denied for the registration u/s 80G because the Assessee is allegedly benefitting the particular religious community. The CIT has not rejected the Assessee's charitable activity by running the schools, colleges, medical colleges, nursing colleges, langar halls, etc. He had submitted that CIT himself in paragraph 2.2 of his Order (SUPRA) had acknowledged that the Assessee is running hospitals, langars, Sarai etc. The main emphasis of the CIT was that the Assessee was managing the property belonging to religious communities as per the objects and reasons of the Sikh Gurdwara Act, 1925 and SGPC was created solely for the welfare and management of Sikh Shrine as Gurdwara. In paragraph 3.3, the CIT had admitted that "There is no doubt about its other-

activities relating to educational and health relating fields.”, however, CIT has wrongly held that the dominant object of the Assessee is religious activities and therefore, it is in conflict with the Section 80G(5) (iii) of the Act.

4. Feeling aggrieved by the Order passed by the CIT-1, Amritsar, the Assessee, appeals before us.
5. The Ld. AR for the Assessee had drawn our attention to the various provisions of the Sikh Gurdwara Act, 1925, and also various judgments of Punjab & Haryana High Court and other High Courts. Based on the above, it was submitted that the Ld. CIT failed to distinguish between managing the Sikh Gurdwaras in terms of the Act of 1925 and doing the religious activities by the other Sikh bodies/ committees. It was submitted that the predominant purpose of creating the SGPC was to manage the Sikh Shrine/ Gurdwara. Before 1925, Main gurudwaras were in the control of Mehtas, and the Sikhs who belonged to the lower caste were not given free access to the Gurdwaras.
6. The Ld. AR had drawn out attention to the decision of Punjab & Haryana High Court in the following cases when the High Court has succinctly had note down the background in which the Sikh Gurdwara Act, 1925 was enacted by the Britishers in India. The Ld. A.R. further submitted that the SGPC is a State within the meaning of Article 12 of the Constitution of India, and the writ petition lies against it. Further, it was submitted that the SGPC is subjected to a regular audit by the Auditor General of India.
7. The Ld. AR submitted that Assessee is drawing its Income and expenditure account and the balance sheet. The perusal of the Income and expenditure account and the balance sheet clearly shows that expenditure incurred by the Assessee for the religious activities was far below that the threshold limit of 5% fixed in the Statute.

8. The main function of the Assessee was to manage properties of SGPC, which consists of Gurdwaras, schools, colleges, sarais, hospitals, etc., and the Assessee draws its powers from the Act enacted by Central Government. It was submitted that if a body is created by the Act of Central Government for managing and administering the properties, Income etc. of a community/sect, then Body so made would not become a religious body. SGPC is akin to the Improvement Trust, Wakf Board, Devsthana Board, Archeological Survey of India etc. It was further submitted that the purpose of the Assessee is neither wholly nor substantially is of religious. It was submitted that the Assessee was entitled to the registration u/s 80G of Income Tax Act. The Ld. AR had filed the detailed written submission in support of his contention, which is reproduced hereinbelow for the completeness of the record:-

“.....The learned CIT after observing various sections of The *Sikh Gurdwaras Act, 1925* has held that the objects of SGPC are religious in nature and the said institution is established for the benefit of Sikh Religious Community only. Therefore, the application was rejected by the ld. CIT.

The Assessee is a Statuary Body (Board) created under *Sikh Gurdwaras Act, 1925*, the income of which is exempt u/s 10(23BBA). During the course of proceedings, detail of charitable expenditure was placed before the Ld. CIT and **it is worthwhile to mention here that para in paragraph 2.2, 3.1 & 3.3 of the impugned Order, the ld CIT has not doubted the charitable activities/works carried out by SGPC in various fields which are provided to the public at large without discrimination of religion, caste, creed, color, sex, race etc.**

1. Nomenclature of SGPC:

- a. SGPC is a Statuary Board created under *Sikh Gurdwaras Act, 1925*. SGPC and in terms of the mandate of section 42 of *Sikh Gurdwaras Act, 1925*, it is a body corporate, having perpetual succession and a common seal. This provision also mandates, that the SGPC can be sued in its name, and likewise, it can sue others. Under section 107 of *Sikh Gurdwaras Act, 1925*, the funds collected from “Committees of Sikh Gurdwaras” can be used by SGPC, inter-alia, for charitable purposes.

- b. No provision of *Sikh Gurdwaras Act, 1925* provides that SGPC (ie. Board) has been formed only for the benefit of the Sikh community only nor does any provision of *Sikh Gurdwaras Act, 1925*, say that SGPC (Board) is a religious body nor does the *Sikh Gurdwaras Act, 1925* provide that the activities of SGPC shall be restricted to the Sikh community only. *Sikh Gurdwaras Act, 1925*, provides a **two-tier system** for the administration of Gurudwaras: -

Tier 1: Board (i.e., “SGPC”) is statutory body formed for administration of “*Committees of Sikh Gurdwaras*”. (A Body Corporate as per Section 42(3) of *Sikh Gurdwaras Act, 1925*). Board has a separate legal identity and can sue and be sued in its own name and the funds collected from “*Committees of Sikh Gurdwaras*” are used by SGPC, inter-alia, for charitable purposes for the public at largewithout discrimination of religion, caste, creed, color, sex, race etc.

Tier 2: “*Committees of Sikh Gurdwaras*” constituted for every notified Sikh Gurudwara. (Every “*Committee of Sikh Gurdwara*” is a Body Corporate as per Section 94-A of the *Sikh Gurdwaras Act, 1925*). Each “*Committee of Sikh Gurdwara*” has a separate legal identity and can sue and be sued in its own name.

- c. The Ld. CIT has made reference to the certain sections (e.g. 85 and 106 of *The Sikh Gurudwaras Act, 1925*) which only deal with “*Committees of Sikh Gurdwaras*” and has passed the impugned Order equating the Board (i.e., SGPC) to a Gurudwara. Based on the misconstrued reading, the Ld. CIT concludes that the dominant object of the Board (i.e. SGPC) is for the benefit of Sikh Community only.
- d. Infact, as per section 107 of *The Sikh Gurudwaras Act, 1925*, Board charges 10% of income of “*Committees of Sikh Gurdwaras*” as annual fee for the purpose of administration of Gurudwaras which is then used by SGPC, inter-alia, for charitable purposes for the public at large without discrimination of religion, caste, creed, color, sex, race etc.
- e. The Board (i.e., SGPC) is a separate legal entity and has a distinct identity, than that of every “*Committees of Sikh Gurdwaras*”. Gurudwaras are places of public worship

and are epicenter of religious activities/works and the Board (i.e., SGPC) is not a place of worship. “Committees of Sikh Gurdwaras” are responsible for all the religious activities/work and not the Board (i.e., SGPC). It is the duty of the Board (SGPC) to ensure that every “Committees of Sikh Gurdwara” deal with property and income of the Gurudwara managed by it in accordance with provisions of *The Sikh Gurudwaras Act, 1925*. For the purpose of administration of “Committees of Sikh Gurdwaras”, the Board (SGPC), exercises general supridence over all committees of Gurudwaras and charges 10% of the income of the Gurudwaras.

2. SGPC is a Statuary Body:

- a. Object & Preamble of *The Sikh Gurudwaras Act, 1925* provide for the better administration of certain Sikh Gurdwaras-”
- b. As mentioned above, SGPC is a Statuary Board created under the *Sikh Gurdwaras Act, 1925*. It has been formed as a body corporate for the better administration of Gurdwaras. SGPC receives Annual contribution from Gurdwaras and channelises this money into charitable activities. It is pertinent to mention here that **no provision of Sikh Gurdwaras Act, 1925 provides that SGPC (Board) has been formed only for the benefit of the Sikh community nor does any provision of Sikh Gurdwaras Act, 1925**, say that SGPC (Board) is a religious body. At the cost of repetition, it is once again submitted that for the purpose of administration of “Committees of Sikh Gurdwaras”, the SGPC (Board) exercises general supridence over all “Committees of Sikh Gurdwaras”.
- c. SGPC is a Statuary body which falls within the definition of “State” within the meaning of Article 12 of the Constitution as SGPC is a Statuary Body and has separate legal existence as a corporate body and functions in a defined area and its members are elected and it enjoys a certain degree of autonomy and is entrusted by statute with government like functions and duties.
- d. The *Sikh Gurdwaras Act, 1925* is a law adopted by the Parliament after independence. A mere reading of various provisions of *The Sikh Gurudwaras Act, 1925* and Rules made thereunder, unmistakably show that SGPC is a creation of the Statute and the Rules framed by it in exercise of its statutory powers have force of law. SGPC is not a body made under any law but a body constituted by the law. Also,

as per Section 72 of the Punjab Reorganisation Act, 1966, SGPC is an inter-State body.

- e. Further, SGPC is also amenable to writ jurisdiction of the Hon'ble High Court under Article 226 of the Constitution.

Therefore, SGPC being a Statuary body having functions of a "State" and is constituted for exercising general supridence over all "*Committees of Sikh Gurdwaras*" and has not been formed for the benefit of the Sikh community only nor does any provision of *Sikh Gurdwaras Act, 1925*, say that SGPC (Board) is a religious body. "*Committees of Sikh Gurdwaras*" are responsible for all the religious activities and not the Board (i.e., SGPC). In other words, it can be said that the Board (i.e., SGPC) is not created for the benefit of Sikh Religious Community only and is for the public at large and therefore, entitled for registration u/s 80G.

3. Activities of SGPC:

- a. **In paragraph 2.2, 3.1 & 3.3 of the impugned Order, the Id. CIT has** categorically accepted the "*n*" number of charitable activities carried out by the SGPC vis-à-vis Schools (53), Degree Colleges (35), Universities (2), Medical Colleges (1), Dental College (1), Nursing College (1), Engineering Colleges (2) & Polytechnic College (1), Hospitals, Lungars, Sarais, Educational Aid, Aid to Poor, Medical Aid, Aid for Historical Buildings, Cancer Aid, Aid for Natural Calamities like Earthquakes/Droughts, Aid for Social Awareness like drugs, dowry etc.
- b. **Further, it is a publicly known fact that the aforesaid charitable activities are provided to the public at large without discrimination of religion, caste, creed, color, sex, race etc. It also publicly known fact that even the employment in the aforesaid institutions run by SGPC is given regardless of religion, caste, creed, color, sex, race etc. In the past, efforts made by SGPC at the time of independence by making refugee camps have been publicly lauded. The humanitarian services rendered by the SGPC especially, the services of langar (cooked food from community kitchen) and arrangements of free medical aid**

and free oxygen during the current COVID-19 pandemic without discrimination of religion, caste, creed, color, sex, race etc have also been publicly applauded.

- c. During the course of proceedings detail of charitable expenditure was placed before the Ld. CIT and **it is worthwhile to mention here that para in paragraph 2.2, 3.1 & 3.3 of the impugned Order, the Id CIT has not doubted the charitable activities/works carried out by SGPC in various fields. Nor is there an averment in the impugned Order that the activities of the SGPC are confined to Sikh Community only.**

As per paragraph 2.2, detail of expenditure as well detail of Aid was provided to the Ld. CIT. However, Annual Accounts of SGPC from FY 2006-07 to FY 2011-12 are enclosed herewith. At the cost of repetition, it is once again stated that “Committees of Sikh Gurdwaras” are responsible for all the religious activities and not the Board (i.e., SGPC). The Board (i.e., SGPC) carries out the charitable activities which have not been doubted by the Ld. CIT in the impugned order. Therefore, SGPC should be allowed registration u/s 80G of the Income Tax Act.

4. PROVISIONS OF SECTION 80G(5B) OF INCOME-TAX ACT,1961

- a. During the course of proceedings before the Ld. CIT, provisions of section 80G(5B) were highlighted and the same have been discussed at para 4.1 and 4.2 of the impugned Order. The provisions of section 80G(5B) are as follows: -

*“(5B) Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year **shall be deemed to be an institution or fund to which the provisions of this section apply.**”*

- b. It was further argued that expenses incurred on any religious activities if any, during last several years were less than 5% of total income. **It is pertinent to mention that the learned CIT has not doubted that expenses incurred on religious activities were less than 5% of total income.** However, the Ld. CIT has rejected the

contention of the Assessee on the reasoning that the SGPC has been formed for the benefit for Sikh Community only.

- c. Finance Act, 1999 has inserted a new sub section (5B) in section 80G. Memorandum explaining finance bill appearing at 152 CTR 156 (statutes) at page no. 178 gives detailed reasons for inserting of sub-section (5B) in section 80G as follows: -

“Deduction for donations made to funds or institutions for charitable purposes

Under the existing provision of section 80G of the Income tax Act, 1961, a deduction in respect of donations to certain funds, institutions etc..is provided. However, if such fund or institution has in its instrument any provision for the transfer or application at anytime for the whole or any part of the income or asset for any purpose other than a charitable purpose, it cannot avail of the benefit under this section, charitable purpose does not include any purpose, the whole or substantially the whole of which, is of a religious nature.

Many institutions which are carrying out charitable work are often inspired by the tenets of religion. In order to allow them to show respect to this aspect without depriving them of the benefit of this section, it is proposed to amend the provisions of section 80G so as to provide that in case such institution or fund spend not more than five per cent of its income during the relevant previous year for religious purpose, the benefit of this section will not be denied to them.

The proposed amendment will take effect from the 1st day of April,2000 and apply in relation to assessment year 2000-2001 and subsequent years”.

- d. It is worthwhile to mention that the decision of **Hon’ble Supreme Court in the case of Upper Ganges Sugar Mills Ltd. v/s CIT (1997) 227 ITR 578 (SC)** was passed on 4th August, 1997 i.e. much before the amendment made by Finance Act, 1999 by

inserting sub-section (5B) in section 80G and would not be applicable to the facts of the present case.

Taking into account the amendment made by Finance Act, 1999 by inserting sub section (5B) to section 80G, it can be said that **sub-section (5B) provides a tolerance limit of 5% of total Income** which could be applied for religious trust and has the effect of overriding Explanation 3. In the present case, the charitable activities/works of SGPC are not restricted to the Sikh community only nor has the same been doubted by the Ld. CIT and admittedly religious expenses if any are less than 5% of total income, therefore, by virtue of new section 80G(5B) and the above reasoning, the Board (SGPC) is entitled to registration u/s 80G.

- e. It will not be out of place to mention that in an identical case, the very same CIT i.e. Ld. CIT -1 ASR. has allowed registration under section 80G in **Chief Khalsa Diwan via Order dated 24.04.2009**. In very same Order the learned CIT Amritsar has even given **aoffice note** on the last page which is as under :-

“At the time of passing the earlier order No.2250 dated 2.9.08 in this very case, the applicant trust had not brought to my notice the amended provisions of Section (5B) coming into force w.e.f 1.4.2000 and I had also inadvertently missed it out. I have also enquired from the CIT-II, Jodhpur on his ITO(Technical)’s phone No.0291-231404 today i.e 23.4.09 when Mr.Khorra, ITO(T) has confirmed that the Department has not filed any appeal against the decisions of Hon’ble Rajasthan High Court, referred to above in the body of the Order. In view of acceptance of the Hon’ble Rajasthan High Court’s Order in all the three cases(supra) which has been delivered after the Honourable Supreme Court’s decision in Upper Ganges Sugar Mills Ltd. &Ors. V. CIT (1997) 227 ITR 578 (SC) (i.e prior to coming into force w.e.f 1.4.2000 the amended provisions of Sec.(5B) to Sec.80-G), the Rajasthan High Court’s decision (supra) being final in the absence of any contrary view expressed by any other High Court and particularly the A.O’s report No. 4107 dated 26.3.07, referred to above, confirming clearly that expenditure incurred by the applicant-trust on religious activities, if any, was less than 5%, the applicant-trust has been allowed continuation of approval u/s 80-G(5)(vi) of the I.T. Act,1961.”

Copy of Order in the case of Chief Khalsa Diwan dated 24.04.2009 placed on record along filed Written Submissions in the Hon'ble Court on 29.07.2010.

5. **Case Laws:** In this regard reliance is placed on the following decisions:

- a. **CIT vs. M/s Dawoodi Bohara Jamat 364 ITR 31 (SC)**
- b. **CIT v. Christian Medical College (2015) 374 ITR 17 (P&H)**
- c. **Sri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti Trust V/s Union of India (2005) 273 ITR 475 (Raj.)**
- d. **Mishrilal Gordhanlal Batra charitable trust v/s Union of India (2008) 307 ITR 221(RAJ.)**
- e. **Umaid Charitable trust v/s Union of India (2008) 307 ITR 226 (RAJ.)**
- f. **Commissioner Of Income-Tax vs Social Service Centre (2001) 250 ITR 39 (AP)**
- g. **Tirumala Tirupathi Devasthanam vs CCIT (2001) 251 ITR 849 (AP)“**

6. **Registration u/s 12AA: An issue raised by the Revenue during the course of argument.**

- a. In this regard, it is pertinent to mention that as per paragraph 2.3 of Order of Ld CIT, the only issue in the present case of was of application of section of 80G(5)(iii) read with Explanation 3 to section 80G.
- b. It is humbly submitted that Hon'ble Tribunal has no jurisdiction or power to travel beyond the impugned Order or subject-matter of the appeal. Power of the Hon'ble are provided in Section 254(1) which reads as follows:-

*“(1) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders **thereon** as it thinks fit.”*

- c. The word "**thereon**" restricts the jurisdiction of the Hon'ble Tribunal to the subject-matter of the appeal. The Hon'ble Tribunal has no jurisdiction or power to travel beyond the impugned Order specially on issues (Registration u/s 12AA) not disputed by the Ld. CIT in the impugned order. The Hon'ble Tribunal has no jurisdiction to doubt Registration u/s 12AA, when the same has not been doubted by the CIT in the impugned Order. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **MCorp Global Pvt. Ltd. v. CIT (2009) 309 ITR 434 (SC)** wherein it has been held:

*"6. In the case of Hukumchand Mills Ltd. v. CIT reported in (1967) 63 ITR 232 this Court has held that under Section 33(4) of the Income-tax Act, 1922 (equivalent to Section 254(1) of the 1961 Act), **the Tribunal was not authorized to take back the benefit granted to the Assessee by the AO.** The Tribunal has no power to enhance the assessment. Applying the ratio of the said judgment to the present case, we are of the view that, in this case, the AO had granted depreciation in respect of 42,000 bottles out of the total number of bottles (5,46,000), by reason of the impugned judgment. That benefit is sought to be taken away by the Department, which is not permissible in law. This is the infirmity in the impugned judgment of the High Court and the Tribunal."*

- d. The elementary principle found in the Code of Civil Procedure that the Respondent who has neither preferred his own appeal nor filed cross-objections in the appeal preferred by the appellant must be deemed to be satisfied with the decision of the lower authority and that he will not be entitled to seek relief against a rival party in an appeal preferred by the latter, is equally applicable to revenue proceedings.

Therefore, when the Ld. CIT has not doubted the registration u/s 12AA in the impugned Order and the said Order has neither been challenged nor rectified till date and the Hon'ble Tribunal having no jurisdiction or power to travel beyond the impugned Order, Revenue is barred from raising such an issue during the appellate proceedings.

9. On the basis of above, it was submitted that the Assessee is entitled to registration u/s 80G(5) of the Income Tax Act and the appeal of the Assessee is required to be allowed.

10. On the other hand, the Ld. DR relied upon the Order passed by the CIT and submitted that though some of the activities are charitable, the religious activities cannot be segregated from the main activities, and on account of the various religious activities, the dominant purpose of the Assessee is religious and therefore, religious Act is meant for benefitting the religious community and therefore, the Assessee cannot be granted the registration u/s 80G(5) of the Income Tax Act.
11. We have heard the rival contentions of the parties and perused the material available on record, and have also gone through two written submissions filed by the Assessee in support of its claim.
12. The Assessee has not applied for registration u/s 12AA of the Income Tax Act, as mentioned by the Lower Authorities in paragraph 2.1, as the Assessee is claiming the exemption u/s 10(23) BBA of the Income Tax Act, 1961. Further, the only objection of the Ld. Lower Authority was that the Assessee was created for the maintenance and administration of the Shikhs Shrine. Therefore, they are primarily doing religious activities for the benefit of the Sikh's religion, as we are deciding that the activities of Assessee are not meant for the benefit of the Sikhs community only, and there is a difference between managing the property and doing the religious activity. Therefore, in our view, there is no requirement for deciding with the issue of registration u/s 12AA of the Income Tax Act for the year under consideration as this was not a reason for denying the registration u/s 80G(5)(iii) of the Act. However, in terms of amendment provision 2020. The assessee is required to apply for registration u/s 12AA of the Act.
13. Before we proceed to deal with the factual matrix and issue involved in the case, we must mention the relevant provisions of the Income Tax Act necessary for dealing with the subject matter in hand:-

80G(5)

5) This section applies to donations to any institution or fund referred to in sub- clause (iv) of clause (a) of sub- section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely:--

(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (22)³ or clause (22A)]³ or clause (23)]⁴ or clause (23AA)]⁵ or clause (23C)] of section 10:

Provided that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if, -

(a) the institution or fund maintains separate books of account in respect of such business;

(b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and

(c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;]]

(ii) the instrument under which the institution or fund is constituted- does not, or the rules governing the institution or fund do not, contain any provision for the transfer of application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

iii) The institution or fund is not expressed to be for the **benefit** of any **particularreligious community** or caste.

iv).....

v).....

vi).....

vii).....

5A.....

5B –Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five percent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply.

Explanation 3:- In this Section “Charitable purpose” does not include any purpose the whole or substantially the whole of which is of a religious nature.

14. From the perusal of the Order impugned before us, it is clear that the Assessee is not violating any of the conditions mentioned in Clauses(a), (b), (c) of sub-section (i) of 80G(5). The whole case of the CIT is that the Assessee is an institution created for the benefit of particular religious community within the meaning of 80G(5)(iii) of the Act. For the above-said purposes, the CIT had relied upon the various provisions of the Sikh Gurdwara Act, 1925.

15. The preamble of Act of 1925 provides as under:-

“An Act to provide for the better administration of certain Sikh Gurdwaras and the inquiries into matter connected therewith.

Preamble: - WHEREAS it is expedient to provide for the better administration of certain Sikh Gurdwaras and for inquiries into matters and settlement of disputes connected therewith, and whereas the previous sanction of the Governor-General has been obtained to the passing of this Act; it is hereby enacted as follows: -”

16. The Board and Committee were defined in Section 2 of the Act of 1925 as under:-

“**Board**” means the Board constituted under the provisions of Part III

“**Committee**” means a committee of management constituted under the provisions of Part III”

Further section 40, 41, 42, 85, 106 ad 106A of the Act provides as under:-

“40. Board, committees and Commission to be constituted for the purposes of this Act. - For the purposes of this Act there shall be constituted a Board and for every Notified Sikh Gurdwara a committee of management, [* * *] and there shall also be constituted from time to time a Judicial Commission in the manner hereinafter provided

41. Control of Sikh Gurdwaras. - The management of every Notified Sikh Gurdwara shall be administered by the **Committee** [* * *] constituted thereof, the **Board** and the **[Commission]** in accordance with the provisions of this Part.

42. **Name of Board.** - (1) The Board shall be known by such name as may be decided upon at a general meeting of the first Board constituted under the provisions of this Act provided that not less than three-fifths of the members, present at the meeting have voted in favour of the name selected, and that such name has been approved by the [State] Government.

(2) If the Board fails to select a name in accordance with the provisions of sub-section (1) or the name selected is not approved by the [State] Government the Board shall be designated the Central Board.

(3) The Board shall by such name be a body corporate and shall have a perpetual succession and a common seal and shall by such name sue and be sued.”

85.(1) **The Board shall be the Committee of Management for the Gurdwaras** known as :-

- (i) The Sri Akal Takhat Sahib at Amritsar and Sri Takhat Keshgarh Sahib, Anandpur;
- (ii) The Darbar Sahib, Baba Atal Sahib and all other Notified Sikh Gurdwaras other than Sri Akal Takhat Sahib, situated within the Municipal boundaries of Amritsar;
- (iii) Sri Darbar Sahib and all other Notified Sikh Gurdwaras within the limits of Municipal area of Tarn Taran;
- (iv) All the Notified Sikh Gurdwaras at Anandpur and the gurdwaras connected therewith other than the Sri Takhat Keshgarh Sahib;
- (v) The Notified Sikh Gurdwaras at Muktsar;

(vi) Gurdwara Dukhniwaran Sahib PadshahiNaumi along with Gurdwara Moti Bagh (including Gurdwara Sudha Sar) Khel Sahib, Patiala;

(vii) Gurdwara Fatehgarh Sahib (Shahidi Asthan Baba Fateh Singh Ji and Baba Jorawar Singh Ji) along with GurdwaraJotisarup, Burj Mata Gujri and Shahid Ganj situated in HarnamNagar;

(viii) [Gurdwara PadshahiNaumi at Dhamtan along with Bunga Dhamtanian near Railway Station, Patiala;]

(ix) Gurdwara Guru Teg Bahadur Sahib in Jind with Gurdwaras KharakBhuraPadshahiNaumi and KhatkarPadshahiNaumi in Tehsil Nawana;

(x) Gurdwara Ber Sahib (PadshahiPehli) at Sultanpur Lodhi along with Gurdwaras Hat Sahib, Kothri Sahib, Sehra Sahib, Sant Ghat and Guru Ka Bagh;

(xi) Gurdwara (PadshahiNaumi and Dasmi) Damdama Sahib at Talwandi Sabo along with Gurdwaras [* *] Takhat Sri Damdama Sahib, Jandsar and Bunga Kattuwalla at Sabo Ki Talwandi, Gurdwara Sri Damdama Sahib Bunga Mata Sahib Dewan Ji at Talwandi Sabo, Gurdwara Sahib PadshahiDasmi Takhat Damdama Sahib, Bhai Bir Singh Dhir Singh, Mazhabi Singh Wala at Talwandi Sabo, Gurudwara Sahib Takhat Sri Damdama Sahib Malwai Bunga PadshahiDasmi at Talwandi Sabo, Sri Damdama Sahib Bunga LikhansarPadshahiDasmi, Sri Damdama Sahib Gurdwara Sri HolsarPadshahiDasmi, at Talwandi Sabo Ki :

(xii) Gurdwara Nanakiana Sahib, Sangrur.]

(2) The Board shall, [* * * *] prepare a scheme for administration and management of the Gurdwaras described in sub-section (1), their property, endowments, funds and income. Thereafter, this scheme may be modified or amended from time to time by a resolution of the Board passed by a majority of two-thirds of the members present in the meeting.

86. Committees of gurdwaras other than those specified in section 85. - [(1)] For every Notified Sikh Gurdwara other than a gurdwara specified in section 85 a committee shall be constituted after it has been declared to be a Sikh Gurdwara under the provisions of this Act, or after the provisions of Part III have been applied to it under the provisions of section 38, provided that the [State] Government may by notification direct that there shall be one Committee for any two or more such gurdwaras specified in the notification, and may in like manner cancel or modify such notification, provided further that the [State] Government shall not issue, cancel or modify any such notification after constitution of the first Board, except upon recommendation being made to it in this behalf by the Board.

[94-A. Incorporation of committees. - Every Committee shall be a body corporate by the name of the Committee of Management of the Gurdwara or Gurdwaras under its management and shall have perpetual succession and a common seal and shall sue and be sued in its corporate name.]

106. Object on which the funds of a gurdwara may be spent. - (1) Subject to the provisions of this Act, all properties and income of a Notified Sikh Gurdwara shall be used, in the first place, for the maintenance or improvement of the gurdwara; **for the maintenance of religious worship and the performance and conduct of religious and charitable duties**, ceremonies and observances connected therewith; for the payment of allowances or salaries of dependents, officers and servants thereof; for the fulfilment of the objects of the endowments thereof; for the maintenance of the langar; for such **religious, charitable or educational** purposes as the Committee may consider necessary in connection therewith or for the discharge of any obligations legally incurred.

(2) When after providing for the purposes specified in sub-section (1) there remains or appears likely to remain any surplus sum or any income not required for any such purposes, the Committee may, by resolution passed by not less than two-third of its members propose to allocate a part of the whole of such surplus sum or income **to a particular religious, educational or charitable purpose** [or any purpose which promotes social welfare] and may, if the Board in writing sanctions such proposal, act in accordance therewith, provided that any proposal so sanctioned to devote to such purpose income accruing during a period of more than three years at any time not sooner than three years after the proposal was sanctioned be rescinded or varied by a subsequent resolution of the Committee passed in like manner.

(3) Notwithstanding anything contained in sub-section (2) when it appears to be Board that after providing for the purposes specified in sub-section (1) there remains or is likely to remain any surplus sum or income not required for any such purposes, and the Committee is not willing to devote such surplus sum or income to other purposes, the Board may apply to the Commission for an order allowing the Board to devote the whole or part of such surplus sum or income to a particular and **specified religious, educational or other charitable purpose** [or any purpose which promotes social welfare.]

(4) When application has been made in accordance with the provision of sub-section (3) the Commission may, after hearing the objection, if any, of the Committee or of any person having interest in the gurdwara concerned if it is satisfied that the application is reasonable, determine what portion if any of such surplus sum or income shall be retained

as a reserve fund for the gurdwara concerned and direct the remainder of the surplus sum or income to be devoted to any such religious, educational and charitable purpose as it may deem proper, and the Commission may, from time to time, on the application of the Board or of the Committee or of a person having interest in the gurdwara concerned, rescind or vary any order passed under the provisions of this sub-section.

(5) A Committee or the Board if it is aggrieved by an order passed under sub-section (4) may, not later than ninety days after the passing of the Order, appeal to the High Court and the High Court may confirm the Order or pass any such order as the Commission might have passed instead of the Order appealed against.

[(6) Nothing contained in sub-sections (2), (3), (4) and (5) shall apply to the Board when acting as a Committee of Management under section 85 of this Act. In the case of such a committee when after providing for the purposes specified in sub-section (1) there remains or appears likely to remain any surplus sum or any income not required for such purposes, the Committee may by a resolution passed by not less than two-thirds of the members present in the meeting; provided that the meeting is attended by not less than one-half of the total members constituting the Committee, utilize or allocate a part or the whole of such surplus sum or income of any particular gurdwara under its management to a particular religious, educational, charitable or industrial purpose :

Provided further that an allocation so made to devote to such purpose income accruing during a period of more than three years may at any time not sooner than three years after the allocation was made be rescinded or varied by a subsequent resolution of the Committee passed in the like manner.]

[106-A. Utilization of surplus income. - Any surplus sum or any income of a notified Sikh Gurdwara not required immediately for purposes mentioned in sub-section (1) of Section 106 may be placed to the credit of the Committee in such Bank as approved, generally by the Board in general meeting or be invested in one or more Government securities or National Saving Certificates or in purchasing immovable property for Gurdwaras under its management.]

107. Annual contribution to Board. - (1) Every Committee shall pay annually to the Board for the purpose of **meeting the lawful expenses of the Board** a contribution in money out to the income of the gurdwara or gurdwaras under its management.

[(2) The proportion which such contribution shall bear to the annual income of a gurdwara shall be fixed for each gurdwara by the Board : provided that it shall not exceed one-tenth of such income.]

[(3) The Board shall be competent to reduce the amount of contribution due to the Board from any committee or gurdwara in any year for special reasons. Further the Board, shall have power to prescribe the limit or annual income of the gurdwara or gurdwaras which may be totally exempted from making the contribution payable to the Board under the provisions of this section.]

125. Powers and duties of the Board generally. - It shall be the duty of the Board to ensure that every Committee deals with the **property and income of the gurdwara or gurdwaras managed** by it, in accordance with the provisions of this Act, and for the fulfilment of this duty and subject to the provisions of and in addition to the powers conferred upon the Board by this Act, the [control, direction and] general superintendence over all committees appointed under the provisions of this Act shall vest in the Board.

127-A. Collection of dues payable to notified Sikh Gurdwaras left in Pakistan. - (1) Notwithstanding anything contained in any other law for the time being in force or in this Act or in any administrative scheme, rules or bye-laws framed under the Act, the Board shall be the sole authority to receive, collect, realize and take possession from the Government Treasuries, Banks, Courts, Post Offices, wheresoever situated or from Custodian, Evacuee Property, [Punjab], or any person, member or office-bearer of any local committee or Gurdwara Management Committee of any notified Sikh Gurdwara [in the territory in Pakistan known as Punjab] in possession of or against whom any kind of property or sums or dues recoverable by or payable to any notified Sikh Gurdwara left in the territory now known as Pakistan are still outstanding.]

(2) The payment made to the Board in pursuance of sub-section (1) shall constitute a valid discharge of the liabilities of the person or persons aforesaid.

(3) This section shall have retrospective effect as from the 15th day of August, 1947.]

133. General powers of committees. - Subject to the provisions of this Act, a committee shall have full powers of control over the office-holders and dependents of, and all properties and income of whatever description belonging to the gurdwara or gurdwaras under its management and of enforcing the proper observance of all ceremonies and religious observances in connection with such gurdwara or gurdwaras and of taking all such measures as may be necessary to ensure the proper management of the

gurdwara or gurdwaras and the efficient administration of the property, income and endowments thereof.

17. From the reading of the above said relevant provisions of the Act of 1925, the Board was constituted under Section 42 of the Act, 1925, and the Committees were constituted u/s 85 and 86 of the Act. Section 85(1) of the Act provides that the Board shall be the Committee of Management for the Gurdwaras mentioned in the said section; however, for the remaining Gurdwaras, separate committees other than the Board are formed provided under section 86 of the Act. Section 94A also provides incorporation and perpetual succession of the Committee of management of Gurdwara.
18. Powers and duties of the boards are provided in section 125 of the Act, the Board has to ensure that every Committee deals with the property and Income of Gurdwara as per provisions of this Act.
19. The duties of the Committee are provided u/s 133 of the Act which includes management and of enforcing the proper observance of all ceremonies and religious observances in connection with such gurdwara or gurdwaras and of taking all such measures as may be necessary to ensure the proper management of the gurdwara or gurdwaras and the efficient administration of the property, income and endowments thereof.
20. Thus, the Board which is Committee of Management for the Gurdwaras mentioned in Section 85 would be discharging its duties as mentioned and provided under Section 133, as Committee, including observation of all ceremonies and religious observances in connection with such gurdwara or gurdwaras and of taking all such measures as may be necessary to ensure the proper management of the gurdwara or gurdwaras and the efficient administration of the property, income and endowments thereof.

21. In the light of the above, it is apparently clear that the Board which is also a Committee for the purposes of Gurdwara mentioned in Section 85A would be discharging and performing various religious duties, ceremonies in connection with the gurdwaras along with efficient management of property and income of Gurdwaras and endowments thereof .
22. Now the question arises whether a statutory body which is created by the Statutory for the purpose of performing religious duties, administration of properties, income and endowment, can be said to be institution for the benefit of any particular religious community or caste, or not?
23. Before we deal with this issue, we wish to bring on record that record that, Shiromani Gurdwara Parbandhak Committee Amritsar had published on Feb 3, 1945 **Sikh Reht Maryada** , which had enlisted various do and do not for Sikhs as individual and as a community. Important principles of Sikh Reht Maryada as per publication are
1. *Dharam-Di- Kirt Karna* (Honest earning and truthful living)
 2. *VandKeChhakna* (Sharing honest earnings with needy and less fortunate)
 3. *Naam Japna* (Meditation on the Name of One God)
 4. *Puja Akal Ki* (Worshipping the Almighty God)
 5. *ParchaSabhad Ka* (Understanding and practicing Gurbani)
 6. *Didar Khalse Ka* (Appreciation of Sikh Rehat) Attending company of holy Sangat
 7. *Amrit Chhakna* (Initiation of Amrit Pahul and stay away from taboos)
 8. *Sarbat Da Bhala* (Well-being of all)
 9. *SevaSambhal* (Selfless service for welfare of humanity)
 10. *Sacha Achar* (Keeping good moral character in life)
 11. *Bhana Manana* (Surrender before Will of God)
 12. Believe in One God, Sri Guru Granth Sahib and teachings of ten Gurus
 13. Practicing the principles of both Bani and Bana (Norm and Form)
 14. No commission of Kurehts

15. Adopt and practice compassion, honesty, generosity, patience, perseverance and humility
16. Non observance of blind rites, rituals and superstitions. No worship of idols and images

24. Sikhism laid much emphasis on **Pangat and Sangat** , which were set up First Guru, to weed out inequality on account of caste, creed, religion or sex . Similarly, **DEG** and **Tegh**– the kettle to supply food to the needy the sword to smite the oppressor is also essential part of Sikhism. It is interesting to note that four doors of famous Gurdwaras (including Darbar sahib/ golden Temple), are opening out in four difference directions to signify and welcome all without any discrimination of class or creed. Though it will impossible for us to spell out the concept of Sikhism , as it is more a way of life, to do self-less, philanthropic work for the cause of society and nation, however to our limited understanding the basic philosophy of Sikhism is **Nar seva Narain Sewa** , , this had been succinctly conveyed in Gurbani in various ways including “**Vich Duniya Sev Kamaiye, Tan Dargeh Baisan Paiya** ” (let us be of service in this world so that we may find seat in the court of the Lord) and **Ih Jagg sachehe Ki Hai Kothri Sache Ka vich Vas** (**Having created the human body God has installed His very self-therein, said he And ‘this word is the chamber of God wherein it true one resides ’**). Let us use this body to serve him / humankind.

25. Having briefly stated the few aspects of Sikhism let us reproduce some of the important Articles of various Chapter of **Sikh Reht Maryada**, how it had directed Sikh community to work for the welfare of humanity and for self-emancipation , while living in the society doing Kirat , Kirtan and Sewa.

26. Chapter IV of **Sikh Reht Maryada** , it is mentioned
 - k) No person, no matter which country, religion or caste he/she belongs to, is debarred from entering the gurdwara for darshan (seeing the holy shrine). However, he/she should not have on his/her person anything, such as tobacco or other intoxicants, which are tabooed by the Sikh religion.

m) In the congregation, there should be no differentiation or discrimination between Sikh and non-Sikh, persons traditionally regarded as touchable and untouchable, the so-called high and low caste persons, the high and the low.

In Article XII of Chapter VIII, it is provided as under :-

c) After this, before the distribution to the congregation of the KarhahPrashad, the share of the five beloved ones should be set apart and given away. Thereafter, while the general distribution, the share of the person in attendance of the Guru GranthSahib(Giving double share to the person in attendance constitutes improper discrimination)should be put in small bowl or vessel and handed over. The person who doles out the KarhahPrashad among the congregation should do so without any discrimination on the basis of personal regard or spite. He should dole out the Karhah Parshad equally to the Sikh, the non-Sikh or a person of high or low caste. While doling out the KarhahPrashad, **no discrimination should be made on considerations of caste or ancestry or being regarded, by some, as untouchable, of persons within the congregation.**

In Article XVI of Chapter X, it is provided as under :-

j) A Sikh must not take hemp (cannabis), opium, liquor, tobacco, in short, any intoxicant. His only routine intake should be food. k. Piercing of nose or ears for wearing ornaments is forbidden for Sikh men and women.

l) A Sikh should not kill his daughter; nor should he maintain any relationship with a killer of daughter.

m) The true Sikh of the Guru shall make an honest living by lawful work.

n) A Sikh shall regard a poor person's mouth as the Guru's cash offerings box.

o) A Sikh shall not steal, form dubious associations or engage in gambling.

p) He who regards another man's daughter as his own daughter, regards another man's

wife as his mother, has coition with his own wife alone, he alone is a truly disciplined Sikh of the Guru. A Sikh woman shall likewise keep within the confines of conjugal rectitude.

In Article XXI of Chapter XII, it is provided as under :-

Article XXI - Voluntary Service

1. Seva (Voluntry Service) is a prominent part of Sikh religion. Illustrative models of voluntary service are organised for imparting training, in the Gurdwaras. Its simple forms are : sweeping and plastering the floors (In older times, buildings, particularly in rural areas had mud and not brick paved or cement floors. To give these floors firmness and consistency, they were thinly plastered with a diluted compound of mud.) of the Gurdwara, serving water to or fanning the congregation, offering provisions to and rendering any kind of service in the common kitchen-cum-eating house, dusting the shoes of the people visiting the Gurdwara, etc.

a) Guru Ka Langar (Guru's Kitchen-cum-Eating House) The philosophy behind the Langar (Guru's kitchen-cum-eating-house) is two-fold : to provide training to the Sikhs in voluntary service and to help banish all distinction of high and low, touchable and untouchable from the Sikhs' minds.

b) All human beings, high or low, and of any caste or colour may sit and eat in the Langar. No discrimination on grounds of the country of origin, colour, caste or religion must be made while making people sit in rows for eating. However, only baptised (Amritdhari) Sikhs can eat off one plate.

27. From the reading of **Sikh RehtMaryada, Act of 1925**, and other contemporary material available on the Activities of the Assessee, including the income and expenditure account, balance sheet etc it is clear that in Sikhism, there is no distinction based on caste ,creed, sex etc . As is clear from the Sikh RehtMaryada, the place of worship(gurudwaras) are open for all human beings irrespective of caste creed or religion, similarly, the Karda Prasad, is also distributed to the Sangat without making any discrimination, School, colleges , Medical colleges,

Hospitals, Library, Sarai, are open for all human beings irrespective of caste creed or religion. In fact all the establishments were run by the Sikh community, under the aegis of the Assessee are open for humanity and, the Assessee through its community is serving to the cause of humanity.

28. As per the definition of the Sikh, given under the Act of 1925, it is clear that one who believes in Sikhism is a Sikh, though there is further distinction of Amritdahi Sikh, Sajdahri Sikh, Patit that distinction is only relevant for electoral college and election to the committee/ Board. However, the voluntary services given by the Assessee were open and meant for the whole humanity.
29. 80 G(5)(iii), provided that "the institution or fund is not expressed to be for the benefit of any particular religious community or caste." In our understanding the "**benefit of any particular religious community**".
30. This depends on how funds were used by the Institution/ trust and not on the phraseology used in the formation document of such institution, the undoubtedly, language used in the document, is required to be understood and interpreted in the light of the activities of the institution. No benefit can be extended solely based on the language used in the trust/ society/ formation document, it is the substance, i.e, for what purposes, the funds were actually used (whether funds were used solely and exclusively for the benefit of the particular religious community or not) .
31. Undoubtedly, the Lower Authorities while rejecting the application for registration of the Assessee U/s 80G (5)(iii) of the Act had wrongly swayed with the preamble of the Assessee as well as the various other clauses of the SGPC Act, 1925, which provides the Assessee to take care, and manage Sikhs Shrine / Gurudawara. Lower authority had further wrongly held that the dominant object of the Assessee is that of the religious activities and, therefore, it conflicts with the provisions of section 80G (5)(iii) r.w.s Explanation-3 of the 80G.

32. The Assessee is a Board and in some circumstances, it is required to discharge duties as of the Committee u/s Section 85 of 1925 Act . However, the various Committee formed under section 85& 86 of the Act 1925 of the Gurdwaras are independent legal entities and some of them are having separate registration 80G of the Act. Gurudwaras notified u/s 80G(2)(B). Under section 80G(2)(B), the Central Government notifies places of public worship owing to their historical, archaeological, or artistic importance. The following Gurudwaras due to their historical importance have been notified u/s 80G(2)(B) by the Central Government.

1. Gurudwara Harminder Sahib, SO 1974, Dated 19.06.1965.
2. Gurudwara DukhNiwaran Sahib, SO 885, Dated 31.12.1975.
3. Gurudwara Shri Hemkunt Sahib, SO 84, Dated 19.03.1980.
4. Gurudwara Sachkhand Sri Hazur Sahib, SO 1440, Dated 17.04.1974.
5. Gurudwara Bangla Sahib, SO 137, Dated 14.10.1969.

Therefore, when few historical Gurudwaras being place of public worship have been notified u/s 80G(2)(B), then the Board (ie. SGPC) can not be denied registration u/s 80G as it exercises general superintendence over Gurudwaras and charges 10% of the income of the Gurudwaras which is then used by SGPC, inter-alia, for charitable purposes for the public at large without discrimination of religion, caste, creed, color, sex, race etc.

33. The committees of Gurdwaras, predominantly doing and taking care of religious activities pertaining to Sikh religion/ sect, have a distinct identity and functions than that of the Board before us. The functions of the Board and of Committee are mutually exclusive in most of cases, however, in some cases functions are overlapping on account of dual role of Board; however, the predominant purpose of the SGPC continued to be to maintain Gurdwaras and its properties, Income and endowment.

34. Further, we have to keep in mind the distinction between management of Gurudwaras properties, Income and endowment, and discharging religious duties/ceremonies affair by the Committee of Gurudwaras. Managing the properties of the Gurdwaras is a function akin to functions performed by various Municipal Authorities, Shrine Boards, Devasthanam Board, Wakf Board, ASI, and other development bodies.
35. The SGPC is undoubtedly running various Schools, Cancer Hospitals, General Hospitals, shelter Homes, Sarai, Lunger (community Kitchen), flood relief camps, , Pandemic relief campsetc . All these activities are the being done by the Assessee for the benefit of the all communities/religions, these activities are undoubtedly philanthropic in nature and are being done irrespective of cast ,creed, religion sikhs etc. It is also pertinent to mention here that the teaching, administrative and even the other staff in the institutions run by the Assessee had been giving employment on the basis of professional qualification regardless of religion, caste, creed, color, sex, race etc.
36. The admissions in the educational institutions are also given on merit and not on the basis of religion, caste, creed, color, sex, race etc. For example, the admissions in the Medical College are done solely on the basis of merit list made in NEET (National Eligibility Cum Entrance Test) conducted by NTA (National Testing Agency) a body of Central Government.
37. Facilities of Medical Aid & OPD in hospitals run by the SGPC are also provided to the public at large regardless of religion, caste, creed, color, sex, race etc. Aid during natural calamities in the

form of food and other relief materials is provided to the public at large regardless of religion, caste, creed, color, sex, race etc. Humanitarian services like free medical Aid, free oxygen, and free food during the current COVID-19 have been provided to all needy personals.

38. During the course of proceedings detail of charitable expenditure was placed before the Ld. CIT and it is worthwhile to mention here that para in paragraph 2.2, 3.1 & 3.3 of the impugned Order, the Ld CIT has not doubted the charitable activities/works carried out by SGPC in various fields. Nor is there an averment in the impugned Order that the activities of the SGPC are confined to Sikh Community only. Further, if we look into the financial of the Assessee which are regularly being subject matter of audits by the Auditor General of India and other agencies clearly shows that only fraction of the total expenditure were spent on the religious activities (less than 5% of the total expenditure). Table of Expenditure incurred by the asseesee from 2007 to 2012 reproduced herein below clearly shows the funds were utilized primarily for education, health , building maintenance etc .

BIFURCATION OF EXPENSES

<u>EDUCATION FUND</u>	<u>3/31/2007</u>	<u>3/31/2008</u>	<u>3/31/2009</u>	<u>3/31/2010</u>
Exp. On Education for Colleges & Schools	6,66,90,720.83	84,85,27,58.00	90,77,66,13.80	9,13,25,44,2.00
<u>Other Exp.</u>				
Salary, office Exp & Promotion of Games	51,26,335.00	95,52,053.00	12,14,76,04.00	99,76,44,2.34
TOTAL (A).....	7,18,17,055.83	9,44,04,811.00	10,29,24,217.80	10,13,01,884.34

GENERAL BOARD FUND

Aid for Education	1,92,56,552.00	0.00	20000000.00	4,83,33,518.00
Aid for Historical Building	50,19,247.24	79,10,434.50	8160302.47	42,14,782.26
Salary&OfficeExp.	7,27,17,732.00	8,67,06,385.11	97629965.84	10,94,78,247.00
TOTAL(B).....	9,69,93,531.24	9,46,16,819.61	12,57,90,268.31	16,20,26,547.26

DM

Aidfor Natural Calamity	28,53,114.00	75,59,482.00	12536115.00	9833379.00
Aidfor SocialAwareness	5,70,21,474.00	76,14,822.00	18077590.00	7940694.00
Teaching & Education	15,20,01,613.60	219750729.70	273974975.42	283318336.41
Aid for Historical Buildings	44,46,998.00	4,13,72,346.00	18096963.00	19871026.00
TOTAL(C).....	21,63,23,199.60	27,62,97,379.70	32,26,85,643.42	32,09,63,435.41

GRANDTOTAL[A+B+C].....	38,51,33,786.67	46,53,19,010.31	55,14,00,129.53	58,42,91,867.01
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BIFURCATIONOFEXPENSES

EDUCATIONFUND

	<u>3/31/2011</u>	<u>3/31/2012</u>
Exp. On Education for Colleges& Schools	11,56,19,606.30	121973349.00
<u>OtherExp.</u>		
Salary,officeExp&Promotion of Games	2,84,88,263.00	19678638.38
TOTAL(A).....	14,41,07,869.30	14,16,51,987.38

GENERALBOARDFUND

Aid for Education	6,40,00,000.00	60000000.00
Aid for Historical Building	40,78,482.88	14705339.47
Salary&OfficeExp.	12,27,11,027.65	152449886.00
TOTAL(B).....	19,07,89,510.53	22,71,55,225.47

DM

Aidfor Natural Calamity	20061625.00	7649890.00
Aidfor SocialAwareness	29366615.00	2894332.00
Teaching & Education	320788360.73	179808682.95
Aid for Historical Buildings	12956305.00	5609843.00
TOTAL(C).....	38,31,72,905.73	19,59,62,747.95
GRANDTOTAL[A+B+C].....	71,80,70,285.56	56,47,69,960.80

39. As the predominant purpose and object of the Assessee are to manage the property, do charitable activities by way of imparting / running educational institutions, organizing lunger, medical camp, hospital etc.; therefore, the activities of the Assessee could not be termed as being done only for the benefit of particular community/ religion hence the Assessee was entitled to the benefit of 80G (5) and would not be religious activities as the its total expenditure incurred on the religious activities was less than 5% during these years.
40. As mentioned herein above even religious activities of Sikh as an individual or as community are meant to extend benefits to the needy human being irrespective caste, creed and religion, which is clear from the Sikhs Maryada (Sikh RehatMaryada, 1945) (supra) . The Sangat and Pangats are open to all.
41. As every philanthropic or charitable work cannot continue without the contribution from the members of the community/ society , with a view to give impetus to charitable work by the SGPC, it was provided in Sikhs RehatMaryada, which is equally applicable to all Sikhs(Amritdhari or SahjDhari both) , to **regard as poor men mouth as offering box of Guru** and it is old age tradition in India more particularly in Hindus/Sikhs to contribute 10% of the earning

for the charitable purposes. The basic concept of charity is to do charity without disclosing identity and knowing who would benefit from the said Charity. (दाएंहाथसेदानकरेऔरबाएंहाथकोभीपतानचले।नेकीकरदरियामेंडाल).Analyzing form any angel in our considered opinion, the Assessee is entitled to benefit under 80G (5)(iii) of the Income Tax Act, 1961, and it will go wrong to allege that the SGPC was constituted for the benefit of a particular religion.

42. Our views mentioned above are supported by the decisions of the Hon'ble Supreme Court in the matter of DawoodiBoharaJamat [2014]43 taxmann.com 243 (SC). The said decision of the Hon'ble Supreme Court had been relied upon by the Hon'ble Punjab & Haryana High Court in the matter of Christian Medical College [2015] 61 taxmann.com 68 (P&H) .In the case of Indian Society of the Church of Jesus Christ of Latter Day Saints*[2017] 86 taxmann.com 44 (Delhi) it was held by Delhi High court as under

15. In the present case, the factual determination by the ITAT that (i) the programmes conducted by the Society "are open for public at large without any distinction of caste, creed or religion and the benefits of these programmes held at the meeting house are available to the general public at large and (ii) priests are not managing the affairs of the society, have not been shown by the Revenue to be perverse. It is not the percentage of expenditure on persons not belonging to the religious community that mattered. What was significant was that there were donations made by the Society for the general public utility. This showed that it was not exclusively for the benefit of one particular religious community.

16. The CIT (A) had proceeded on the basis that although the Assessee Society was for both religious and charitable purposes, since it was for the benefit of only one religious community the provision of Section 13 (1) (b) would apply to deny it exemption under Section 11 of the Act. The above conclusion was legally flawed. It was contrary to the decision of the Supreme Court in *Dawoodi Bohra Jamat (supra)* which held that even where the trust or society has both religious and charitable objects, "it needs to be examined whether such religious-charitable activity carried on by the trust only benefits a certain particular religious community or class or serves across the communities and for society at large". In that case it was factually found that "the activities of the trust though both charitable and religious are not exclusively meant for a particular religious community" and, therefore Section 13 (1) (b) was not attracted. In the present case too, the factual finding of the ITAT is likewise. It has been found that the activities of the Assessee Society, though

both religious and charitable, were not exclusively meant for one particular religious community. It was, therefore, rightly not denied exemption under Section 11 of the Act.

43. Respectfully following the decision of the Hon'ble Supreme Court and High Courts (supra), we are of the view that Assessee is entitled to the registration u/s 80G(5)(iii) from the date of application.

44. Before we part, we feel it appropriate to record our deepest appreciation for Shri Prem Singh, Advocate, Sh GS Syal, CA, Sh TS Aurora, Advocate and ShGunjeet S Syal, Advocate for helping the disposal of the present appeal "Pro Bono" and Ld DR for the Revenue, who had argued this appeal, on short notice.

In the result the appeal of the Assessee is allowed.

Order pronounced in the Open Court on 16/08/2021.

**Sd/-
(Dr. Mitha Lal Meena)
Accountant Member**

**Sd/-
(Laliet Kumar)
Judicial member**

Copy of order forwarded to:

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|---------------------------------|--------------------|
| (1) The appellant | (2) The respondent |
| (3) Commissioner | (4) CIT(A) |
| (5) Departmental Representative | (6) Guard File |

By Order

Sr. Private Secretary
Income Tax Appellate Tribunal
Agra Bench, Agra