

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**

**BEFORE HON'BLE RAJPAL YADAV, VICE PRESIDENT**  
**AND**  
**HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**  
**VIRTUAL HEARING**

ITA No.706/Ind/2017

Shri Shridhar Gyan Prasara Parmarthik Trust  
Rajgad

PAN :AAFTS0410D

: Appellant

V/s

CIT-(Exemption)

Bhopal

: Respondent

Assessee by	Shri Atik Bansal, AR
Revenue by	Shri S.B. Prasad, CIT- DR
Date of Hearing	07.07.2021
Date of Pronouncement	09.08.2021

**ORDER**

**PER MANISH BORAD, A.M**

The above captioned appeal filed at the instance of the Assessee is directed against the orders of Ld. Commissioner of Income Tax(Exemption) (in short 'Ld. CIT(E)], Bhopal dated 30.08.2017 which are arising out of the order u/s 80G of the

Income Tax Act 1961(In short the 'Act'). The assessee has raised following grounds of appeal:

*That on the facts and circumstances of the case the Ld. CIT erred in considering the capital expenditure of Rs.11,82,924/- incurred during the F.Y. 20016-17 as expenses covered u/s 80G(5B) of the Income Tax Act before rejecting the application for approval u/s 80G.*

*That the Ld. CIT(E) considered all the application of income for non charitable purpose and rejected the application for approval u/s 80G(5)(ii).*

2. Brief facts of the case as culled out from the records are that the assessee trust is registered u/s 12AA of the Act and is stated to be engaged in carrying out charitable activities including spiritual activities, samuhik prayers, yoga camp, old age home and also owns a temple namely "Balaji Mandir". It is also stated that trust is organizing "Annashektra" for poor classes and provides philanthropic services.

3. Assessee trust applied for approval u/s 80G of the Act in form No.10G on 20.03.2017. Various documents as called for were supplied. However, Ld. CIT(Exemption) rejected the application u/s 80G of the Act observing as follows:

*3.1 The details of detonation revealed that source of income of is anonymous donations received in the typical drop box/dan peti usually found in religious places and therefore, details of the donors are not available. The objects of the trust include both religious and charitable*

*objects however the current activities are primarily religious in nature. The trust has constructed and is maintaining a temple name 'Balaji Mandir' at Zeerapur, Rajgarh (MP) which also has not a prayer hall where yoga and medical camp is organized occasionally. The perusal of income and expenditure accounts for F.Y. 2015-16 and 2016-17 reveals that the expenses are either religious in nature (Pooja Samargri expenses and Poshak Expenses) or are establishment expenses. As the current establishment consists of maintenance of temple only, even the establishment expenses are also considered religious in nature.*

*3.2 As regard capital expenditure, the total cost of construction of temple along with shops was Rs.1,92,25,973/- as on 31.03.2016, which rose to Rs.2,04,23,027/- as on 31.03.2017 on account of work in progress of proposed Vriddharshram, adjoining the temple premises. Therefore, even if capital expenditure of Rs.11,82,924/- incurred during F.Y. 20016-17 is considered the total expenses on running and maintenances of temple including establishment expenses for temple, by far exceed the limit of 5% as allowed as per section 80G(5B) of the I.T. Act and therefore, the AR was requested to show cause as to why not the approval be denied. In its reply dated 29.08.2017, the applicant claimed that only pooja samagri expenses are religious in nature and the rest are charitable. However, even though charitable activity is being claimed to be carried out, there are no expenses relating to any charitable activity debited in income and expenditure account and as discussed above. As the current establishment oly consists of 'Balaji Mandir', all expenses debited to income and expenditure account religious in nature and therefore, section 80G(5B) of the I.T. Act is invoked in tis case. Also the condition at Section 80G(5)(ii) is also violated as the objects as well as activities both indicate the utilization of funds for purpose other than charitable purpose. The AR though relied upon some case laws relating to the condition mentioned at section 80G(5)(iii), which is not being invoked in this case.*

4. Aggrieved assessee is now in appeal before this Tribunal. Ld. counsel for the assessee submitted that the assessee trust is not running solely for religious activities but is also carrying out various other charitable activities as mentioned in the trust deed. It is also constructing a new Dharmsala which will be used to provide temporary shelter to poor and needy. He also referred to

paper book pages 17 & 18 submitting that in the past also assessee was granted approval u/s 80G of the Act vide letter dated 16.04.1999 for the period 02.02.1999 to 31.03.2003. Regular activities are being carried out and construction of building is in progress. Income Tax Inspector has visited the spot personally and submitted his detailed report and has not found any irregularities. Reference was further made to the written submissions placed on record and the decisions relied:-

A. *The trust filed an application in Form No.10G seeking approval u/s 80G—CIT objected that the expenditure on religious object exceeded 5 percent of total income of assessee trust, therefore, he invoked section 80G(5B) and 80G(5)(ii) for rejected the application.*

B. *All building maintenance expenses, free food expenses, prasadam and festival, prayer and daily expenses cannot be regarded to be one incurred for religious object. Appellant had submitted all evidence including objects and how expenditure were incurred by it—There were no allegation on part of revenue that whole or substantially whole of object of trust was to propagate or advance support to a particular section of society or a religion. Further Hindu consists of a number of communities having different gods who are being worshipped in a different manner, different rituals, different ethical codes—Technically Hindu is neither a religion nor a community. Therefore, expenses incurred for worshipping of Lord Balaji and for maintenance of temple cannot be regarded to be for religious purpose.*

C. *The definition of charitable purpose is inclusive one, some of the objects fall within "advancement of any other object of general public utility"—until and unless any part of the income or assets of the institution for any purpose other than a charitable purpose or an activity when it loses its charitable character.*

D. *The appellant Trust total expenditure of on alleged religious activities during the F.Y. 16-17 was Rs. 88,262 (prasadam and poshak) where as total income/receipts including corpus fund amounts to Rs. 21,54,200. Thus the total*

*% age of the amount on alleged religious activities was 4.09 % whereas it should not exceed to 5 % as restricted by the section 80G (5B).*

E. The 'total income' as mentioned in sub-clause (5B) of [Section 80G](#) of the Act does not mean the 'income', as it appears in [Section 11](#) of the Act. The expression "total income" and income have been used differently and has distinct application. The circular dated 19.06.1968 and the judgment in Rao Bahadur Calavala Cunnan Chetty Charities's case is in respect of "income" relatable to [Section 11](#) of the Act and not "total income".

F. Appellant also relies on the decisions of:

1. YAMUNAJI MANDIR TRUST vs. CIT, ITAT, RAJKOT S. S. GODARA, JM & MANISH BORAD, AM, ITA No. 330/Rjt/2015, 18/01/2016, (2016) 46 CCH 0265 Rajkot Trib, (2016) 46 ITR (Trib) 0283 (Rajkot)
2. SHIV MANDIR DEVSTAN PANCH COMMITTEE SANSTAN vs CIT, ITAT NAGPUR, 2009, 11/10/2012,(2012) 34 CCH 0108, 150 TTJ 0452: (2012),
3. Umaid Charitable Trust vs. Union of India & Ors., HC Raj., (2008)218 CTR 0030”

5. Per contra Ld. Departmental Representative (DR) vehemently argued supporting the order of Ld. CIT(E) and also submitted that approval u/s 80G of the Act should not be granted to the assessee as it is solely running a temple namely “Balaji Mandir” and no others activities except religious in nature have been carried out as appearing from the expenses debited to income and expenditure account.

6. We have heard rival contentions and perused the records placed before us and carefully gone through the judgments referred and relied by the Ld. counsel for the assessee. We find that assessee trust is registered u/s 12AA of the Act since 12.03.1999 and objects of the trust as appearing for the trust deed dated 7<sup>th</sup> August 1998 are bing

consistently carried out which apart from carrying out religious activities at the 'Balaji Mandir' also carries out other activities including health checkup camp, yoga camp, spiritual activities, organizing "Annashektra" providing food for poor, library, old age home etc.

7. On perusal of finding of ld. CIT(E) we find that he has rejected the application u/s 80G of the Act on following two grounds:

- a) Expenses debited to income and expenditure account are mainly religious in nature.
- b) Violation of the provisions of section 80G(5B) of the Act as expenditure for religious activities exceeding 5% of the total income.

8. We observe that the assessee trust apart from running the 'Balaji Mandir' has also incurred expenditure on constructing old age home which is in progress. This fact has been admitted by Ld. CIT(E) also. Further on perusal of paper book pages 21 to 23, we find that the assessee trust is also providing food to poor, organizing medical camp and so it was not justified on the part of the Ld. CIT(E) to observe that the assessee trust is only running for religious activities. Even in the Income Tax expenditure account apart from the expenses for Pooja

Samagri at Rs.63,462/- and Poshak at Rs.24,800/-, trust has incurred other expenses at Rs.3,97,789/-. This facts goes un-rebutted by Ld. DR, therefore, so for as the first observation of the Ld. CIT(E) that the assessee is carrying out only religious activities does not seems to have merit as the evidence placed on record shows that the assessee trust is carrying out other activities also as enumerated in the trust deed.

9. As regards the second observation of the ld. CIT(E) that the assessee trust has violated the provision of section 80G(5B) of the Act, we find that as per the provisions of section 80G(5B) of the Act for institutions or fund to qualify for getting approval u/s 80G(5B) of the Act the expenditure of religious nature incurred during any previous year should not exceed 5% of its total income. In the impugned order Ld. CIT(E) has alleged that the expenditure of religious nature incurred by the assessee has exceeded 5% of the total income. We, however on going through the submissions of the Ld. counsel for the assessee as well as facts placed on record, find that during the year total receipts appearing in the income and expenditure account are at Rs.14,11,089/- and carpus fund received during the year (as shown in the balance sheet end 31<sup>st</sup> March 2017) is Rs. 7,43,111/-. Thus total

receipt of the trust for the year at Rs.21,54,200/- and against the total receipts the alleged expenditure of religious nature amounts to Rs.88,262/- which in percentage term comes to only 4.10% of the total receipt. Therefore, in our considered view assessee has not violated the provision of section 80G(5B) of the Act.

10. In view of above discussions we find that both the reasons for which the assessee had been denied the approval u/s 80G(5B) of the Act do not have merit and further we find that the assessee's case is also supported by judicial precedents. In case of *Shiv Mandir Devsttan Panch Committee Sanstan vs. CIT(supra)* following ratio was laid down by Coordinate Bench Nagpur:-

*Held: Section 80G(5) assessee has provided kites for distribution in general public, carried out free medical check-up, distributed provisions, run music school, planted trees, provided lunch to children, started library, supplied food and clothes to flood victims, carried out dental check up, lunch for orphanage, paid needy children fees, offered free medical aid to poor for treatment of cancer, free check up diabetes and blood pressure, organize teaching class, and distributed books. The paper books comprise of photographs and letters which have gone un-rebutted in the course of argument. We quote all this material and findings on record to hold that the assessee is not an institution expressed to be for the benefit of any particular religious community or caste u/s. 80G(5)(iii) or having any purpose the whole or substantially the whole of which is of religious nature under explanation 3 therein. ITAT accepted assessee's arguments and assessee's registration petition.*

11. Hon'ble' Rajasthan High Court in the case of *Umaid Charitable Trust vs. Union of India & Ors., (supra)* has held the following in relation to the provisions of section 80G(5B) of the Act, *qua* approval u/s 80G(5)(vi) of the Act. Relevant extract is reproduced below:

*In this case it was held that "Donation of more than 5% of its income for renovation of temple of Lord Vishnu would not disentitle the trust for renewal of approval under s. 80G(5)(vi) on the ground of violation of s. 80G(5B)-As people belonging to different religious sects have faith in lord Vishnu, the expenditure cannot be said to have been incurred for a particular religion-There is no clause in the trust deed which indicates that income of the petitioner trust was to be applied wholly or substantially for any particular religion so as to constitute violation of s 80G(5) r/w Expln. 3.*

*D.6. **In CIT v. Rajneesh Foundation** , the Bombay High Court observed that charitable purpose includes relief of the poor, education, medical relief and advancement of any other object of general public utility. Not only in India, meditation and yoga are being accepted in the western countries also as a great source for physical and mental health and spiritual attainment. When a large number of people feel that meditation is a great source for physical, mental and spiritual well-being it must be held to be an activity for the advancement of general public utility. Rule of Consistency.*

12. We, therefore in the given facts and circumstances of the case and respectfully following the decisions referred hereinabove, are of the considered view that the ld. CIT(E) erred in denying the approval u/s 80G of the Act applied by the assessee in Form 10G since the assessee is carrying out activities both religious and charitable in nature and expenditure of religious nature during the year have not exceeded 5% of the total receipts, assessee should be granted necessary approval u/s 80G of the Act. Thus, grounds raised by the assessee are allowed.

13. In the result, assessee's appeal in

ITANo.706/Ind/2017 is allowed.

The order pronounced as per Rule 34 of ITAT Rules, 1963  
on 09.08.2021.

Sd/-

(RAJPAL YADAV)  
VICE PRESIDENT

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

दिनांक /Dated : 09.08. 2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore