

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 335/SRT/2023 (AY: 2022-23)
(Hearing in Virtual Court)

Shri Ojus Trust, C/o-Smt. Maniben Pithawala Diagnostic Centre, P.O. Sultanabad, Dumas, Dist.- Surat-394550. PAN: AABTS 2891 L	Vs.	Commissioner of Income Tax (Exemptions), Ahmedabad, Room No. 60, Floor-6, aayakar Bhawan (Vejalpur), Nr. Sachin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad-380015.
APPELLANT		RESPONDEDNT

Assessee by	Shri Hiren Vepari, C.A.
Department by	Shri Ashok B. Koli (CIT-DR)
Date of Institution of Appeal	10/05/2023
Date of hearing	11/07/2023
Date of pronouncement	11/07/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee-trust is directed against the order of learned Commissioner of Income Tax, (Exemptions), Ahmedabad [in short the Id. CIT(E)] in rejecting the application for approval of assessee-trust under Section 80G(5) of the Income Tax Act, 1961 (in short, the Act) vide order dated 22/03/2023. The assessee has raised following grounds of appeal:

- “(1) The learned CIT(Exemption) was not justified in rejecting application for recognition u/s 80G.
- (2) Without prejudice to the above, with the application u/s 80G only premised upon the rejection of application u/s 12AB and that the

Tribunal setting aside the order u/s 12AB, the order appealed against rejection of application of section 80G may also be set aside.

- (3) All of the above grounds are prejudice to one another.*
- (4) The appellant craves leave to add, alter or vary any of the grounds of appeal."*

2. Brief facts of the case are that the assessee-trust filed an application for approval of the Trust under Section 80G(5) of the Act in Form 10AB in accordance with Rule 11AA of the Income Tax Rules, 1962, (in short, the Rules) on 21.09.2022. The assessee furnished necessary required details at the time of filing application electronically/online. On receipt of such application, the Id. CIT(E) issued notice dated 12/12/2022 and subsequently on 10/01/2023 for requiring the assessee for filing certain other details/documents. The assessee filed required details vide its reply dated 12.01.2023 and on 23.01.2023. However, the Id. CIT(E) rejected the approval by taking a view that the application of assessee for registration under Section 12AB of the Act has been rejected on 21/03/2023. The Id CIT(E) was further of the view that registration under Section 12AB which is prerequisite condition for granting of approval under Section 80G of the Act. Therefore, in absence of valid registration under Section 12AB, the application for approval under Section 80G(5) of the Act is rejected. Further aggrieved, the assessee has filed present appeal before the Tribunal.
3. We have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Commissioner of Income Tax-

Departmental Representative (Id. CIT-DR) for the revenue. The Id. AR of the assessee submits that the assessee has challenged the rejection of application for registration under Section 12AB, before Tribunal and prayed that he has a good case on merit and is likely to succeed for getting registration under Section 12AB of the Act, if their application is considered afresh. The rejection of application was that the assessee could not furnish audited statement for FY 2021-12. The Id AR for the assessee prayed that grounds of appeal raised in the present appeal may be restored to the file of Id. CIT(E) for granting appropriate approval to the assessee under section 80G(5) after deciding the application for registration under section 12AB.

4. On the other hand, the Id. CIT-DR for the revenue supported the order of Id. CIT(E). The Id. CIT-DR submits that for approval of trust under Section 80G(5) of the Act, registration of 12A/12AA/12AB is precondition and in absence of such registration, no approval under Section 80G(5) of the Act can be granted.
5. We have considered the submissions of both the parties and have gone through the order of Id. CIT(E) carefully. We find that the assessee has also challenged the action of Id CIT(E) in rejecting the application under section 12AB, which we have restored back to reconsidering it afresh on submitting required details, vide our order dated 11.07.2023. Therefore,

this this appeal is also restored back to the file of Id. CIT(E) to decide it, after the order on the application under Section 12AB of the Act. Needless to direct that before deciding the application afresh, the Id. CIT(E) shall grant opportunity of hearing including to make further submission to prove the object of assessee-trust and its activities and other requirement in accordance with law. In the result, grounds of assessee's appeal is allowed for statistical purposes.

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

Order pronounced on 11/07/2023 in open court.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 11/07/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT
4. DR
5. Guard File

By Order

Sr. Private Secretary, ITAT Surat