

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 376/Ahd/2023

| | | |
|---|----------------------|--|
| Ajramar Active Assort Trust Sanand Circle S. G. Highway, Ahmedabad Gujarat - 382210 | बनाम/ Vs. | The CIT(Exemption) Ahmedabad |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAITA5998F | | |
| (Appellant) | .. | (Respondent) |

| | |
|-------------------------------------|------------------------------|
| अपीलार्थी ओर से /Appellant by : | Shri Mehul Thakker, A.R. |
| प्रत्यर्थी की ओर से/Respondent by : | Shri Kamlesh Makwana, CIT DR |

| | |
|------------------------------|------------|
| Date of Hearing | 31/01/2024 |
| Date of Pronouncement | 31/01/2024 |

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed at the instance of the assessee is directed against the order dated 18.03.2023 passed by the CIT(E) Ahmedabad, under Section 80G(5) of the Act.

2. The crux of the matter is this that the approval of the 80G has been disallowed by the Ld. CIT(E) as one of the objects of the Trust is found to be religious. The Ld. CIT(E) relied upon Explanation 3 of Section 80G of the Act to this effect that if any of the objects mentioned in Section 80G of the Act is wholly, or substantially wholly, of a religious character, the institution or fund falls outside

the scope of Section 80G of the Act and a donation to it does not secure the advantage of the deduction that it gives. Further that, 80G(5)(iii) of the Act stipulates that the institution or fund is not expressed to be for the benefit of any particular religious community or caste. Some of the objects of the appellant trust are found religious in nature and the assessee violated the provision of the Act and not entitled to get approval under Section 80G(5) of the Act was the main ground of rejection of approval of the assessee Trust.

3. At the time of hearing of the instant appeal, the Ld. Counsel appearing for the assessee submitted before us that Section 80G(5B) of the Act states that the institution or trust or fund which incurs expenditure in previous year which is of religious nature for an amount exceeding 5% of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of Section applies. The judgment relied upon by the Ld. CIT(E) while rejecting approval under Section 80G of the Act passed by the Hon'ble Supreme Court in case of Upper Ganges Sugar Mills Ltd. vs. CIT, reported in 93 Taxman 645 has been argued to be not applicable by the Ld. AR in the present facts and circumstances of the case since the provision of Section 80G(5B) of the Act as mentioned hereinabove came into force by the Finance Act, 1999. The CBDT Circular No.779 dated 14.09.1999 dealing with this particular amendment has been submitted before us which speaks as follows:

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

33.1 Under the provision of section 80G of the Income-tax Act, 1961, a deduction in respect of donations to certain funds, institutions, etc., is provided. However, clause (ii) of sub-section (5) of that section provides that if such fund or institution has in its instrument any provision for the transfer or application of the whole or any part of the income or asset for any purpose other than a charitable purpose, it could not avail of the benefit under this section. It has also been provided in Explanation 3 that for the purpose of this section, "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature. These provisions have been interpreted to deny the benefit to even such funds or institutions as are predominantly engaged in charitable activities but are either inspired to do charity by tenets of religion or spend a negligible amounts on purposes other than charitable. It would be harsh to deny the benefits to the institutions which are engaged in activities, the whole or substantially the whole of which are of charitable nature.

33.2 In order to mitigate hardship to such funds or institutions, the provisions of section 80G are amended so as to provide that in case such institutions or funds spend upto five per cent. of their income during the relevant previous year for religious purpose, the benefit of deduction will not be denied to them.

33.3 This amendment will take effect from the 1st day of April, 2000, and will, accordingly, apply in relation to the assessment year 2000-2001 and subsequent years. [Section 43]"

4. It appears that authority was of the view that the institution which are pre-dominantly engaged in charitable activities but are either inspired to do charity by tenets of religion or spend a negligible amounts on purposes other than charitable, it would be harsh to deny the benefits to those institutions in term of the provision of Section 80G of the Act. In order to mitigate hardship to such funds or institutions, the provisions of Section 80G of the Act are amended by Finance Act, 1999 so as to provide that in case such institutions or funds spend upto 5% of their income during the relevant previous year for religious purpose, the benefit of deduction would not be denied to them. As the judgment relied upon by the Ld. CIT(E) in case of Upper Ganges Sugar Mills Ltd. vs. CIT (supra) was pronounced in pre-amended era, the same is not applicable to

the facts and circumstances of the case as contended by the Ld. Advocate is, therefore, found to be acceptable by us in view of the CBDT Circular No. 779 dated 14.09.1999 mentioned hereinabove. Thus, keeping in view this particular aspect of the matter, we set aside the issue to file of Ld. CIT(E) for adjudication of the same de novo keeping in view the provision of Section 80G(5B) of the Act and upon granting an opportunity of being heard to the assessee and considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. The Ld. CIT(E) is directed to pass reasoned order strictly in accordance with law.

5. In the result, the appeal preferred by the assessee is allowed for statistical purposes.

This Order pronounced on 31/01/2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 31/01/2024
S. K. SINHA

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad