

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.390/Ahd/2023  
(Assessment Year: N.A.)

Swami Sunyanand Janseva Trust, 13-B, Swastik Society, Gorbi Marg, AT And Post, Palanpur, Banaskantha-385001	Vs.	Commissioner of Income Tax (Exemption), Ahmedabad
[PAN No.AATTS4396J]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Mehul Thakkar, C.A.
<b>Respondent by:</b>	Shri Sudhendu Das, CIT DR

<b>Date of Hearing</b>	09.01.2024
<b>Date of Pronouncement</b>	28.02.2024

ORDER

**PER SIDDHARTHA NAUTIYAL, JM:**

This appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Exemption), (in short “Ld. CIT(E)”), Ahmedabad in DIN & Notice No. ITBA/EXM/F/EXM45/2022-23/1051200943(1) vide order dated 23.03.2023.

2. The assessee has taken the following grounds of appeals:-

*“1. The Ld. CIT-Exemption, Ahmedabad has erred on facts and in law in rejecting the application seeking approval under section 80G(5) of the Income Tax Act on the ground that some of the objects of the appellant trust are religions in nature.*

*2. The appellant craves leave to add, alter or delete any ground either before or in the course of hearing of the appeal.”*

3. The brief facts of the case are that the assessee filed application for approval of Trust under Section 80G(5) of the Act on 27.09.2022. The CIT(E) rejected the application filed by the assessee on the ground that the assessee / applicant has mentioned in Form 10AB that two of the objects of the assessee are “religious” in nature. The CIT(E) observed that the assessee / applicant in Form No. 10AB has mentioned that it has incurred expenditure of religious nature. The CIT(E) was of the view that Section 80G of the Act specifies that there is no provision for application of fund for any purposes other than a “charitable purpose”. Accordingly, CIT(E) dismissed the application of the assessee, with the following observation:-

*“6. In response to the above notices issued, the applicant/assessee has submitted certain details/documents and from perusal the Trust deed/instrument of creation of trust submitted, it is observed that some of the objects are religious in nature and the portion in Gujarati language of the same is reproduced hereunder:*

*“.....*

*c) To establish centres for research, development & spreading of **Buddhisam**.*

*d) To canyon or premise educational and cultural activities of all kinds including **Buddhisam** & physical, intellectual, moral and social benefit of the students of **Buddhisam** and other community and to acquire, hold, take on lease, purchase or receive by way out promoting or putting in to effect the activities of the Trust.*

*.....”*

7. *The provisions of sec 80G(5) stipulates that the said section applies to any donation or 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 other conditions mentioned therein. The provisions of sec 80G(5)(ii) of the Act, stipulates that 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 or 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 and the sec 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. The plain reading*

of said provisions of the Act makes it evident that the provisions of sec 80G(2)(a)(iv) of the Act is applicable only to such institution or fund which is established in India for Charitable purposes, there is no provision for transfer or application of fund for any purposes other than a charitable purpose. However, the sec 80G(5B) of the Act further prescribes that 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.

8. The Hon'ble Supreme Court in the case of Upper Ganges Sugar Mills Ltd vs CIT, reported in 93 Taxman 645, while adjudicating similar issue u/s 80G of the Act has held as under:

8. Section 80G applies to donations to any institution or fund established in India 'for a charitable purpose'. Charitable purpose, for the purposes of the section, does not include any purpose the whole or substantially the whole of which is of a religious nature'. [Emphasis supplied] Explanation 3, which uses this phraseology, takes note of the fact that an institution or fund established for a charitable purpose may have a number of objects. **If any one of these objects is wholly, or substantially wholly, of a religious character, the institution or fund falls outside the scope of section BOG and a donation to it does not secure the advantage of the deduction that it gives.**

9. The judgment of this Court in Addl CIT v. Surat Art Silk Cloth Mfg. Association [1980] 121ITR 1/[1979] 2 Taxman 501, cited by the learned counsel for the assessee, was delivered with reference to the true meaning of the words 'not involving the carrying on of any activity for profit' occurring at the end of the definition of 'charitable purposes' in section 2(15) of the Act. This Court said that if the primary or dominant purpose of the trust was charitable, another object which by itself may not be charitable but which was merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or the institution from being a valid charity. The judgment is of no assistance in construing Explanation 3 of section 80G.

10. To reiterate, 'Explanation 3 does not require the ascertainment of whether the whole or substantially the whole of the institution or fund's charitable purpose is of a religious nature. If it did, it would read differently. **It requires the ascertainment of whether there is one purpose within the institution or fund's overall charitable purpose which is wholly, or substantially wholly, of a religious nature.** There is little doubt that clause 2(h) of the trust deed which permits the trustees to support prayer halls and places of worship sets out a purpose the whole or substantially the whole of which is of a religious nature, and this has not been seriously disputed. Therefore, in our view, the Trust and the donation by the assessee to it fall outside the scope of section 80G."

The above referred provisions of sec 80G of the Act make it amply clear that the applicant/assessee has to be established only for charitable purposes and there is

*no transfer or application of funds for any purposes, other than a charitable purpose, subject to concession granted to the extent to the extent of 5% of total income as per sec 80G(5B) of the Act. It is not the case, that the provisions of sec 80G(5GB) of the Act is applicable to any trust/fund established for any purposes other than charitable purpose, i.e. religious or charitable cum religious purposes. Similar law has been laid down by the Hon'ble ITAT Agra in the case of Yug Chetna Parmarth Trust, reported in 44 taxmann.com 446, wherein the Hon'ble Tribunal has held as under.*

*"Section 80G(5B) is also not in contravention of provisions of section 80G(5) of the IT Act because it clarifies the position that the assessee trust when incurred expenditure on religious activities, which is less than 5% of the total income would be deemed to be Institution or fund, to which the provisions of this section apply. The small percentage of amount not exceeding 5% provided in this section clearly prove that the assessee shall have to establish on record that it existed and established for charitable purpose only and while incurring the expenditure during any previous year, which is of a religious nature for an amount not exceeding to 5% of its total income for that previous year, shall be deemed to be an Institution or fund to which the provisions of section shall apply. **The benefit of section 80G(5B) is thus provided to limited extent to the Institution or trust or fund, established for charitable purpose only when it incurs expenditure on religious activities not exceeding 5% of its total income in that previous year. This provision did not say that the assessee trust or fund should not exist or establish for charitable purpose.**"*

9. As discussed above, it is evident that some the objects of the applicant/assessee are religious in nature. Therefore, the applicant/assessee has violated the above referred provisions of the Income Tax Act and hence the applicant/assessee is not entitled to get approval u/s. 80G(5) of the Income Tax Act therefore the present application filed in Form 10AB is liable to be rejected.

10. Looking to the above facts, the present application filed in Form No. 10AB for the approval u/s. 80G(5) of the I.T. Act, 1961, is **"rejected"**."

4. The assessee is in appeal before against the aforesaid order passed by CIT(E).

5. Before us, the Counsel for the assessee submitted that at firstly Ld. CIT(E) made an observation with respect to only two of the objects of the applicant trust that they are religious in nature. The Counsel for the assessee submitted before us that the balance objects of the applicant trust are not of a religious nature. Further, the Counsel for the assessee drew our attention to sub-Section (5B) to Section 80G with states that a

Trust which incurs expenditure during any previous year which is of a religious nature for an amount not exceeding 5% of it's total income shall be deemed to be an institution or fund to which the provisions of this section apply. The Counsel for the assessee submitted that the applicant trust had incurred less than 5% of it's total income towards religious purposes and accordingly, the benefit of Section 80G(5) of the Act should not be denied to the assessee.

6. In response, Ld. D.R. placed reliance on the observations made by the Ld. CIT(E) in the order. The Ld. D.R. submitted that even if one of the objects of the trust is wholly religious in nature, then irrespective of the quantum of expenditure incurred by the applicant on such religious activity, the applicant is not entitled to the benefit of Section 80G(5) of the Act.

7. We have heard the rival contentions and perused the material on record.

8. It would be useful to reproduce Explanation 3 to Section 80G(5) for reference which reads as under:-

*“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.”*

9. A plain reading of Explanation 3 suggests that the term “charitable purpose” does not include any purpose, the “whole or substantially the whole” of which is of a religious nature. This implies that some part of the activities of a trust are permitted to be of a religious nature.

10. It would be further useful to reproduce sub-Section (5B) to Section 80G of the Act for ready reference:-

*“(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.”*

10.1 Sub-Section (5B) provides that an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding 5% of its total income in that previous year, shall be deemed to be a institution or fund to which the provisions of this section apply. Further, notably sub-section (5B) starts with the words “Notwithstanding anything contained in Clause (ii) of sub-Section (5) and Explanation 3...”. Therefore, on a plain reading of sub-Section (5B) to Section 80G, it is evident that if any institution or fund incurs any expenditure which is of a religious nature for an amount not exceeding 5% of its total income in a previous year, it shall be deemed to be an institution or fund to which the provisions of this section apply. In the instant facts, we observe that Ld. CIT(E) has relied upon the fact that two of the applicant trust’s objects are religious in nature. Further, Ld. CIT(E) has not made any specific observations as to whether less than 5% of the total income has been spent by the assessee towards religious purposes.

11. Accordingly, in the interest of justice, the matter is being restored to the file of Ld. CIT(E) for de-novo consideration after analyzing whether less than 5% of the total income has been incurred by the

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assessee trust towards religious activities. In case it is found that less than 5% of the total income has been incurred as expenditure by the applicant trust towards religious purposes, then benefit of Section 80G(5) of the Act may be granted to the assessee in other conditions are satisfied, in accordance with law.

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

<b>This Order pronounced in Open Court on</b>	<b>28/02/2024</b>
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**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 28/02/2024

TANMAY, Sr. PS

**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, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

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