

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"D" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.175/AHD/2023
(निर्धारणवर्ष/Asstt. Year: 2022-23)

OM Tapovan Charitbale Trust, At: Village Borbhatha Bet, Nr. Golden Bridge, Ankleshwar-393001 PAN: AAATO2047D	Vs.	Commissioner of Income Tax (Exemption), Ahmedabad
(Applicant)		(Respondent)

Assessee by :	Ms. Kinjal Shah, C.A.
Revenue by :	Dr. Darsi Suman Ratnam, CIT D.R.

सुनवाईकीतारीख/**Date of Hearing** : **19/02/2024**
घोषणाकीतारीख/**Date of Pronouncement**: **17/05/2024**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Exemption), (in short "Ld. CIT(E)"), Ahmedabad order dated 21.02.2023 passed for A.Y. 2022-23.

2. The only issue raised by the assessee is that the learned CIT(Exemption) erred in rejecting the application filed for registration under section 80G(5) of the Act.

3. The facts in brief are that the assessee, a charitable trust, runs an ashram where people can engage in yoga, yagna (havan), and shibirs. The assessee trust was established with various objects such as running charity kitchen, medical camp, assistance to economically weaker people, assistance in imparting education etc. as well as to carry out religious activity& celebration, maintenance

of temple etc. The assessee trust was registered under section 12A of the Act w.e.f. 31-05-2021.

4. Subsequently, the assessee trust applied for the approval of trust under section 80G(5) of the Act vide application dated 10-08-2022 before the Id. CIT(Exemption). The learned CIT(Exemption) found that the application of the assessee contains nature of activity as "Religious cum Charitable" and further para/row 5 of the application in form (Form-10AB) mentions object as "religious". The learned CIT(Exemption) further notices that object clause 22 of the trust deed also contains object to carry out religious activity, to make and maintain temple, to celebrate religious festival. The learned CIT(Exemption) was of the view, as per the provisions of section 80G(2)(iv)(a) read with section 80G(5)(ii) & (iii) of the Act, that:

- i. The fund/institution should be created for charitable purposes.
- ii. The rules governing the institution should not contain any provision for transfer or application of funds for the purpose other than charitable purpose.
- iii. The object of the institution should not express to be for the benefit of any religion or caste.
- iv. The learned CIT(Exemption) further observed that the provision of section 80G(5B) provides that notwithstanding to the Explanation 3 and section 80G(5)(ii) of the Act provides that the expenses incurred for religious purpose if less than 5% of gross receipts, then it shall be deemed that there is no contravention of the provisions of section 80G of the Act.
- v. However, the assessee to avail the benefit of the provisions of section 80G(5B) of the Act is required to establish that its activities are only for charitable purposes.

5. However, in the case of the assessee trust, the object clause expressly contains religious purposes. Hence, the application of the assessee for approval under section 80G of the Act was rejected by the learned CIT(Exemption).

6. Being aggrieved by the order of the learned CIT(Exemption), the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 32 and contended that it has not incurred any expense relating to religious activity and therefore the assessee should be allowed the registration as per the amended provisions of section 80G(5B) of the Act.

8. On the other hand, the learned DR submitted that the assessee can be allowed the benefit of the provisions of amended section 80G(5B) of the Act provided that its objects are only charitable in nature and while carrying out charitable activities, it has incurred some expenses which are of religious nature but the same should not exceed 5% of the gross receipts. But in the given case, one of the objects of the assessee is of religious nature and therefore the application of the assessee is hit by clause (iii) of section 80G(5) of the Act which has not been overridden by the amended provisions of section 80G(5B) of the Act. The learned DR permanently supported the order of the learned CIT exemption.

9. We have heard the rival contentions of both the parties and perused the materials available on record. The amended provisions of section 80G(5B) of the Act have overridden the provisions of sub-clause (ii) of section 80G(5) of the Act and the explanation 3 of section 80G of the Act but it has not overridden sub-clause (iii) of section 80G(5) of the Act which requires that the assessee should not have any object in the deed relating to the religious activity. In the present case, admittedly one of the objects in the deed is of a religious nature as observed by the Id. CIT exemption discussed above and, therefore we are of the view that the assessee is not eligible for registration under section 80G(5) of the Act. In holding so, we draw support and guidance from the order of ITAT in the case of **Yug Chetna Parmarth Trust vs. CIT** reported in 44 taxmann.com 446 wherein it was held as under:

"Section 80G(5B) is also not in contravention of provisions of section 80G(5) 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 per cent provided in this section clearly proves 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 per cent 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 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 per cent of its total income in that previous year however, this provision does not say that the assessee trust or fund should not exist or establish for charitable purpose."

10. The facts of the case on hand are identical to the facts of the case cited above. Therefore, we are of the view that the assessee is not eligible for registration under section 80G(5) of the Act. Accordingly, we do not find any reason to interfere in the finding of the learned CIT exemption and thus we uphold the same. Hence, the ground of appeal of the assessee is hereby dismissed.

11. In the result the appeal filed by the assessee is hereby dismissed.

Order pronounced in the Court on 17/05/2024 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER
Ahmedabad; Dated 17/05/2024
Tanmay

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

TRUE COPY

आदेशकीप्रतिलिपिग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad