

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

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1890/Ahd/2024
(निर्धारण वर्ष / Assessment Year: NA)

Pravinbhai Puranraj Sthanakvasi Foundation 9,10, Manichandra Society, Nr. Surdhara Circle, Thaltej, Ahmedabad 380054 Gujarat	बनाम/ Vs.	Commissioner of Income Tax (Exemption), Ahmedabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAOCP4545J		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Sh Parin Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri A P Singh, CIT-DR

Date of Hearing	23/12/2024
Date of Pronouncement	06/01/2025

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order dated 19.10.2024 passed by the Commissioner of Income Tax (Exemption) Ahmedabad, (in short ‘the CIT(Exemption)’), rejecting the application for approval u/s. 80G(5)(iii) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. The application for approval of the Trust under clause (iii) of first proviso to sub-section (5) of Section 80G of the Income Tax Act, 1961 was filed by the assessee in Form No.10AB electronically. The Id. CIT(Exemption) observed that the assessee should be provisionally approved prior to filing of application for obtaining regular approval under clause (iii) of first proviso to sub-section (5) of Section 80G of the Act. Since no order of provisional approval was filed by the assessee, the Id. CIT(Exemption) held that the application of the assessee for regular approval was premature and non-maintainable. Therefore, the application of the assessee was rejected.

3. Aggrieved with the order of the Id. CIT(Exemption) the assessee is in appeal before us. The following grounds have been taken in this appeal:

1. *The order passed by CIT (Exemption) is bad in law and required to be quashed.*
2. *Ld. CIT(Exemption) erred in law and on facts in rejecting registration by observing that regular approval was not provided ignoring fact that same has been already submitted to him.*
3. *Ld. CIT(Exemption) ought to have considered the fact that filing an application under wrong clause of proviso does not alter the objects or activities of trust and its procedural error or technical error and accordingly he ought to have granted registration.*
4. *Ld. CIT(Exemption) ought to have considered the fact that procedural or technical error does not take away fundamental rights which are otherwise available to the applicant.*
5. *Ld. CIT(Exemption) erred in law and on facts in not confronting opportunity of being heard and thus violated principle of natural justice.*

4. Sh. Parin Shah, the Id. Counsel of the assessee submitted that the assessee trust was incorporated on 06.02.2024 and this

was the first year of activity. The trust was formed with the object of relief to poor, education and advancement of any other object of public utility. The trust had undertaken the project of construction of girl's hostel at Navarangpura. The Id. AR submitted that the trust had applied for final registration as the activity had commenced immediately after incorporation and that the registration u/s 12AB(1)(b) was granted on 01/08/2024 for the years 2024-25 to 2028-29. The Id. AR submitted that there was an inadvertent error in the application filed by the assessee as the application was made under subclause (iii) of the proviso to section 80G(5) whereas the application should have been made under sub-clause (iv) of the said proviso. According to the Id. AR the Id. CIT (Exemption) was not correct in rejecting the application of the assessee for this inadvertent mistake without allowing any opportunity of being heard to the assessee. He submitted that the assessee was not allowed any opportunity to rectify the mistake in the application, The Id. AR relied upon the decision of coordinate bench of this Tribunal in the case of *Uttar Gujarat Shikshan Seva Trust in ITA No.1090/Ahd/2023 dated 05.04.2024* and submitted that the assessee should have been allowed an opportunity to rectify its application.

5. Per contra the Id. CIT-DR, Sri A P Singh, appearing for the Revenue supported the order passed by the Id. CIT (Exemption) and submitted that since the application was filed by the assessee under wrong provision the Revenue had no option to rectify the mistake. Therefore, he requested to uphold the order passed by

the Id. CIT (Exemption). He further submitted that the assessee was free to make a fresh application under the correct provisions of the Act.

6. We have given thoughtful consideration to the rival submissions and perused the materials available on the record. The only reason for rejecting the registration u/s. 80G(5) of the Act was that the assessee had wrongly filed the application under sub-clause (iii) of the proviso to section 80G(5) of the Act. The said proviso is reproduced for sake of easy comprehension:

Provided that the institution or fund referred to in clause (vi) shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval,—

- (i) where the institution or fund is approved under clause (vi) [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020], within three months from the 1st day of April, 2021;
- (ii) where the institution or fund is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;
- (iii) where the institution or fund has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier; ⁶[or]
- ⁷[(iv) ⁸[***] where activities of the institution or fund have--
 - (A) not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought;
 - (B) commenced⁹[***]at any time after the commencement of such activities:]

7. As rightly held by the Id. CIT (Exemption) the application could have been filed under sub-clause (iii) of the proviso only in the case where the institution or fund was provisionally approved. In the present case the assessee was not granted provisional approval when the present application

was filed by it. In the case of the assessee sub-clause (iv)(B) of the proviso was applicable since the trust had had already commenced its activities and the application for approval was filed thereafter. The fact that the activity of the trust had commenced immediately after incorporation on 06.02.2024 and, therefore, sub-clause (iv) of the proviso was applicable, was apparent from the reply of the assessee filed before the Id. CIT (Exemption). Under the circumstances the Id. CIT (Exemption) should have allowed an opportunity to the assessee to rectify its application. The rejection of the application by the Id. CIT (Exemption) without allowing any opportunity to the assessee was against the principle of natural justice. It is undisputed fact that the assessee was carrying out the charitable activities and the genuineness of the activities were not under doubt. The denial of registration only for wrong mention of the sub-clause in the application certainly affects the charitable activities carried out by the trust.

8. An identical issue was involved in the case of *Uttar Gujarat Shikshan Seva Trust* (Supra) wherein the Coordinate Bench of this Tribunal had set aside the matter to the Id. CIT (Exemption) with a direction to pass order on merits after the rectified application was filed by the assessee. In that case the assessee had filed application u/s 80G(5)(ii) of the Act instead of u/s 80G(5)(iii) of the Act.

9. Respectfully following the decision of the Coordinate Bench, the present impugned order of Id. CIT (Exemption) is hereby set aside with a direction to pass order on merits on the rectified application to be filed by the assessee. Needless to mention, the assessee should file the application for

registration under the correct sub-clause of proviso to section 80G(5) of the Act before the Id. CIT (Exemption).

10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

This Order pronounced on 06/01/2025

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 06/01/2025

S. K. SINHA

Sd/-

(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

True Copy

आदेश की प्रतिलिपि अद्येषित/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