

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 537/RPR/2024

(निर्धारण वर्ष Assessment Year:2024-25)

Bhagwan Mahaveer Jain Relief Trust, 01 Pagaria Complex, Siddharth Chowk, Tikra Para, Raipur- 492 001, C.G.	v s	CIT(Exemption), Bhopal- 462016, M.P.
PAN: AACAB0577A		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Nikhilesh Begani, Adv. & Mrs. Dimple Warlyani, CA
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	27.01.2025
घोषणा की तारीख/Date of Pronouncement	:	31.01.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee against the order by Commissioner of Income Tax (Exemption), Bhopal u/s 80G of the Act, 1961 (in short "The Act"), dated 27.09.2024, rejecting the application of assessee in Form No. 10AB for granting of registration under Item (B) of Sub-clause(iv) of 1st Proviso to section 80G (5) of the Act.

2. The Grounds of appeal raised by the assessee are extracted as under:

Grounds of Appeal

1. Erroneous Interpretation of Provisions:

- *The learned Commissioner of Income Tax (Exemptions) has incorrectly applied sub- clause (iv)(B) of the first proviso to Section 80G(5), which does not disqualify a trust already claiming exemption under Sections 11, 12, or 10(23C). The rejection fails to consider the primary intent of Section 80G(5), which is to assess the trust's charitable nature and its compliance with the requisite conditions.*

2. Failure to Consider Relevant Facts:

- *The rejection order passed by the learned Commissioner of Income Tax (Exemptions) was based solely on technical grounds without examining the merits of the trust's activities or financial compliance. The trust has been operational for charitable purposes and has complied with statutory obligations, including filings under Section 12AB. The rejection order specifically mentions that the merits of the case were not examined. This demonstrates an arbitrary and mechanical approach, undermining the trust's right to a fair hearing.*

3. Non-Consideration of Statutory Requirements:

- *The registration under Section 12M was validly granted, and there has been no contravention of Section 12M(3) or Section 12AB. The appellant continues to operate exclusively for charitable purposes as defined under Section 2(15) of the Income-tax Act, 1961.*

4. No Breach of Object Clauses:

- *The appellant's activities have been consistent with its stated objectives, which continue to serve the public benefit without any deviation.*

5. Violation of Natural Justice:

- *The learned CIT(Exemptions) did not adequately address the responses and documentation submitted during the proceedings, thereby violating the principles of natural justice.*

3. Briefly stated the assessee trust had applied for registration u/s 80G in Form No. 10AB on 14.03.2023 before the Ld. CIT(E), consequently, opportunity letters were issued on 22.07.2024 and 02.08.2024 to the assessee, various documents / details were called for to process the said application and to verify the objectives and activities of the assessee trust. In response, the assessee submitted its replies along with various documents during the proceedings. Subsequently, the subject application of assessee was rejected by the Ld. CIT(E), stating that the assessee had filed the application under sub-clause(iv)(B) of 1st Proviso to Section 80G(5) of the Act, which is not applicable in the case of the assessee trust, accordingly, the assessee, being not eligible to file the application under the provisions of clause(iv)(B) of the 1st Proviso to Section 80G, therefore, the grant of registration is rejected on account of filing of application under wrong provisions of the Act. The observation of Ld. CIT(E), while rejecting the application of assessee are as under:

The assessee has applied in Form 10AS for registration under Item (B) of sub-clause (iv) of first proviso to section 80G(5) of the Income Tax Act, 1961. Consequently, opportunity letters were issued on 22.07.2024 & 02.08.2024 to the assessee and various documents/details were called for; to process the said application and to verify the objects and activities of the assessee. In response to the notice, the assessee submitted its reply along with various documents during the proceedings, which were examined, considered and placed on record.

The relevant part of clause applicable from 01.10.2023- (iv)(B) of first proviso to section 80G(5) of the Act is as under-

(vi) in any other case, where activities of the trust or institution have-

(B) commenced and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, or section 11 or section 1.2, for any previous year ending on or before the date of such application, at any time after the commencement of such activities,

It is clear that sub-clause (iv)(B) of first proviso to section 80G(5) of the Act is applicable only for those assessee whose activities are already commenced and no exemption U/s 11/12 or 10(23C)(iv)/(v)/(vi)(via) has ever been claimed before filling of instant application in Form 10AS. On perusal of the reply of the assessee and data available on record, it is observed that the assessee has already been claiming exemptions u/s 11/12/10(23C)(iv)/(v)/(vi)(via) in its ITR for earlier assessment year(s),

before filling the present application. Hence, the assessee is not found to be eligible to file application as per the provisions of clause (iv)(B) of first proviso to section 80G(5) of the Act.

Considering the facts of the case and reason(s) mentioned above, the application filed in Form IOAB for grant of registration u/s 80G(5) of the Act is hereby rejected as wrongly filed.

(Note- Please note that due to above technical issue, merits of the case have not been examined)

4. Aggrieved with the rejection of application in terms of aforesaid observations of Ld. CIT(E), assessee preferred the present appeal, which is under consideration before us.

5. While addressing the aforesaid issue, Shri Nikhilesh Begani, Advocate, representing the assessee (in short "Ld. AR"), submitted that wrong selection of clause while filing an application for grant of registration u/s 80G is a genuine clerical and inadvertent mistake, therefore, the defect being curable one, ought to have been considered and the registration cannot be denied only on this count. In support, Ld. AR placed his reliance on the following Judgments / circular:

1. *Help for Children in Need Foundation v. CIT(E) in ITA No.1774/PUN/2024*
Dated 09/12/2024 (ITAT Pune)
2. *Nitdaa Foundation v. CIT(E) [2024] 167 taxmann.com 111 (ITAT Kolkata)*
3. *Circular No.7/2024 dated25/04/2024*
4. *Kimaya Ashram Charitable Trust v. CIT [2025] 170 taxmann.com 376 (ITAT Pune)*

6. Ld. AR further argued as the assessee trust is a registered Charitable Institution u/s 12AA of the Act, therefore, following the judicial precedence the corollary flows that application of assessee trust u/s 80G(5) deserves to be allowed. In support of this contention, Ld. AR placed his reliance on the following judgments.

5. *CIT(E) v. Shri Sadhumargi Shantkranti Jain in TAXC No.191 of 2024*
(Date of Judgment: 25/11/2024) (Chhattisgarh HC)
6. *Shri Sadhumargi Shantkranti Jain v. CIT(E) in /TA No.233/RPR/2023*
(Date of Order: 22/01/2024) (ITAT Raipur)
7. *CIT(E) v. Dignify Education Society in TAXC No.87 of 2022 (Date of Judgment : 28/11/2024) (Chhattisgarh HC)*

7. In backdrop of the aforesaid submissions, it was the prayer by Ld. AR that the application of the assessee in Form no. 10AB, which was rejected by the Ld. CIT(E) on account of application under wrong provisions of the Act, without show causing the assessee to rebut on such observations, such action of Ld. CIT(E) is against the principle of natural justice and the assessee should have been afforded with another opportunity to clarify the issue before the Ld. CIT(E). It was requested that following the jurisprudence, the application of assessee should have been accepted and decided in terms of the settled principle of law as emanating from the various case laws relied upon referred to (supra).

8. On the contrary, Shri S. L. Anuragi, (in short "Ld. CIT-DR"), vehemently supported the order of Ld. CIT(E).

9. We have considered the rival submissions, perused the material available on record and case laws relied upon by the Ld. AR. Admittedly, in the present case, the application of assessee in form No. 10AB was rejected by the Ld. CIT(E) on technical grounds that the application was not filed under the correct provisions of the Act. It is also emanating from the order of Ld. CIT(E) that the necessary information sought was duly submitted by the assessee from time to time. Apparently, there is no whisper in the order of Ld.

CIT(E) about any query or show cause to the assessee about the ineligibility of assessee to file an application under provisions of clause (iv)(B) of 1st proviso to section 80G(5), expressing his opinion *qua* the filing of the application under wrong sub-clause of section 80G. Taking an action against the assessee without confronting it about the reasons for such rejection place the present case in a category wherein the principle of natural justice have been violated, as the assessee was not afforded with reasonable opportunities of being heard to submit its contentions in defense to the basis of rejection of application before saddling it with the order of rejection. Considering such facts and circumstances of the instant case, in order to provide a fair opportunity of being heard and to represent its case in a judicious manner, the matter needs to be revisited by the Ld. CIT(E) after affording reasonable and adequate opportunity of being heard to the assessee.

10. Though Ld. AR referred to various case laws in support of the contentions raised above, however, as the matter is considered fit to be restored for fresh adjudication by the Ld. CIT(E), it would be very premature to advert upon and deal with the merits of the assessee application in terms of findings in the judgment referred to (*supra*). We, thus, grant the liberty to

the assessee to raise all such contentions before the Ld. CIT(E) during the set aside proceedings.

11. Resultantly, the order of Ld. CIT(E) passed u/s 80G dated 27.09.2024 is set aside and the matter is restored back to the file of Ld. CIT(E), in terms of our aforesaid observations.

12. In result, **ITA No. 537/RPR/2024** filed by the assessee is **partly allowed**.

Order pronounced in the open court on 31/01/2025.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 31/01/2025

Vaibhav Shrivastav

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant- Bhagwan Mahaveer Jain Relief Trust
2. प्रत्यर्थी / The Respondent- CIT(E), Bhopal
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur