

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**  
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND**  
**SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**  
**आयकर अपील सं./ITA No.1239/SRT/2024**  
**(Physical Hearing)**

Sanskrutik Raksha Samiti, 350-351, Kashi Nagar Society, Udhna SO, Bamroli – 394210, Gujarat	<b>Vs.</b>	The CIT (Exemption), Ahmedabad
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No: <b>ABATS4036R4</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Rasesh Shah, CA
<b>Respondent by</b>	Shri Ravi Kant Gupta, CIT-DR
<b>Date of Hearing</b>	19/02/2025
<b>Date of Pronouncement</b>	29/04/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH:**

This appeal by assessee emanates from the order dated 26.09.2024, passed by the Commissioner of Income-tax (Exemption), Ahmedabad [in short, 'CIT(E)'], wherein the CIT(E) rejected the application filed in Form No.10AB for approval u/s 80G(5) of the Income-tax Act (in short, 'the Act').

2. The grounds of appeal raised by assessee are as under:

*"1. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax has erred in rejecting the application of assessee for approval u/s 80G(5) of the I.T. Act, 1961.*

*2. It is therefore prayed that order of CIT, passed u/s 80G(5) of the I.T. Act, 1961 may please be cancelled and approval may be granted or matter may be set aside to the file of CIT with appropriate direction.*

*3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

3. Brief facts of the case are that the assessee filed application in Form No.10AB under sub-clause (B) of clause (iii) of first proviso to sub-section (5) of section 80G of the Act. The applicant was requested to submit certain details / documents vide notice dated 13.06.2024. In response to the said notice, the applicant filed certain reply/details on 24.06.2024. On perusal of the Memorandum of Association (MoA), the CIT(E) observed that the objectives/objects of the assessee-trust are also religious in nature, which put the assessee under the category of composite trust i.e., religious-cum-charitable trust. The assessee stated that the object of the trust is to educate young men and women about Indian culture in science, arts, crafts, literature, culture, cultural dramas and religious cultural programme and to organize international level knowledge camps for the citizens of the country and abroad. The intent of this clause is to spread awareness among the youth of the country about the culture of India without any discrimination of the caste and creed. On perusal of the Form 10AB, the CIT(E) observed that the assessee-trust at para 3 towards 'nature of activities' had specifically selected it as 'religious-cum-charitable' and towards para 5 i.e., "Object of the applicant" had opted 'Religious' as one its objects. Further, from perusal of 27a and 27b of Form 10AB, it is evident that the assessee-trust had undertaken religious activity and incurred expenditure above the threshold limit of 5% of total income. Considering the facts on record, the CIT(E) held that the assessee-trust is partly religious in nature and it clearly contravenes main condition of section 80G(5) of the Act. The assessee-trust had

also incurred religious expenditure, which was 7.95% of total income, towards Ram Navami festival celebration. The CIT(E) relied on the decision in cases of Yug Chetna Parmarth Trust, 44 taxmann.com 446 (ITAT – Agra) and OM Tapovan Charitable Trust vs. CIT(E), ITA No.175/Ahd/2023. The CIT(E) observed that assessee-trust had failed to prove that the trust is established for charitable purpose and satisfied the conditions of sub-section (5B) of section 80G of the Act. The applicant had incurred ‘religious expenditure’ over and above prescribed limit of 5%. The CIT(E) rejected the application filed in Form 10AB for approval under sub-section (B) of clause (iii) of first proviso to section 80G(5) of the Act.

4. Aggrieved by the order of CIT(E), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted English translation of Memorandum of Association (MoA) of the assessee-trust, replies dated 24.06.2024 and 18.09.2024 to CIT(E) and various decisions. The Id. AR submitted that there are composite purpose of the trust, but the main objects are for charitable purpose. He submitted that the trust is running Gaushala at Surat, Gujarat where sick and disabled cows are treated with proper care and facilities. Various cow sheds have been created at the Gaushala. He submitted that expenses for religious purposes exceeded 5% only in one year and it was ‘Nil’ in other two years. He has relied on various decisions, viz., (i) CIT(E) vs. Rajkot Jilla Gayatri Parivar Trust, 117 taxmann.com 142 (SC), (ii) CIT vs. Shri Radha Raman Niwas Trust, 42 taxmann.com 77 (All.), (iii) Sadhumargi

Shantikranti Jain vs. CIT(E), 159 tamxnan.com 636 (Rai – Trib.), (iv) Shiv Mandir Devsttan Panch Committee Sansthan vs. CIT, ITA No.223/Nag/2009 (Nag – Trib.), (v) Yamunaji Mandir Trust vs. CIT, 88 taxmann.com 432 (Raj – Trib.), (vi) Shree Bhandari Gnyati Mandal vs. CIT(E), ITA No.1503/Ahd/2024 (Ahd – Trib.) and (vii) Shri Shruthiparampara Gurukulam vs. ITO, ITA No.1083/Ahd/2023 (Ahd.).

5. On the other hand, learned Commissioner of Income-tax – Departmental Representative (Id. CIT-DR) for the revenue relied on the order of CIT(E). He submitted that the objects of Gaushala are not in the objects of the trust as mentioned in the MoA of the trust. He submitted that the assessee has violated main provision of sub-section (5) of section 80G as well as sub-section (5B) of the Act. He relied on the decision in the case of Kalaram Sansthan vs. CIT(E), 152 taxmann.com 464 (Pune – Trib.).

6. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by both sides. The CIT(E) has elaborately discussed the legal back ground as well as facts of the case to deny approval u/s 80G(5) of the Act. In order to qualify for approval u/s 80G(5) of the Act, the trust should be established in India for a charitable purpose. Therefore, the trust which are religious or are composite trust, i.e., both religious or charitable are not liable for benefit u/s 80G(5) of the Act. Further, as per section 2(15) of the Act, charitable purpose includes relief for the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or

objects of artistic or historic interest and the advancement of any other object of general public utility. Thus, charitable purpose does not include religious objects or activities in its ambit. Further, as per Explanation – 3 of section 80G of the Act “ ‘charitable purpose’ does not include any purpose the whole or substantially the whole of which is of a religious nature.” As per sub-section (5B) of section 80G “an institution or fund which incurs expenditures, during any previous years which is of a religious nature for an amount not exceeding five percent 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”.

6.1 With these statutory background, let us examine whether the facts of the appellant satisfies the conditions for benefit u/s 80G(5) of the Act. As per clause 1(1) of the Memorandum of Association, the purpose is as under:

**“(1) Cultural Purposes:**

- 1) *To educate young men and women about Indian culture in science, arts, crats, literature, culture, cultural dramas and **religious cultural program** and to organize international level knowledge camps for the citizens of the country and abroad. **Organizing Ras Garba.** To organize a community hall useful to the society.”*

From the above, it is clear that the objects emphasized above are clearly religious in nature. The same has not also been disputed by the appellant which is clear from its submission to the CIT(E) vide its reply dated 24.06.2024 (Page 23 and 24 of the paper book). At page 23 of the paper book, the appellant itself submitted that there were religious expenses of Rs.40,500/- towards Ram Navami festival celebration. The expenses towards other charitable activities were Rs.4,66,039/-. The appellant again in page 24 had submitted that

Rs.40,500/- out of total income of Rs.5,09,226/-, constituting 7.95% of total income, was religious expenditure. The Id. AR has not denied the above fact but has made a feeble attempt that religious expenditure in FY.2021-22 and 2023-24 was 'Nil' but was more than 5% in 2022-23. Hence, the benefit could not be denied. We do not find any substance in the contention of the Id. AR. The words used in sub-section (5B) of section 80G of the Act are very clear. It talks about amount not exceeding 5% of its total income in that previous year. It does not mentioned average of 3 years. Since no exception has been provided as contended by the Id. AR, the plea of the Id. AR cannot be accepted. Both sides have relied upon various decision which we have deliberated upon. However, the facts relied upon by the Id. AR are distinguishable from the facts of the appellant. On the other hand, in the case of Kalaram Sansthan (supra) relied upon by the Id. CIT-DR, the Co-ordinate Bench of Pune Tribunal held that where assessee, a trust registered u/s 12AA, had spent more than 5% for religious purposes from its total income, there was clear violation of section 80G(5B) and thus the CIT(E) was correct in denying exemption u/s 80G. The Hon'ble Supreme Court in case of Upper Ganges Sugar Mills Ltd. vs. CIT, 227 ITR 578 (SC) has settled the issue in favour of revenue by holding as under:

*“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."*

It is clear from the order of the Hon'ble Supreme Court that if one purpose within the institution's overall charitable purposes is wholly, or substantially wholly, of a religious nature, then it falls outside the scope of section 80G of the Act. In the present case, we have found that one of the purposes was of religious in nature. The expenditure for such object was more than 5% of the total income. In view of the facts discussed above and respectfully following the decisions cited supra, the ground Nos. 1 and 2 of the assessee are dismissed.

7. Ground No.3 is general in nature and do not require any adjudication.

8. In the result, the appeal of the assessee is dismissed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 29/04/2025.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat  
दिनांक/ Date: 29/04/2025  
SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**// TRUE COPY //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat