

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

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.364/Ahd/2025
(Assessment Year: N.A.)

Aatman Foundation, Plot No. 1687/2, Sector-2D, Gandhinagar-382002	Vs.	Commissioner of Income Tax (Exemption), Ahmedabad
[PAN No.AAATA7609K]		
(Appellant)	..	(Respondent)

Appellant by :	Shri M K Patel, Advocate
Respondent by:	Shri Ashesh R Rewar, CIT DR

Date of Hearing	15.05.2025
Date of Pronouncement	26.05.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

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 vide order dated 20.08.2024.

2. The Assessee has taken the following grounds of appeal:-

“1. That on facts, and in law, the learned CIT (Exemption) has grievously erred in rejecting the application for approval u/s80G(5)(iv)(B) of the Act as non maintainable.

2. That on facts and in law, the appellant made a bona fide error in selecting sub-clause (iv) instead of sub-clause (ii) of section 80G(5) of the Act.

3. That on facts, and in law, learned CIT (Exemption) be directed to consider the application under the correct provisions of section 80G(5)(ii) of the Act, and decide on merits.

4. The appellant craves liberty to add, alter, amend any ground of appeal.”

3. At the outset, we observe that the appeal is time barred by 109 days. The delay of 109 days is condoned on due consideration of facts of assessee's case and owing to causing no perceptible prejudice to other side.

4. The brief facts of the case are that the applicant filed an application in Form 10AB on 23.02.2024 for approval under section 80G(5)(iv)(B) of the Income Tax Act. In response to notices issued by CIT(Exemptions), the applicant submitted replies to the queries raised. CIT(Exemptions) noted that as per the legal provisions, in order to be eligible under section 80G(5)(iv) of the Act, an institution must have commenced its activities and should not have claimed any income exemption under certain clauses of section 10 or under sections 11 or 12 for any previous year up to the date of application. The applicant was asked by CIT(Exemptions) to clarify whether it had claimed such exemptions. In its reply, the applicant confirmed that it had in fact claimed exemption under sections 11 and 12 based on an earlier approval granted under section 12AA. Accordingly, CIT(Exemptions) held that since as per the applicant's own admission, it had earlier claimed exemption under sections 11 and 12 of the Act, the eligibility conditions under section 80G(5)(iv)(B) of the Act had been violated, and therefore the application is not maintainable.

5. The assessee is in appeal before us against the order passed by CIT(Exemptions). Before us, the counsel for the assessee submitted that there was an inadvertent error in filing of Form 10AB, wherein application was made under the incorrect sub-clause (B) of clause (iv) of the first proviso to subsection (5) of section 80G instead of clause (iii) of first proviso to subsection (5). Accordingly, it was submitted that the matter may be restored

to the file of CIT(Exemptions) for de-novo consideration. The Counsel for the assessee placed reliance on the Mumbai ITAT decision in the case of Rotary Charity Trust, wherein on identical set of facts, the matter was restored to the file of CIT(Exemptions) for de novo consideration.

6. It would be useful to reproduce the relevant extracts of the decision of **Rotary Charity trust in ITA No. 6133/Mum/2024 (vide order dated 09-01-2025)**, for ready reference:

“3. Ld. AR submitted that assessee while filing Form for final registration in Form 10AB has inadvertently mentioned the wrong section as sub- clause (B) of clause (iv) of first proviso to subsection (5) of section 80G instead of clause (iii) of first proviso to subsection (5) of section 80G. He further submitted that assessee could not explain the error before the CIT(E) because the notice calling for details mentioned that proceedings under section 14A and that when the staff of the assessee approached the office of the CIT(E), it was advised that no action is required. Ld. AR, accordingly submitted that no proper opportunity was given to the assessee before rejecting the application for registration under section 80G. Ld. AR also drew our attention to the relevant provisions of section 80G to submit that the reason as quoted by the CIT(E) for rejecting the application is not applicable to the assessee. Therefore, ld. AR prayed that directions may be given to ld. CIT(E) to grant approval for registration under section 80G to the assessee. Ld AR relied on the decision of the Kolkata Bench of the Tribunal in the case of North Eastern Social Research Centre vs CIT(E) [2024] 165 taxmann.com 12 (Kolkata Trib) in this regard and prayed for a similar direction as held hereunder –

6. The facts and issues involved in the case in hand being identical to that of the above referred to cases and in view of the findings given by the Coordinate Benches of the Tribunal, the appeal of the assessee is allowed accordingly and the ld. CIT(Exemption) is directed to grant final approval to the assessee under Clause (iii) to First Proviso to section 80G(5) of the Act, if the assessee is otherwise found eligible. It is directed that the Id. CIT(Exemption) will decide the application of the assessee for final approval as expeditiously as possible but not later than two months from the receipt of this order. It is further directed that, if the assessee is granted final approval by the ld. CIT(Exemption) then, the benefit of approval u/s 80G of the Act, if it was available to the assessee prior to the Amendment brought vide Amending Act of 2020, will be deemed to have been continued without any break. The assessee will not be deprived of the benefit during the time period falling between 31/03/2021 and the date of grant of provisional approval under clause (iv) i.e., 28/06/2022, due to technical errors occurred in making the application under the relevant provisions of the Act because of the confusion and misunderstanding on part of the assessee as well as on part of the ld. CIT(Exemption) in properly interpreting the relevant provisions.

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4. Ld. DR on the other hand submitted that the CIT(E) has rejected the application based on the submission made by the assessee in Form 10AB stating that the application is made under section 80G(5)(iv)(B). Ld. DR further submitted that case can be remitted back to ld. CIT(E) to consider the application afresh based on the claim of the assessee that wrong section has been inadvertently mentioned in the Form 10AB.

5. We have heard the parties and perused the material on record. Before we proceed to examine the facts in assessee's case, it is important to first look at the relevant provisions of first proviso to subsection (5) of section 80G which read as under –

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: [or]

*[(iv) [***] 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) commenced [***] at any time after the commencement of such activities:]*

6. Assessee, in terms of the above provisions, first applied for a provisional approval under sub-clause (B) of clause (iv) of first proviso to subsection (5) of section 80G within and subsequently (refer clause 2 in Form 10A) and was given the provisional registration up to AY 2024-25 on 04.04.2022. In the application for final approval in Form 10AB, it is noticed that assessee has once again mentioned same section i.e. sub-clause (B) of clause (iv) of first proviso to subsection (5) of section 80G whereas the correct section code under which the assessee ought to have selected is clause (iii) of first proviso to subsection (5) of section 80G. We also noticed that ld. CIT(E) has treated the application as one filed under sub-clause (B) of clause (iv) of first proviso to subsection (5) of section 80G and accordingly rejected the application for not fulfilling the stipulated conditions prescribed for filing application for approval in Form 10AB.

6.1. **From the perusal of forms filed and the facts of the case, in our considered view, there is merit in claim of the ld. AR that assessee has selected the wrong section code inadvertently while filing the application for final registration in Form 10AB. Further, we notice that assessee did not have the opportunity of being heard before ld. CIT(E) due to incorrect course of action advised, which otherwise assessee might have explained**

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the facts to avoid the impugned rejection. In view of these discussions and respectfully following the above decision of the Kolkata Bench in the case of North Eastern Social Research Centre (supra), we remit the issue back to the file of ld. CIT(E), with a direction to grant final approval to assessee under Clause (iii) to first proviso to section 80G(5) of the Act, if assessee is otherwise found eligible. We also direct ld. CIT(E) to decide the application of the assessee for final approval as quickly as possible before the expiry of the provisional approval granted in order to enable the assessee to have the benefit of section 80G without any break. It is ordered accordingly.

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

7. In view of the facts of the assessee’s case and in light of the judicial precedents referred to above, in interest of justice, the matter is hereby restored to the file of CIT(Exemptions), for de-novo consideration.

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

This Order pronounced in Open Court on	26/05/2025
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Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad; Dated 26/05/2025

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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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