

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE MS. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.211/SRT/2025

(Hybrid hearing)

Shree Koteswar Mahadev Public Trust b/h Dholakiya Garden, Katargam Main Road, Katargam, Surat-395 004	बनाम/ Vs.	Commissioner of Income-tax (Exemption), Ahmedabad, Aayakar Bhawan (Vejalpur), Near Sachin Tower, 100 Foot Ring Road, Anandnagar-Prahladnagar Road, Ahmedabad-380 015
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AAGTS 9911 A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri P.M. Jagasheth, CA
राजस्व की ओर से /Respondent by	Shri Ashish Pophare, CIT-DR
अपील पंजीकरण/Appeal instituted on	21/02/2025
सुनवाई की तारीख/Date of Hearing	02/06/2025
उद्घोषणा की तारीख/Date of Pronouncement	11/06/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal emanates from the order dated 28.12.2024 passed by the Commissioner of Income-tax (Exemption), Ahmedabad [in short “the CIT(E)”] rejecting application for granting registration under Section 80G(5) of Income-tax Act, 1961 (‘in short, the Act’).

2. Grounds of appeal raised by the assessee for the appeals are as under:

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of the Income-tax(Exemption), Ahmedabad has erred in rejecting application for grant of final registration u/s 80G(5)(iii) of the Income Tax Act, 1961 and the provisional approval u/s 80G5(iii) granted earlier has also been cancelled.

2. On the facts and in the circumstances of the case as well as the law on the subject the learned Commissioner of the Income Tax (Exemption), Ahmedabad has erred in not granting adequate opportunity to hear and passed the order, hence, the principal of natural justice is not abide.

3. On the facts and in the circumstances of the case as well as the law on the subject, the appellant trust is qualifying for registration u/s 80G(5)(iii) of the Income Tax Act, 1961.

4. It is therefore prayed that order of CIT(Exemption) should be directed passed u/s 80G(5)(iii) of the Income Tax Act, may please be set aside to the file of the CIT (Exemption) with appropriate direction.

5. 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-trust filed an application for final registration in Form-10AB of the Act on 21.06.2024 u/s 80G(5)(iii). The date of provisional approval granted clause (iv) of first proviso to sub-section (5) of Section 80G of the Act was on 04.04.2022. The assessment years for which the assessee-trust was provisionally granted registration were from 04.04.2022 to AY 2024-25. The CIT(E) has discussed legal backgrounds under Rule 11AA(1), Rule 11AA(2) of the Income-tax Rules, 1962 and provisions of Sections 2(15), 80G(5), Explanation-3 to Section 80G and sub-section (5B) of the Section 80G as well as the facts of the case. He had issued notices and show cause on 05.10.2024 and 10.12.2024; in response to which, assessee-trust had filed part details and requested for adjournment. In absence of response to the show cause notice, the CIT(E) decided the case based on materials available on record and the details furnished along with Form

No.10AB and submissions made in response to the questionnaire issued by CIT(E). He examined objects of the trust and found that they are religious in nature. He further found that the applicant has incurred religious expenses for puja and dharmik purposes, which are religious in nature. The same were more than 5% each for FY 2020-21, 2021-22 and 2022-23 i.e., 8.75%, 12.88% and 14.37% respectively. Thus, the appellant was found to be engaged in religious activities and the religious expenditure is above the permissible limit of 5% of total income, which is a clear violation of the provisions under sub-section 80G(5B) of the Act. Hence, the application for approval under 80G(5)(iii) of the Act was rejected and the provisional approval was also cancelled.

4. Aggrieved by the order of CIT(E), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed a paper book containing various details and case laws. He submitted that the CIT(E) has rejected the application of the assessee without giving proper opportunity of hearing. It is evident from the observations of the CIT(E) at para-7.2 and 8 in his order. He submitted that the expenditure of religious nature was less than 5% of its total income. However, no opportunity was given to the appellant to prove the above claim. He, therefore, requested that order of CIT(E) may be set aside and another opportunity may be granted to the appellant to prove that the expenditure considered by him as religious in nature were in fact not so.

5. On the other hand, learned Commissioner of Income-tax - Departmental Representative (Id. CIT-DR) for the revenue supported the order of CIT(E).

6. We have heard both the parties and carefully perused the materials on record. The reasons for rejecting the application for registration u/s 80G(5) of the Act were that the objects of the appellant was religious in nature and further that the appellant has violated the existing provisions of sub-section (5B) of section 80G of the Act. We find that the CIT(E) has decided the case on the basis of the part submission of the appellant and other details available on record along with Form No.10AB. Hence, complete details were not considered and verified by the CIT(E) before passing the impugned order. The Ld. AR submitted that the appellant was not given adequate opportunity of hearing by the CIT(E). He submitted that appellant is now ready with all the details and it may be given another opportunity in the interest of justice to plead its case on merit. The Id. CIT-DR has also no objection, if matter is remitted to the CIT(E). Considering all these facts, we are of the view that one more opportunity should be given to the assessee to plead its case before the CIT(E). Hence, we set aside the order of CIT(E) and restore the matter to the file of CIT(E) for fresh adjudication and to pass a speaking order after affording sufficient opportunity of being heard to the assessee. The assessee is directed to furnish its submission and the relevant details/documents before the CIT(E)

as and when called for. For statistical purposes, the appeal of the assessee is treated as allowed.

7. In the result, assessee's appeal is allowed for statistical purposes.

Order is pronounced in accordance with Rule 34(3) of the ITAT Rules, 1963 on 11/06/2025 in the open court.

Sd/-
(SUCHITRA R KAMBLE)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 11/06/2025
Dkp Outsourcing Sr.P.S*

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत