

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.358/RJT/2024

(निर्धारण वर्ष / Assessment Year: N.A.)

Shri Tunda Jain Mahajanwadi, Tunda, Mundra, Kutch, Gujarat- 370435	Vs.	Commissioner of Income Tax (Exemption), Ahmedabad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABFTS8536F		
(Assessee)		(Respondent)

Assessee by : Shri Kalpesh Doshi, AR
Respondent by : Shri Sanjay Punglia, CIT DR
Date of Hearing : 05/06/2025
Date of Pronouncement : 30/06 /2025

आदेश / O R D E R

Per, Dr. A. L. Saini, AM:

Captioned appeal filed by the assessee, is directed against the order passed by the Learned Commissioner of Income Tax (Exemption), (in short "Ld. CIT(E)"), wherein the CIT(E) has rejected the assessee's application in Form No. 10AB under Clause (iii) of First Proviso to Section 80G(5) of the Act holding that the assessee trust is not entitled to get approval under Section 80G(5) of the Act as the assessee has not complied with the conditions mentioned in Section 80G(5)(iii) of the Act.

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

"1.That, the learned CIT (Exemption) has wrongly rejected the application filed in form no. 10AB for granting approval u/s 80G(5) of the I.T Act, 1961.

2.That, the findings of the learned CIT, (Exemption) are not justified in law as well as facts of the case and required to be deleted.

3.The assessee craves to add, alter, amend or delete any of the above grounds of appeal."

3. The facts necessary for disposal of this appeal are stated in brief. The assessee-trust had filed Form No. 10AB, u/s 80G(5) of the Act, on 27/09/2023. The assessee-trust had been granted order for provisional approval in Form No. 10AC, which was issued on 04/06/2023, under Clause (iv) of first proviso to sub-section (5) of section 80G of the Act, for the period commencing from 04/06/2023 to assessment year (AY) 2026-27. The learned CIT (Exemption), on perusal of trust deed/instrument of creation of trust furnished by the assessee, it was observed that some of the objects of the trust are religious in nature, which are reproduced below:

"According to the system of social, religious, charity etc., work should be done for social, economic, educational, religious etc, upliftment of the society ..."

From the above, objects, the Id CIT(E) observed that above referred objects in the trust deed is **religious** in nature. Therefore, above object of trust, is not charitable in nature, as per section 80G(5) of Income-tax Act, 1961. Therefore, learned CIT(Exemption) issued a show-cause notice to the assessee to explain, as to how there is no violation of section 80G(5B) of the Act read with clause (ii) of sub-section (5) and *Explanation 3 of the Act*.

4. In response to the above notice, issued by the Ld. CIT(E), the assessee submitted before the Ld. CIT(E) that the activities of the trust are started during Financial Year (F.Y.) 2023-24. The bank account of the trust was opened on 15/04/2023. Earlier there were no activities of the trust. The copies of provisional income & expenditure account & balance sheet for the period 15/04/23 to 19/03/24, were also submitted before the learned CIT (E).The assessee submitted that income and expenditure of the trust are totally charitable in nature. The fund were utilized for financial help, educational help, medical aid, jivdaya expenses and bhojanalaya expenses. The copies of income & expenses ledger account were submitted, before the learned CIT(E). The donation receipt and expenses vouchers were

also submitted before the learned CIT(E). Therefore, assessee submitted that there is no any religious expenses and the assessee- trust is not having any temple. Therefore, there is no violation as defined in the Explanation to section 80G(5B)(ii) of Sub section 5 and explanation 3 of the Act. The Bank Account with Bank of Baroda, of the assessee- trust was also opened on 15/04/2023 and financial transaction started with the bank w.e.f. 22/05/2023. The assessee-trust submitted a copy of bank statement before learned CIT(E). The assessee also submitted that trust is registered with Charity Commissioner Office, Bhuj on dated 04/03/1964, however activities started w.e.f. financial year(F.Y 2023-24. Besides, the assessee trust, had been granted 12A registration u/s 12A(1)(ac)(iii) of Act on 21/03/2024. The copy of registration certificate was also furnished before the learned CIT (E).

5. However, Ld. CIT(E) rejected the above reply of the assessee and observed that abovementioned objects of the assessee are religious in nature. The provisions of section 80G(5) stipulates that the said section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils other conditions mentioned therein. The provisions of section 80G(5) (ii) of the Act, stipulates that the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose and the section 80G(5)(iii) of the Act, stipulates that the institution or fund is not expressed to be for the benefit of any particular religious community or caste. The plain reading of said provisions of the Act makes it evident that the provisions of section 80G(2)(a)(iv) of the Act is applicable only to such institution or fund which is established in India for

Charitable purposes, there is no provision for transfer or application of fund for any purposes other than a charitable purpose. Therefore, learned CIT(E) noted that the assessee has violated the above referred provisions of the Income Tax Act and hence the assessee is not entitled to get approval u/s. 80G(5) of the Income Tax Act, therefore the assessee`s application filed in Form 10AB was rejected by ld.CIT(E).

6. Aggrieved by the order of the Ld. CIT(E), the assessee is in appeal before this Tribunal.

7. Shri Kalpesh Doshi, Learned Counsel for the assessee submitted that only one of the objects is religious in nature and the expenses on such religious object is not more than 5% of the total income. Therefore, the assessee-trust is entitled for approval under Section 80G(5)(iii) of the Act. The Ld. Counsel for the assessee invited our attention towards the expenses incurred by the assessee trust, which is given on Page No. 3 of the Paper Book and stated that the following are the expenses incurred by the assessee-trust:

<i>Name of Expense</i>	<i>Amount</i>
<i>Bhojanalay (Common Kitchen)</i>	<i>2,37,876/-</i>
<i>Education</i>	<i>85,000/-</i>
<i>Jivdaya</i>	<i>20,460/-</i>
<i>Medical Aid</i>	<i>5,04,964/-</i>
<i>Meeting expense not for religious expenses</i>	<i>94,815/-</i>
	<i>9,43,115/-</i>

Regarding, the above total expenses, the Ld. Counsel for the assessee pointed out that meeting expenses of Rs.94,815/- is not for religious purposes, as it was wrongly stated by the auditor of the trust, however, later on, the auditor of the trust has rectified the same. However, the Jivdaya expenses are to the tune of Rs. 20,460/-, (which is incurred for the treatment of ill animals) and if this expense is to be considered, as a religious in

nature, then it is below 5% of the total income of the trust/expenses of trust, and hence still the assessee- trust is entitled for registration. Therefore, learned Counsel contended that the matter may be remitted back to the file of the CIT(E) to examine the above expenses, to ascertain whether any expenditure is in the nature of religious, which is above 5% of the total expenses/ income of the assessee- trust, and after such examination, the assessee -trust may be granted approval under section 80G(5)(iii) of the Act.

8. On the other hand, Ld. D.R. for the Revenue submitted that this issue may be remitted back to the file of the Ld. CIT(E) to examine whether the expenses incurred by the assessee on religious is more than 5% or not. If the expenses on religious purpose is less than 5% of the total expenditure then the Ld. CIT(E) may grant the registration in accordance with law.

9. We have heard both the parties and perused the material available on record. We note that the assessee -trust, at the time of filling of the 80G application and 80G proceedings, furnished the following documents in compliance with the statutory requirements, viz: (i) The copy of Registration Certificate, (ii)The copy of Provisional Order of 12A, (iii)The copy of Provisional Income and Expenditure Accounts, (iv) The copy of PTR in original Gujarati language and in English version, (v)The copy of expense vouchers and activity photos, (vi) The details of Donation received List, (vii)The copy of Bank Statement, (viii) The copy of Electricity Bill, (ix)The copy of undertaking of the Trustees, (x)The copy of Change Reports of Trustees. The above details were filed before the ld. CIT (Exemption), by assessee, vide letter dated 13/01/2024.

10. However, the Ld. CIT (Exemption) has rejected the assessee`s application on the ground that one of the objects in the Trust deed is of a

religious nature. We find that primary objectives of the Trust include, providing medical assistance to the poor and to help them cover medical expenses. Additionally, the Trust allocates funds for 'Jivdaya' (animal welfare and their treatment). The Trust has incurred expenses for providing food to poor and needy people and also incurred expenses for education. Therefore, from the above, it is clearly evident that the activity of the Trust is not intended for the benefit of any particular religious community or caste. It is stated by the Id Counsel for the assessee that the funds received by the assessee- trust, have been exclusively utilized for providing financial aid, medical assistance, Jivdaya (animal welfare) expenses and expenses related to the Bhojanalaya (common Kitchen). The Trust has not incurred any expenditure on religious activities during the financial year 2023-24. The above facts were duly stated during the course of proceedings u/s 80G(5)(iii) of the Act and the assessee -trust has duly submitted the required documents to establish the genuineness of the activity of the Trust. We also note that as per the provisions of sub-section (5B) to section 80G of the Act, which states that a Trust which incurs expenditure during any previous year which is of a religious nature for an amount not exceeding 5% of its total income, shall be deemed to be an institution or fund to which the provisions of this section apply. Section 80G (5B) of the Income Tax Act, reads as under:

"5B Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure during any previous year, which is of a religious nature for an amount, not exceeding 5% 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"

11. However, we note that if the Jivdaya expenses, which has incurred by the assessee- trust to the tune of Rs. 20,460/-, (which is incurred for the treatment of ill animals and welfare of animals) and if the learned CIT(E)

treated these expenses, as religious in nature, than in that circumstances, we direct the learned CIT (E) to work out the percentage, as compared to the total income, of the trust and to examine whether such expenses falls below 5% of the total income of the assessee- trust. If the Jivdaya expenses, falls below 5% of the total income of the assessee- trust, the assessee- trust deserve approval under section 80G (5) (iii) of the Act, hence for limited purpose, we remit this issue back to the file of the Id. CIT(E) to examine the above stated facts and grant the approval under section 80G(5) of the Act in accordance with Law. For statistical purposes, the appeal of the assessee is treated to be allowed.

12. In the result, appeal filed by the assessee is allowed for statistical purposes, in above terms.

Order is pronounced in the open court on 30/ 06/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot

दिनांक/ Date: 30/06/2025

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Copy of the Order forwarded to

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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot