

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ , अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
And
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1304/AHD/2025
निर्धारण वर्ष/Asstt. Year: NA

Sudharma Prachar Mandal, 6, "Nehal", Near Jain Upashray, Near Commerce College Six Roads, Navrangpura, Ahmedabad - 380009. Gujarat PAN: AAETS2050E	बनामVs	The Commissioner of Income Tax (Exemption), Ahmedabad.
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(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)
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Assessee by :	None
Revenue by :	Shri R P Rastogi, CIT.DR

सुनवाई की तारीख/Date of Hearing : 25/08/2025
घोषणा की तारीख/Date of Pronouncement: 10/09/2025

आदेश/O R D E R

PER NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order passed by the Commissioner of Income Tax (Exemption) Ahmedabad, (in short "the CIT(E)") dated 27.12.2024, in the proceedings u/s. 80G(5) of the Act.

2. There was delay of 101 days in filing of this appeal. The assessee has filed a condonation application along with affidavit of Shri Mayank

Jashwantlal Shah, trustee of the assessee-trust and explained the reason for the delay. It is submitted that the delay was for the reason that the trustees were stationed in Mumbai whereas the activities of the trust were carried on in Ahmedabad and there was a delay in coordination regarding the future course of action after receipt of Ld. CIT(E)'s order. The trustee had to travel from Mumbai to discuss the matter with the lawyers and in the process there was this delay. It was submitted that the assessee was engaged in charitable activities and the delay was not deliberate. Considering the explanation of the assessee, the delay in filing the appeal is condoned.

3. The assessee has taken the following grounds of appeal:

- "1. The Ld. CIT (Exemption) erred on facts and in law in not granting approval u/s.80G(5) despite approval u/s.12AA granted to the appellant.*
- 2. The Ld. CIT (Exemption) erred on facts and in law in not granting approval u/s.80G(5) on the ground that appellant is engaged in religious activities even though no such activity is reported in the audited accounts by the Auditors."*

4. None appeared on behalf of the assessee on the date of hearing. We have heard the Ld. CIT-DR who explained that the Ld. CIT(E) had rejected the application of the assessee for approval u/s 80G(5) of the Act on the ground that the assessee-trust was not purely charitable trust. He explained that the Ld. CIT(E) had referred to certain objectives of the trust wherein reference to construction, maintenance and financial help to religious centres, assistance to organizations/institution carrying on such activities, printing and publishing religious books and literature etc. was made and on that basis he had held that provision of section 80G(5)(ii) and Explanation 3 to section 80G was contravened. Therefore, the Ld. CIT(E) had held that the assessee

had violated the provision of section 80G(5)(ii) of the Act and was not entitled to get approval u/s 80G(5) of the Act. The Ld. CIT-DR, therefore, supported the order of the Ld. CIT(E).

5. We have considered the facts of the case and submissions of the Ld. CIT-DR. The Ld. CIT(E) had considered some of the objectives of the trust wherein reference to construction, maintenance and financial help to religious centres, assistance to organizations/institution carrying on such activities, printing and publishing religious books and literature etc. was made and on that basis he had held that provision of section 80G(5)(ii) and Explanation 3 to section 80G was contravened. The *Explanation 3* to section 80G defines “charitable purpose” as not to include any purpose the whole or substantially the whole of which, is of a religious nature. A mere mention of construction, maintenance, financial help to religious centres, assistance to organizations/institution carrying on such activities, printing and publishing religious books and literature etc. in the objects, does make the object of the trust wholly or substantially wholly as religious in nature. Therefore, the action of the Ld. CIT(E) in rejecting the application of the assessee on this basis alone cannot be held as correct.

6. The provision of Section 80G(5)(ii) of the Act, on which reliance has been placed by the Ld. CIT(E) to deny the approval reads as under:

(5) This 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 the following conditions, namely :—

.....

(ii) 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;

No finding has been given by the Ld. CIT(E) that any clause in the instrument stipulated that any income or asset of the trust will be transferred for other than charitable purposes. Further, as per the provisions of section 80G(5B) of the Act, the assessee was entitled to incur up to 5% of the expenditure on religious activities. In order to incur such expense, it was imperative that mention of certain religious activity would be there in the objectives of the trust. What was relevant to consider was whether the assessee had incurred any expenditure in excess of the permissible limit of 5% on the religious activities. No findings in this regard has been given in the order of the Ld. CIT(E). We, therefore, deem it proper to set-aside the matter to the file of Ld. CIT(E) with a direction to examine whether the assessee had incurred any expenditure on religious activities beyond the permissible limit of 5%. If not, the assessee should be allowed approval u/s.80G(5) of the Act, after ensuring that all other conditions as stipulated u/s. 80G(5) of the Act are complied. The assessee may also be allowed an opportunity of being heard in the matter.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 10th September, 2025 at Ahmedabad.

Sd/-

**(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 10/09/2025

, Sr. PS

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)-(NFAC)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad