

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

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

I.T.A. No.1082/Ahd/2025
(Assessment Year: N.A.)

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| Shree Fofaria Family Charitable Trust, 79, Vishwas Colony, Alkapuri, Alkapuri S.O., Vadodara-390007 | Vs. | Commissioner of Income Tax (Exemption), Ahmedabad |
| [PAN No.AAATS5722R] | | |
| (Appellant) | .. | (Respondent) |

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| Appellant by : | Shri Viranch Modi, CA |
| Respondent by: | Shri Sher Singh, CIT-DR |

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| Date of Hearing | 10.09.2025 |
| Date of Pronouncement | 12.09.2025 |

O R D E R

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 18.10.2024.

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

“1. Rejection of application filed in Form 10AB for getting regular approval of registration u/s 80G of Act.

1.01 On the facts and circumstances of your appellant’s case and in law, the ld. CIT(E) has grossly erred in rejecting application filed inform 10AB of Act, filed for getting regular approval of registration from provisional approval of registration granted under clause (iv) of first proviso to Section 80G(5) of the Act-

Without giving adequate opportunity of being heard, thereby breaching principals of natural justice.

On the plea that your appellant has filed an application under clause (ii) and not under clause (iii) of first proviso to section 80G(5) Act as you appellant was holding provisional approval of registration.

1.02 Your appellant submits that due to technical glitches, the income tax portal wa not allowing to select clause (iii), while filing application, which the ld. CIT(E) failed to consider.

1.03 Your appellant therefore prays Your Honor to hold so now and direct the ld. CIT(E) to consider the application filed by your appellant as if it is filed by selecting correct clause since your appellant is deprived off of the benefit of accepting donations in absence of approval.

2.00 Your appellant craves leave to add, alter and / or amend the grounds herein raised above.”

3. At the outset, we note that the present appeal is time barred by 135 days. The assessee moved an application alongwith an Affidavit explaining the reason that order in Form 10AD was issued by Ld. CIT(E) on the email of the previous consultant who did not share the same with the assessee. Subsequently, when the assessee trust approached another consultant to check the status of registration of the Trust it came to know about the order is passed by Ld. CIT(E). Thereafter, the assessee immediately preferred an appeal before the ITAT. Considering the explanation furnished, the supporting affidavit, and in the larger interest of justice, we are of the view that the delay deserves to be condoned. Accordingly, the delay of 135 days in filing the appeal is hereby condoned. The appeal is admitted for adjudication on merits.

4. The brief facts of the case are that the assessee filed an application for approval under section 80G of the Income Tax Act, 1961 (Act) in Form 10AB. However, the aforesaid application was incorrectly filed by the assessee under clause (ii) of the first proviso to sub-section (5) of the

section 80G instead of clause (iii). While processing the application filed by the assessee, CIT (Exemptions) noted that Clause (ii) applies to institutions or funds that already possess a regular approval which is nearing expiry, requiring them to apply at least six months before the end of the approval period. However, upon examining the records, the CIT (Exemptions) observed that the assessee did not possess a valid regular approval under Form 10AC or Form 10AD. Instead, the assessee was holding only a provisional approval granted under clause (iv) of the first proviso to sub-section (5) of section 80G, as per URN AAATS5722RF20215, dated 2nd October 2021, effective from the Financial Year 2022-23. Therefore, since the assessee was not holding a regular approval, CIT (Exemptions) held that the assessee was required to file the application under clause (iii) of the first proviso, and not clause (ii). The CIT (Exemptions) further held that the Department does not have the authority or facility to change the "section code" selected by the assessee while submitting Form 10AB. Accordingly, in view of the incorrect filing and the lack of jurisdiction to rectify the section code, the application was held to be non-maintainable and was rejected without adjudicating upon the merits of the case.

5. The assessee is in appeal before us against the order passed by CIT(Exemptions) dismissing the appeal of the assessee. Before us, the Id. counsel for the assessee submitted that the assessee is a registered public charitable trust, incorporated on 17.07.1990 and registered with the Assistant Charity Commissioner, Vadodara under Registration No.

E/4222/Vadodara. Initially, the appellant filed an application in Form 10A dated 18.09.2021 seeking provisional approval under section 80G of the Act, pursuant to which provisional approval was granted in Form 10AC dated 02.10.2021 under clause (iv) of the first proviso to section 80G(5), valid until 31.03.2024. In order to obtain regular approval, the appellant filed Form 10AB on 09.05.2024 under clause (ii) of the first proviso to section 80G(5). However, a notice dated 14.06.2024 was issued stating that the application may be rejected since clause (ii) applies only when a valid regular approval exists, which the appellant did not have. The ld. counsel for the assessee submitted that although the correct clause applicable was clause (iii), the application was filed under clause (ii) inadvertently. This mistake was later acknowledged and, taking into account the extension of the deadline to 30.06.2024 by CBDT Circular No. 07/2024 dated 25.04.2024, the earlier application was withdrawn in response to the notice. Consequently, the CIT(E) passed an order dated 21.06.2024 in Form 10AD rejecting the application based on the appellant's withdrawal. Thereafter, a fresh Form 10AB application was filed on 29.06.2024. However, due to a technical error on the portal (as also confirmed by a screenshot on record), the application was again mistakenly submitted under clause (ii) instead of clause (iii). A notice dated 27.09.2024 was issued seeking an explanation, and the appellant sought an adjournment on 11.10.2024. Nevertheless, without considering the adjournment request, the CIT(E) passed a rejection order in Form 10AD dated 18.10.2024, on the ground that the application was not maintainable since it was filed under the wrong clause and that the CIT(E) had no power to modify the

section code selected by the applicant in the form. The ld. counsel for the assessee submitted that the order was passed in gross violation of principles of natural justice, especially as no adequate opportunity of being heard was provided, and the application was rejected on a purely technical ground. The ld. counsel for the assessee also submitted that the incorrect clause selection occurred due to system glitches, and not on account of any deliberate misfiling. In support of its submissions, the appellant relied on several judicial precedents, including **Youth Service Centre, Vadodara vs. CIT(E) (ITA No. 585/Ahd/2025)**, where the Tribunal remanded the matter back due to similar issues arising from system glitches and denial of opportunity. The ld. counsel for the assessee also placed reliance on the case of **V-One Society vs. CIT(E), Ahmedabad (ITA No. 287/Ahd/2025)**, which also involved inadvertent clause selection and was remanded back for de novo consideration. The ld. counsel for the assessee submitted that that in the case of **Bhagwan Mahaveer Jain Relief Trust vs. CIT(E) [(2025) 171 taxmann.com 574]**, where the Raipur Tribunal held that rejection without giving a show-cause notice violated natural justice; and **Rotary Charity Trust vs. CIT(E) [(2025) 170 taxmann.com 797]**, where the Mumbai Tribunal remanded the matter due to inadvertent selection of the wrong clause and lack of opportunity being given to the assessee to provide an explanation.

6. In response, Ld. DR placed reliance on the observations made by CIT (Exemptions) in his order.

7. We have heard the rival contentions and perused the material on record. We observe that in the case of **Modasa Ekda Visha Khadayata Kovadia Kelavani Mandal vs. Commissioner of Income-tax (Exemption) [2025] 176 taxmann.com 569 (Ahmedabad-Trib.) [16-07-2025]**, ITAT held that where assessee-trust inadvertently selected wrong clause in Form 10AB while applying for regular registration under section 80G, and Commissioner(Exemption) rejected application on ground that he lacked power to rectify error, matter was to be remanded with direction to treat application under correct clause and decide afresh if assessee was otherwise eligible. Again in the case of **Modasa Ekda Visha Khadayata Modipunch Kelavani Mandal vs. Commissioner of Income-tax (Exemption) [2025] 177 taxmann.com 545 (Ahmedabad - Trib.) [14-08-2025]**, the ITAT held that where assessee trust inadvertently selected wrong section code while filing application for approval under section 80G(5) in Form 10-AB, matter was to be remitted to Commissioner with a direction to consider application of assessee as filed under correct clause (iii) to second proviso to section 80G(5) and thereafter grant approval accordingly, if assessee was otherwise found eligible. In view of the facts of the present case, the submissions made by the assessee, and the judicial precedents cited above, including the decisions of the coordinate benches of the ITAT in *Youth Service Centre vs. CIT(E)*, *V-One Society vs. CIT(E)*, *Bhagwan Mahaveer Jain Relief Trust vs. CIT(E)*, *Rotary Charity Trust vs. CIT(E)*, and the decisions in *Modasa Ekda Visha Khadayata Kovadia Kelavani Mandal vs. CIT(E) [(2025) 176 taxmann.com 569]* and *Modasa Ekda Visha Khadayata Modipunch Kelavani Mandal vs. CIT(E)*

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[(2025) 177 taxmann.com 545], we are of the considered view that the rejection of the assessee's application under section 80G merely on the ground of incorrect selection of clause in Form 10AB, especially in light of the technical difficulties and absence of opportunity of being heard, constitutes a violation of the principles of natural justice. Accordingly, we set aside the impugned order passed by the CIT (Exemptions) dated 18.10.2024 and restore the matter to his file with a direction to treat the assessee's application as one filed under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act. The CIT (Exemptions) is further directed to consider the application afresh on merits and pass a reasoned order in accordance with law after giving adequate opportunity of being heard to the assessee.

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

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| This Order is pronounced in the Open Court on | 12/09/2025 |
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Sd/-
(NARENDRA P. SINHA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 12/09/2025

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