

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM&
MS PADMAVATHY S, AM**

**I.T.A. No. 5184/Mum/2025
(Assessment Year: 2026-27)**

Nilesh Kulkarni Foundation A605, Dhaiwat Kalpanagri Balrajeshwar Road, Vaishali Nagar, Mulund West, Mumbai 400080 PAN: AACTN2747F	Vs.	Commissioner of Income Tax (Exemptions) Room No. 601, 6 th Floor, Cumbala Hill MTNL Building, Peddar Road, Dr. Gopalrao Deshmukh Marg, Cumbala Hill, Mumbai 400026
Appellant)	:	Respondent)

Assessee by : Shri Rajesh Athavle

Revenue by : Shri. Leyaqaat Ali Aafaqui, Sr. AR

Date of Hearing : 14.10.2025

Date of Pronouncement : 27.10.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Exemptions), Mumbai (in short "CIT(E)") dated 25.06.2025 denying the application made by the assessee for registration u/s. 80G of the Income Tax Act, 1961 (the 'Act'). The assessee raised the following grounds of appeal.

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (Exemptions) erred in rejecting the application of the appellant for approval under section 80G of the Act, without appreciating the facts and submissions made.

2. *The Ld. CIT (Exemptions) erred in holding that the application was filed belatedly, ignoring that the appellant had already filed the application within the extended time limit as per CBDT Circular No. 7/2024 dated 25.04.2024.*
3. *The Ld. CIT (Exemptions) erred in rejecting the application on the alleged ground that the trust deed contains objects permitting expenditure outside India, without appreciating that -*
 - (a) *the objects are enabling in nature and must be read in context of the main charitable objectives;*
 - (b) *no funds have ever been applied outside India; and*
 - (c) *the appellant is willing to amend/clarify clauses to remove any ambiguity.*
4. *The Ld. CIT (Exemptions) failed to appreciate that section 11 of the Act regulates actual application of income and not the mere presence of certain clauses in the trust deed. Without any actual violation, denial of approval is unjustified.*
5. *The order passed is bad in law, contrary to the facts on record, violative of principles of natural justice, and deserves to be quashed.*
6. *The appellant craves leave to add, alter, delete or modify any of the above grounds of appeal at the time of hearing.”*

2. The assessee is a registered charitable trust engaged in the field of education and sports promotion with the main object of imparting education and promoting sports managements including affiliation, collaboration and training activities. Assessee is registered u/s. 12A of the Act. Vide order dated 22.09.2022 from AY 2023-24 to 2027-28. The assessee was also granted the provisional approval u/s. 80G dated 04.04.2022 valid up to AY 2024-25. The assessee subsequently file and application Form 10AB seeking regularization of provisional approval. The assessee in the application has mistakenly mentioned the section under which the application is filed as Section 80G(5)(ii) instead of Section 80G(5)(iii). The Ld. CIT(E) rejected the said application on the ground of application made under wrong section vide order dated 31.08.2024. The assessee subsequently, filed fresh application mentioning the correct section on 18.11.2024. the Ld. CIT(E) rejected

the second application also on the grounds of that (a) the application was not filed within prescribed time and (b) certain clauses in the trust deed indicate possibility of expenditure outside India which is allegedly violating Section 11. The assessee is in appeal against the order of the Ld. CIT(E).

3. The Ld. AR submitted that, the assessee made the original application for regularizing the 80G registration within the time extended by the CBDT Circular No. 7/2024 dated 25.04.2024. The Ld. AR further submitted that, the CBDT extended the time line for filing Form 10B up to 30.06.2024, whereas the assessee and filed the application on 29.03.2024. The Ld. AR also submitted that mentioning of wrong section is purely a technical error and the Ld. CIT(E) instead of calling the assessee to rectify the error rejected the entire application due to which the assessee had to make a second application on 18.11.2024. Accordingly, the Ld. AR argued that the alleged delay in filing the application was not due to any negligence on the part of the assessee, but is purely due to the first application being rejected on technical ground. With regard to the other contention of the Ld. CIT(E) regarding possibility of expenditure outside India, the Ld. AR submitted that the assessee has not incurred any expenditure and the impugned clauses in the trust deed must be read harmoniously with a trust charitable objectives. The Ld. AR further submitted that the registration u/s. 80G can be denied only if the conditions as specified in sub Section 5 of Section 80G is not fulfilled by the assessee. The Ld. AR also submitted that the Ld. CIT(E) could not have denied the registration on the ground that the clauses in the trust deed indicate possibility of expenditure outside India which is not a precondition for registration u/s. 80G. The Ld. AR on merits submitted that the assessee has submitted all the relevant details including the financial statements evidence in the charitable activity carried on by

the assessee and the Ld. CIT(E) while rejecting the application has not considered any of the submissions of the assessee.

4. The Ld. DR on the other hand, relied on the order of the Ld. CIT(E).

5. We have heard the parties and perused the material on record. The assessee is a Charitable Trust having registration under section 12A of the Act (page 52 to 55 of paper book). The assessee made first application for renewal of 80G on 29.03.2024 and the same was rejected on the ground that the application is made under wrong section. The relevant observation of the CIT(E) in this regard are extracted below:

"1. M/s Nilesh Kulkarni Foundation hereafter the applicant or the assessee) fled application in Form 10AB seeking approval under section 80G(5) of the Income Tax Act hereafter the Act']. The applicant has been granted Provisional Approval under Section 80G(5) of the Act in Form 10AC.

2. As the trust is provisionally approved, provisions of clause (ii) of first proviso to sub section (5) of section 80G are applicable to it, which is reproduced as under

"(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,"

3. On perusal of the Form 10AB filed by the assessee it was observed that the assessee has applied under clause (ii) of first proviso to sub-section (5) of section 80G i.e. for renewal of approval and not for regularisation of provisional approval. Hence this Application is hereby rejected.

4. For statistical purposes, this application is non maintainable and stands rejected."

6. Subsequently, the assessee made the second application under the right section on 18.11.2024. The CIT(E) rejected the application on the ground that there was a delay in submitting the application for registration under section 80G

according to which the application should have been made at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities. The CIT(E) further held that making the application under a wrong section in the first application cannot be considered as a reasonable for delay in filing the second application. The CIT(E) also rejected the 80G registration for the reason that the object clause of the Trust-deed includes application outside India. From the perusal of the order of the CIT(E) we notice that the CIT(E) has considered rejected the application on above stated grounds and has not considered the other details submitted on merits (page 77 to 94 of paper book). In this regard we notice that the Co-ordinate Bench in various cases has been consistently taking the view that mere mention of wrong section cannot be the ground for rejecting the registration under section 80G unless the assessee is otherwise not eligible. It is also relevant to consider the observations of the Kolkatta Bench of the Tribunal in the case *Sarda Mission Sevasram vs. CIT* (ITA No. 994/Kol/2023 dated 31.01.2024) while considering a similar issue has observed that the CIT(E) ought to have given opportunity to the assessee to rectify the mistake i.e. the mentioning of the appropriate Clause or even could have suo-moto passed an order treating the said application under the relevant 'Clause-in' of Section 80G(5) of the Act. Accordingly we are unable to agree with the finding of the CIT(E) that the rejection of first application is not a reasonable cause for the delay in filing the second application. As already stated the CIT(E) did not examine the application on merits based on the documents submitted but has merely stated that the delay is not condoned and that the assessee has violated the provisions of section 11 of the Act. In our considered view, the application for registration under section 80G has to considered as per the provisions of subsection

(5) of the said section, which in the present case has not been carried out by the CIT(E). The relevant provisions read 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 :—

- (i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23AA) or clause (23C) of section 10 :*

Provided *that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if—*

- (a) the institution or fund maintains separate books of account in respect of such business;*
- (b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and*
- (c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;*
- (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;*
- (iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;*
- (iv) the institution or fund maintains regular accounts of its receipts and expenditure;*
- (v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognised by the Government or by a University established by law, or affiliated to any University established by law, or is an institution financed wholly or in part by the Government or a local authority;*
- (vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Principal Commissioner or Commissioner;*
- (vii) where any institution or fund had been approved under clause (vi) for the previous year beginning on the 1st day of April, 2007 and ending on the 31st day of March, 2008, such institution or fund shall, for the purposes of this section and notwithstanding anything contained in the proviso to clause (15) of section 2, be deemed to have been,—*
- (a) established for charitable purposes for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009; and*

- (b) *approved under the said clause (vi) for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009;*
- (viii) *the institution or fund prepares such statement for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:*
Provided *that the institution or fund may also deliver to the said prescribed authority, a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be prescribed; and*
- (ix) *the institution or fund furnishes to the donor, a certificate specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of donation, as may be prescribed:*

7. From the plain reading of the above provisions we notice that, having an object clause in the Trust deed which enables potential application of funds outside India is not a condition under section 80G(5) of the Act and therefore in our view, the same cannot be a reason of denial of registration under section 80G if the assessee is otherwise eligible. Considering these facts peculiar to assessee's case and in the interest of natural justice and fair play, we are remitting the appeal back to the CIT(E) to consider the application for registration under section 80G on merit by calling for relevant details and consider the same in accordance with law. The assessee is directed to file all the required details as may be called by the CIT(E).

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

Order pronounced in the open court on 27-10-2025.

Sd/-

(AMIT SHUKLA)
Judicial Member

Divya R. Nandgaonkar
Stenographer

Sd/-

(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai