

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 205/Ahd/2023**

Tapovan Youth Alumni Group Trust, 6/A, Chandanbala Complex, Near Anandnagar PO Bhatha Paldi, Ahmedabad  PAN: AADTT9102D (Appellant)	Vs	The Commissioner of Income Tax (Exemption), Ahmedabad  (Respondent)
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**Assessee Represented: Shri Hardik Vora, A.R.  
Revenue Represented: Shri Akhilendra Pratap  
Yadav, CIT-DR**

Date of hearing : 20-09-2023  
Date of pronouncement : 22-09-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the Rejection of application of approval under section 80G of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the Ld. Commissioner of Income Tax (Exemption), Ahmedabad.

2. The brief facts of the case is that the assessee is a Trust having registration u/s. 12A of the Income Tax Act vide order dated 21-03-2023. The Assessee also made application for registration u/s. 80G(5) of the Act by filing Form 10AD on 26-09-2022.

2.1. Ld. CIT(E) issued a notice on 12-12-2022 sent through ITBA on the e-mail address given by the assessee to furnish detailed note on the activities actually carried out by the Trust as well as certain details and documents mentioned therein. In response thereto, the assessee furnished its reply. The Ld. CIT(E) issued one more notice on 12-01-2023 requiring certain details . In response thereto, the assessee filed Affidavit wherein it is declared that the Trust has not incurred religious expenses, but due to mistake, incorrect details were filed in Form 10AB and therefore requested to consider that Affidavit filed by the Trustee and grant exemption u/s. 80G of the Act. The relevant portion of the Affidavit reads as follows:

*“.....2. As per Our trust deed, our trust object are charitable only and so activities are charitable only.*

*3. As per clause 27a of form 10AB, it is stated that no religious expenditure was incurred but in clause 27b of form 10AB, expenditure of Rs.2,92,457/-was mentioned as religious expense*

*4. I declare that expense mentioned in audited profit and loss account as establishment expense were mistakenly mentioned in column of religious expenses in the form 10AB. While filling form, the clerk could not understand that clause 27-b is only for expenses which are in religious nature so the mistake made by clerk innocently by giving figures of charitable expenses as religious expenses and I further declare that no such religious expense can be incurred by the trust as per constitution of the trust and so no such expenditure was incurred by us.*

*5. Similarly in audited profit and loss account for 2021-22 classification of expense was wrongly made by auditor. So as per revised audited profit and loss account, expenses are classified as charitable expense only.*

*6. Above affidavit is prepared in connection with proceeding of our application made for registration u/s 12AA and 80G of IT ACT with Income Tax Department in support of the facts mentioned in the application.”*

3. On perusing the above reply, the Ld. CIT(E) held that on perusal of Audit Report for financial year ending 31-03-2022, it is found that the assessee Trust made expenditure towards religious activities of Rs. 7,17,813/- out of the total income of Rs. 49,63,210/-. It is evident that the assessee Trust has incurred expenditure more than 5% of income for religious purpose. Even in the Financial Year 2021, the assessee had spent 24.19% for religious expenses as against the total receipts which is against Section 80G(5)(b) clause (ii) and Explanation 3, wherein an institution which incurs expenditure, during any previous year, which is a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed to be an institution to which provisions of section 80G apply. Thus the Ld. CIT(E) relying upon various case laws and rejected the application filed in Form 10AD for approval u/s. 80G(5) of the Act.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

*1. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in rejecting application for registration u/s 80G(5) of the Act*

*2. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in rejecting application for registration u/s 80G(5) without considering the fact that the registration u/s 12A of the Act has already been approved by the authority vide order dated 21.03.2023.*

*3. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has not provided reasonable opportunity of being heard as provided under Second Proviso to Section 80G (ii)(b)(B) of the Act.*

*4. On the facts and in circumstances of the case as well as law on the subject the learned Commissioner of Income Tax (Exemption) has hurriedly rejected the claim of assessee without even verifying actual expense details*

*5. Appellant craves leave to add alter or delete any ground(s) either before or in the course of hearing of the appeal.*

5. Ld. Counsel Mr. Hardik Vora appearing for the assessee submitted a Paper Book which carries various details and the notices issued by Ld. CIT(E), reply filed by the assessee and also registration granted u/s. 12A of the Act dated 21.03.2023 and Affidavit explaining the mistakes in Form 10AB of the Act. Ld. CIT(E) without considering the above Affidavit rejected the application u/s. 80G but whereas granted registration u/s. 12A of the Act. Thus Ld. Counsel pleaded one more opportunity be given to the assessee to explain its case and that the assessee Trust has not expanded for any religious activities.

6. Per contra, the Ld. CIT-DR Shri Akhilendra Pratap Yadav appearing for the Revenue supported the order passed by the Ld. CIT(E). The assessee ought to have filed the details required u/s. 80G in Form 10AD as per Rule 11AA(1) of the I.T. Rules. The Ld. CIT(E) after perusing the Audit Reports for various financial years denied the registration u/s. 80G of the Act, which does not require any interference and assessee appeal is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record and the Paper Book filed by the assessee. It is seen from the order Ld. CIT(E) passed by two opportunities of hearing was given to the assessee namely on 12-12-2022 and 05-01-2023. Though the assessee filed reply to the notices issued alongwith Affidavit of the Trustee explaining mistakes in Form 10AB. However without verifying the same, rejected the application filed u/s. 10AB and u/s. 80G(5) of the Act.

7.1. We further found that Ld. CIT(E) has not considered the Affidavit filed by the assessee explaining the mistake in Form 10AD of the Act. In our considered opinion, non-consideration of the reply dated 05-01-2023 and the Affidavit thereon is clear violation of Principle of Natural Justice. Therefore in the interest of fair play and justice, we thought it, is a fit case to set aside the matter back to the file of Ld. CIT(E) with a direction to consider the Affidavit filed by the assessee and call for any further explanation thereon and decide the application for approval filed in Form 10AD of the I.T. Rule and also by affording opportunity of hearing to the assessee. Needless to say, the assessee should cooperate by filing all necessary details in adjudicating the registration u/s. 80G(5) of the Act.

8. With this observation, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on	22-09-2023
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 22/09/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद