

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
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.116/RJT/2025
निर्धारण वर्ष /Assessment Year: N.A.

Shri Umiya Mataji Ishver Ramji Annakshetra Trust Vadhay At Deshalpar Vandhay Taluka Bhuj Kutch-370 001 PAN : AABTS 8429 C	बनाम Vs.	Commissioner of Income- tax(Exemption), Ahmedabad, Room No.609, 6 th Floor, Ayakar Bhawan (Vejalpur), Nr. Sacin Tower 100 FT Road, Anandnagar Prahladnagar Road, Ahmedabad-3800 015
(अपीलार्थी/Assessee)	:	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Kalpesh Doshi, Id.AR
राजस्व की ओर से/Revenue by : Shri Sanjay Punglia CIT-DR

सुनवाई की तारीख/Date of Hearing : 09/07/2025
घोषणा की तारीख/Date of Pronouncement : 22/07/2025

ORDER

Per, Dr. Arjun Lal Saini, Accountant Member:

Captioned appeal filed by the assessee, is directed against the order passed by the Ld. Commissioner of Income-tax(Exemption), Ahmedabad [in short, 'Ld.CIT(E)'] wherein Ld. CIT(E) has rejected the assessee's application in Form 10AB for approval under clause(iii) of first proviso to Section 80G(5) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') holding that the assessee-trust has violated main conditions of subsection (5) of section 80G,

that is, assessee-trust is not a purely charitable trust and it has violated the provisions of clause (ii) of sub-section (5) of Section 80G of the Act, hence the assessee trust is not entitled to get approval u/s. 80G(5)(iii) of the Act.

2. The Ground 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. Brief facts *qua* the issue are that the assessee -trust has filed the application in Form 10AB under clause (iii) of first proviso to sub-section (5) of section 80G of the Act before the Ld. CIT(E). However, the Ld. CIT(E), after having received the application of the assessee for approval u/s. 80G(5)(iii) of the Act, has gone through the relevant provisions of Section 80G(5) of the Act, and found that assessee has not fulfilled the conditions mentioned in section 80G(5)(iii) of the Act. Therefore, Ld. CIT(E) issued a show-cause notice to the assessee to explain with documentary evidences, whether the assessee has satisfied the conditions of section 80G(5) of the Act or not.

4. In response to the notice of the Ld. CIT(E), the assessee submitted required details and documents before the Ld. CIT(E). However, Ld. CIT(E) again issued a show cause notice to the assessee, on 10-12-2024, stating that objects of the trust are religious in nature, therefore, if the assessee wants to change the objects, then assessee can do so, by applying to the Charity Commissioner and then filed the amended objects before the Ld. CIT(E).

5. In response to the above second show cause notice of the Ld. CIT(E), the assessee submitted its written submission before Ld. CIT(E). The assessee submitted before Ld. CIT(E), that the trust has carried out activity relating charitable. The Trust has not spent more than 5% of total income in religious Expenses in last three years, and for that assessee referred the provisions of sub-section (5B) of section 80G as follows:

“(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 five per cent 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.”

Trust has received income and also object related expenses of last three years are as under.

Sr. No.	Financial Year	Total Income	Expenditure of Religious Nature	Percentage of Total Income (%)
1	2021-22	1,11,82,777	2,06,613	1.84%
2	2022-23	3,05,78,977	13,07,606	4.27
3	2023-24	3,38,72,115	3,26,335	0.96

The religious expenditure like Ramanavami Mahotsav expenses, and these religious expenses are less than 5% of total income. The assessee submitted that as per the case law- Shri Ramkrishna Sewa Ashram v CIT (2001) 252 ITR 171(AP), Hon`ble Andhra Pradesh High Court held that although the aims and objects of the assessee -trust did not include some purely religious activities, they also included many temporal and secular activities. Hence revenue had to consider the application of the assessee trust under 80G of the Act.

6. However, Ld. CIT(E) rejected the above submissions of the assessee and observed that on perusal of the objects of the applicant as stipulated in the instrument of creation of the Trust, it was observed that following objectives of the instrument are religious in nature which put the applicant under the category of composite trust *i.e.* Religious-cum-Charitable Trust. The applicant has stated in its reply that it has religious objectives and has also incurred expenditure of religious nature. The English version of the object is reproduced as under for ready reference:

“Carrying out various religious activities for organising Katha, Saptah, religious festivals and other similar functions and activities, constructing and maintaining various religious places, as well as maintaining ongoing religious places, renovating religious places, assisting in such activities, spreading the religious spirit among the people to perform similar tasks of that meaning. To perform activities and works related to the service and devotion of God. To arrange Batuk Bhojan.

Activities of spiritual development centers, meditation centers, prayer centers, Sanskrit schools, Gnanmandirs, Swadhyayacenters etc. are carried out in order to spread religious spirit among the people. To publish publications relating to general knowledge as well as all religious knowledge. To provide reading comprehension to the people through various enlightening books, literature...

7. Therefore, Id.CIT(E) noted that there is clear violation of section 80G(5) referred to in Para 5 above, which put a bar on granting approval under section 80G(5) of Income Tax Act, to the institution or fund set up for religious purpose or religious cum charitable purpose. The assessee trust should be set up only for charitable purpose. Further, the provisions of section 80G(5B) of the Act is not applicable to any institution/fund established for any purposes other than charitable purpose, *i.e.* religious or charitable cum religious purposes. Similar law has been laid down by the Hon'ble ITAT Agra in the case of Yug Chetna Parmarth Trust, reported in 44 taxmann.com 446. The Id. CIT(E) further noticed that section 80G(5B) is also not in contravention of provisions of section 80G(5) of the Act because it clarifies the position that the assessee trust when

incurred expenditure on religious activities, which is less than 5% of the total income would be deemed to be institution or fund, to which the provisions of this section apply. Therefore, Id. CIT(E) noticed that having regard to the provisions of Section 2(15), Section 80G(5), Section 80G(5B) and Explanation 3 to Section 80G(5) of the Act, it is inferred that:

(i) Sec. 80G(5) of the Act applies to the donations to any institution or fund only if it is established in India for a Charitable purpose only. Thus, the purpose or object necessarily have to be only charitable, not religious, for an institution or fund to avail benefits of Sec. 80G(5) of the Act. Even if one object is for religious purpose, approval u/s 80G of the Act cannot be granted as there is no way to stop assessee from incurring expenditure on that particular object in excess of 5% since occasion to renew such an approval will arise only after 5 years and any subsequent withdrawal of approval will jeopardize the interests of donor who have made donations in good faith to the assessee trust.

(ii) Sub-section (5B) of Section 80G of the Act merely further clarifies and qualifies the conditions laid down under clause (ii) of Section 80G(5) of the Act in terms of extent of expenditure of religious nature which could be incurred by trust while carrying out its charitable activities. Sub-section (5B) of Section 80G of the Act does not mandate religious object or allows religious objects to institutions/funds desirous of approval or approved u/s.80G(5) of the Act.

(iii) Thus, for the purpose of section 80G(5) of Income Tax Act, 1961, the objects can be only of charitable nature and even not a single object can be religious in nature as unambiguously and explicitly provided for under Explanation 3 to Section 80G of the Act.

(iv) It is incorrect to interpret that Sub-section (5B) of Section 80G of the Act overrides provisions of Section 80G(5) of the Act. Provisions of Sub-section (5B) of Section 80G of the Act only clarifies and qualifies the conditionality provided for by clause(ii) of section 80G(5) of the Act and has to do nothing with the object of institutions/funds desirous of approval or approved u/s.80G(5) of the Act. Such institutions/funds are mandatorily required by section 80G(5) and Explanation 3 to Section 80G of the Act to have only charitable objects. This position has been explained by Hon'ble Supreme Court of India in the case of Director of Secondary Education v. Pushpendra Kumar AIR 1998 SC 2230 wherein the Supreme Court held that a provision in the nature of an exception cannot be so interpreted as to sub-serve the main enactment and thereby nullify, the right conferred by the main enactment. In view of the above, the ld. CIT(E) noted that the applicant has violated existing main condition of sub-section(5) of section 80G being a Religious-cum-Charitable Trust and has violated the conditions of section 80G(5)(ii) of the Act. Therefore, assessee's application filed in Form 10AB, u/s 80G(5) (iii) of the Act was rejected, by Ld. CIT(E).

8. Aggrieved by the order of Ld. CIT(E), the assessee is in appeal before us.

9. Learned Counsel for the assessee, at the outset submitted that most of the objects of the trust are charitable in nature. However few objects of the assessee-trust are religious in nature but the expenditure incurred by the assessee-trust on the religious activities is below 5% of the total income/ receipts of the trust. Therefore, the approval u/s. 80G(5)(iii) of the Act, should not be denied to the assessee-trust. For that Ld. Counsel for the assessee relied on the following judgments:

(i) Jay Mataji Charitable Trust [2024] 160 taxmann.com 76

- (ii) Smruti Social And Charitable Trust in ITA No. 551/Ahd2024.
- (iii) Shri Sant Zolebaba Sansthan Chikhali in ITA No. 381/PUN2021.
- (iv) Shri Tuda Jain Mahajanwadi in ITA No. 35/Rjt2024.

Therefore, Id. Counsel contended that in order to examine the 5% limit, the matter may be remitted back to the file of Ld. CIT (E), to see whether expenses on religious activities are below 5% of total income, if it is below 5%, the approval under section 80G(5) (iii), should be granted to the assessee-trust.

10. On the other hand, Ld. CIT-DR for the Revenue submitted that as per the provisions of section 80G(5) and explanation (iii) of section 80G makes it clear that assessee trust should have only charitable activities and should have objects only for the charitable purpose. Further there is an exception that the assessee-trust may incur 5% expenditure on religious activities, but at the same time, the assessee- trust should not have any object in the object clause which is religious in nature, no doubt the assessee can spent the amount up to 5% on religious activities but it should not have objects of religious nature in the trust deed. Sub-section(5B) of Section 80G of the Act, merely further clarifies and qualifies the conditions laid down under clause (ii) of Section 80G(5) of the Act in terms of extent of expenditure of religions nature which could be incurred by trust while carrying out its charitable activities. Sub-section (5B) of Section 80G of the Act does not mandate religious object or allows religious objects to institutions/funds desirous of approval or approved u/s.80G(5) of the Act. Therefore such institution is mandatorily required by section 80G and explanation (iii) of section 80G(5) of the Act to have only charitable objects. Therefore, objects of the trust themselves cannot be wholly and substantially religious in nature. The objects of the trust should be wholly or substantially charitable in nature. Therefor Ld. CIT-DR submitted that assessee's application

for approval u/s.80G(5)(iii) of the Act should be rejected at this stage and it should not be remitted back to the file of Id. CIT(E) for fresh consideration.

11. We have heard both the parties and perused the material on record. We have deliberated the case laws relied upon by both the parties. We note that Ld. Counsel for the assessee submitted before us the expenditure incurred by the trust on charitable activities and religious activities. The expenses incurred by the assessee-trust on religious activities were submitted by the assessee before the Ld. CIT(E) also, which is reproduced by the Ld. CIT(E) on Page 10 of his order. We note that the assessee-trust has been duly registered with Bombay Public Trust Act 1950 before Charity Commissioner Office, Bhuj Kutch vide application No.A-1414/Kutch and has been registered since 09/11/1989. The assessee-trust has filed application for registration u/s 80G of the Act vide Form 10AB on 10/06/2024. The assessee-trust has duly submitted all requisite documents at the time of filling the application for registration in Form 10AB for the purpose of obtaining approval u/s 80G of the Act. The assessee-trust, at the time of filling of the 80G application and during the course of 80G proceedings before the Ld. CIT(E), has furnished the following documents in compliance with the statutory requirements, viz:(i) The copy of Registration Certificate, (ii) The copy of Sample Expense Vouchers, (iii) The copy of Provisional Order of 12A, (iv) The copy of Audit Report of last three years, (v) The copy of Constitution in original Gujarati language and English version, (vi) The copy of undertaking of the Trustees. The above details are filed before the Ld. CIT (E) vide assessee`s letter dated 25/01/2024. However, the Ld. CIT(E), has rejected the said application on the ground that one or more objects in the Trust deed is of a religious nature. We note that most of the objects of the assessee-trust, are significantly charitable in nature. The primary objectives of the assessee-trust are as under:

(i) To awaken the spiritual spirit among the society by developing the other elements of Indian culture. To eradicate superstition and superstition, to impact or perform the functions of imparting religious education also editing literature on subject of God and promoting it and to make active efforts to reform the customs and rituals of the caste and to increase the trust.”

(ii) To celebrating and inspiring religious festivals

(iii) To run an Annakshetra, open a Bhojanalay and provide accommodation and food facilities for the visitors coming to the trust.

(iv) To link the village temples, resonate with related religious activities.

(v) To establishing and running religious institutions.

(vi) To approaching suitable Saint Mahatmas and giving benefits of religion to people.

(vii) To perform all functions of medical relief.

(viii) To providing possible help to the victims of natural calamities.

(ix) To providing financial assistance to the needy.

(x) To open cowsheds for animals, to carry out fodder, water and other animal protection works.

(xi) To provide food and water and other protection to animals.

(xii) To perform all activities of life and to assist in such activities.

(xiii) To establish and run Kindergartens, schools, collages, hostels for student brothers and sisters in the field of education also providing scholarships to the needy and supportive and running trusts with such objectives. To do social service works in non-political field. To assist the trusts with the above objectives and to support the trusts.

12. We find that the main activities of the trust are to run Annakshetra and provide food at very nominal cost, to run and maintain Atithigruh, Gaushala and provide medical relief to the needy. Additionally, the assessee-trust also

arranges Mass Marriage functions for needy families. The details of the income and the object related expense incurred by the assessee-trust for the preceding three years are as under:

Sr. No.	Financial Year	Total income	Expenditure of religious nature	Percentage to total income (%)
1	2021-22	1,11,82,777	2,06,613	1.84
2	2022-23	3,05,78,977	13,07,606	4.27
3	2023-24	3,38,72,115	3,26,335	0.96

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. The expenses on religious activity is less than 5%, therefore, assessee-trust deserve registration under section 80G of the Act. We note that the fund received by the assessee -trust is exclusively utilized for Annakshetra and Gaushala expenses. The assessee-trust has not incurred any expenditure on religious activities during the financial year 2023-24. The above facts are duly stated during the course of proceedings u/s 80G(5)(iii) of the Act and assessee-trust has duly submitted the required documents to established the genuineness of the activity of the trust.

13. We note that as per the sub-section (5B) to section 80G 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. As per Section 80G (5B) of the Act, notwithstanding anything contained in clause(ii) of sub-section(5) and Explanation 3, an institution or fund that incurs expenditure of a religious nature during any previous year, provided such expenditure has not exceeded 5% of its total income for that year, shall be deemed to be an

institution or fund to which the provisions of section 80G apply. It can be observed from the above that the assessee-trust has not incurred expenditure for religious purpose exceeding 5% of the income in any of the years. Therefore, the prerequisite for availing the benefit of Section 80G(5) has been complied with by the assessee-trust. Therefore, even though the assessee-trust has objects that are religious in nature but since the expenditure incurred for such activities is less than 5% of the income, therefore the assessee is eligible to avail the benefit of section 80G(5) of the Act. For that, reliance is placed on the following decisions:

(i) Jay Mataji Charitable Trust v. CIT (E) 160 taxmann.com 276 (Rajkot - Trib.).

“Wherein the Hon'ble ITAT has held that Section 80G (5B) does not contravene section 80G(5) of the Income Tax Act. The Tribunal clarified that the provision under section 80G(5B) states that if a charitable trust incurs expenditure on religious activities and expenditure is less than 5% of the total income, the trust will still be considered an institute or fund eligible for the benefits of Section 80G”

(ii) Vismruti Social And Charitable Trust vs CIT(E) ITA No.1551/Ahd/2024

“Wherein it has been held by the Hon'ble ITAT that merely when out of the several objects of the trust only a few objects are religious and the expenditure incurred on religious activities is within the threshold limit of 5% as specified under 80G(5), the Trust must be granted registration.

(iii) Shri Sant Zolebaba Sansthan Chikhali v. CIT(E) in [IT Appeal No. 381 (Pune) of 2021, dated 12-5-2022]

“The Hon'ble ITAT observed that Explanation 3 to Section 80G states that "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature, which means that at least some part of the activities of the trust, which are of a religious nature, are permitted. Further, the Hon'ble ITAT observed that this fact is further fortified by sub-Section (5B) of Section 80G which provides that an institution / fund which incurs expenditure which is of a religious nature not exceeding 5% of its total income shall be deemed to be an institution or fund to which the provisions of this section apply.”

14. Therefore, we note that as per the case law and the provisions of sub-section (5B) of Section 80G, it is evident that if an institution or fund incurs expenditure of a religious nature amounting to not more than 5% of its total income for the previous year, then it is deemed to be an institution or fund to which the provisions of Section 80G apply. Therefore, in the assessee's case, the assessee- trust has incurred expenditure on religious activities within the permissible limit. Therefore, we direct the Id. CIT(E) to examine the expenditure incurred, whether it is within the limit of 5% laid down in Section 80G(5) of the Act or not. If the expenses on the religious activities are within the limit of 5%, laid down in section 80G(5) of the Act, then, approval under section 80G(5) of the Act should be granted to the assessee.

15. In the result, the appeal of the assessee is allowed for statistical purpose, in above terms.

Order is pronounced in the open court on 22/07/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

राजकोट /Rajkot

दिनांक/ Date: 22/07/2025

Dkp Outsourcing Sr.P.S

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)/(NFAC), Delhi.
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

Sd/-
(DR. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

By order/आदेशसे,

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot