

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE****BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.712/Bang/2025
Assessment Year: NA

Dr. T.M.A. Pai Foundation Syndicate House Manipal HO Udupi Karnataka 576 104 PAN NO : AAATD1327M	Vs.	CIT (Exemptions) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal Borkar, A.R.
Respondent by	:	Sri Shivanand Kalakeri, D.R.

Date of Hearing	:	12.06.2025
Date of Pronouncement	:	17.06.2025

O R D E R**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the assessee is directed against the order of the Id. CIT(Exemptions), Bangalore dated 17.1.2025 vide DIN & Notice No.ITBA/EXM/F/EXM45/2024-25/1072264620(1) rejecting the application filed for approval u/s 80G of the Income Tax Act, 1961 (in short “The Act”).

2. The assessee has raised following grounds of appeal:

1. On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Exemptions) erred in denying the approval under section 80G(5)(iii) of the Income tax Act, 1961.
2. The learned Commissioner of Income Tax (Exemptions) erred in holding that the appellant had not furnished sufficient details or proof of the activities of the trust/Institution within the meaning of section 2(15) of the Income tax Act, 1961 when on the same set of facts and material furnished the learned CIT(E) had granted registration under section 12AB of the Income tax Act, 1961.
3. The learned Commissioner of Income Tax (Exemptions) having satisfied with the genuineness of the trust and also having satisfied with the activities of the trust to grant registration under section 12AB of the Income tax Act, 1961 ought to have granted the approval under section 80G(5)(iii) of the Income tax Act, 1961 to enable the appellant trust to get donations for carrying out its objects.
4. The learned Commissioner of Income Tax (Exemptions) has failed to comprehend the fact that, appellant has not only having fees receipts it also **has other than** fees receipts, which are eligible for deduction under section 80G of the Income tax Act, 1961.
5. The learned Commissioner of Income Tax (Exemptions) has failed to comprehend the fact that, "fees receipts" is the revenue generated out of the regular activities carried by the Institution/Trust, which does not comes under the definition of Donation Received under section 80G of the Income tax Act, 1961.

6. The learned Commissioner of Income Tax (Exemptions) has wrongly assumed the chair of Appellant Trust by creating her own opinion at 6.4 of the order dated 17.1.2025 i.e., answer to (i) is "No" whereas answer to (ii) is Yes, by doing so, learned CIT(E) overlooked the fact that, the answer to (i) and (ii) may be *vis a vis*.

7. The learned Commissioner of Income Tax (Exemptions) while arriving at the excess of income over expenditure has grossly ignored the capital expenditure applied during the year as application of income under section 11(1) of the Income tax Act, 1961.

8. The learned Commissioner of Income Tax (Exemptions) erred in law in not allowing accumulation under section 11(1)(a) of the Income tax Act, 1961, being 15% of the gross receipts, as application of income.

9. The learned Commissioner of Income Tax (Exemptions) has failed to understand the method of computation of total income i.e., application income in Trust cases.

10. The learned Commissioner of Income Tax (Exemptions) has grossly ignored the fact that, the appellant had granted registration under section 80G from the date of appellant's inception.

11. The learned Commissioner of Income Tax (Exemptions) was not satisfied with the existing materials furnished by the appellant for granting approval in the interest of justice and having failed to do so, the order of denial is opposed to law and liable to be cancelled.

12. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.

3. The brief facts of the case are that the assessee trust is registered under sub-clause (i) of clause (ac) of sub-section (1) of section 12A of the Act vide Unique Registration No. (URN) **AAATD1327ME20211** dated 05.04.2022 from the assessment year 2022-23 to the Assessment Year 2026-27. Further, the assessee trust has been granted the provisional approval vide URN - **AAATD1327MF20221** dated 07/04/2022 under clause (iv) of first proviso to sub-section (5) of section 80G from 07.04.2022 to assessment year 2024-25 in Form No.10AC by the Id. PCIT/CIT. The

assessee trust thereafter applied for permanent approval as per clause (iii) of first proviso to sub-section (5) of section 80G of the Act in Form No.10AB on 10.08.2024.

3.1 The Id. CIT(Exemptions), Bangalore after granting opportunity of being heard rejected the approval u/s 80G of the Act on the following grounds:

- (i) The assessee trust reported surplus every year which is not utilized towards charitable purposes and they had been accumulated in FDs and received interest income.
- (ii) The private institution which is well funded by high fee receipts and management fee, which undergoes an increase every year does not commensurately passed on in terms of tangible or intangible facilities.
- (iii) It is the government aided school / colleges / institution and other institutions operating in remote areas with little or no infrastructure deserve the benefit of 80G.
- (iv) The fee receipts which are forming part of the total receipts do not fall under the purview of donation u/s. 80G of the Act.

3.2 In view of the above, the application filed by the assessee trust in form 10AB dated 10.08.2024 for approval u/s. 80G of the Act was rejected and accordingly, the approval was cancelled by the Id. CIT(E) vide Order in Form **10AD** dated **17/01/2025**.

4. Aggrieved by the order of Id. CIT(Exemptions), Bangalore dated 17.01.2025, the assessee has filed the present appeal before this Tribunal.

5. Before us, the Id. A.R. of the assessee vehemently submitted that the Id. CIT(Exemptions) erred in rejecting the grant of approval u/s 80G of the Act especially having satisfied with the genuineness of the Trust and also having satisfied with the activity of the trust

and granted registration u/s 12AB of the Act. The ld. A.R. of the assessee also submitted that for grant of approval u/s 80G of the Act, the ld. CIT(Exemptions) should only be satisfied about the genuineness of the activity of the trust and fulfillment of the conditions laid down in clause (i) to (v) of section 80G(5) of the Act. Further, the ld. A.R. of the assessee submitted that the fee receipts are the revenue generated out of the regular activities carried on by the institution and they have not been issued any certificate u/s. 80G like any other donations. Lastly, it was submitted that the ld. CIT(E) grossly erred in ignoring the Capital expenditure applied during the year as application as well as accumulation u/s. 11(1)(a) of the Act.

6. The ld. D.R. on the other hand vehemently supported the order of the authorities below and submitted that the surplus of each year carried to the Balance Sheet and added to the General Fund were increased at higher rates which is not utilized towards charitable purposes. Further, the ld. DR submitted that the assessee cannot issue a receipt u/s. 80G for a receipt in the nature of fee receipts.

7. We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that the assessee trust is registered under sub-clause (i) of clause (ac) of sub-section (1) of section 12A of the Act vide Unique registration No. (URN) **AAATD1327ME20211** dated 05.04.2022 from Assessment Year 2022-23 to the Assessment Year 2026-27. We are of the considered opinion that the registration u/s 12A must have been granted only after the ld. CIT(Exemptions) calling for the document/information from the trust in order to satisfy herself about the genuineness of the activity of the trust or institution and compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its object. Further, we also take a note of the fact that the ld. CIT(Exemptions) has also granted the provisional approval vide URN -

AAATD1327MF20221 dated 07.04.2022 under clause (iv) of first proviso to sub-section (5) of section 80G from 07.04.2022 to assessment year 2024-25 in Form No.10AC.

7.1 Now on going through the annexure to Form No.10AD dated 17.01.2025, we observed that the first contention for rejection by the Id. CIT(E) is that the assessee trust had reported surplus every year which was not utilized towards charitable purposes and they had been accumulated in FDs and received interest income. However, on the other hand the Id. AR of the assessee submitted that the Id. CIT(E) has grossly erred in ignoring the capital expenditure applied during the year as application of income u/s. 11(1) of the Act as well as accumulation of 15% of income from such property which shall not be included in the total income. On going through the Income & Expenditure A/c for last 3 years reproduced by the Id. CIT(E) we take a note of the fact that the assessee trust had applied substantial amount towards educational activities. We are of the considered opinion that the scope of enquiry by the Id. CIT(E) while dealing with the application for grant of approval u/s. 80G of the Act extends only to the satisfaction of the genuineness of the activities of such trust/institutions and the fulfillment of all the conditions laid down in clauses (i) to (v) of Section 80G(5) of the Act and not the actual computation of surplus. We are also of the opinion that the provisions of section 11 & 12 along with section 13 including application of fund by the charitable organization are to be examined during the course of assessment proceedings and not at the time of granting approval u/s 80G of the Act.

7.2 With regard to the observation of Id. CIT(E) that the private institution which is well funded by high fee receipts and management fee which undergoes an increase every year does not commensurately passed on in terms of tangible and intangible facilities, we are of the considered opinion that the Id. CIT(E) did not point out any specific

circumstances under which the fees received had not been commensurately passed on in terms of tangible and intangible facilities. These are merely sweeping statement without any corroborative evidences. The Id. CIT(E) did not even whisper about any activity of the trust to be non-genuine.

7.3 Now with regard to the fee receipts which are forming part of the total receipts, the Id. CIT(E) is of the view that these receipts do not fall within the purview of the donation u/s. 80G of the Act. The Id. AR on the other hand vehemently submitted that the Id. CIT(E) failed to comprehend the fact that assessee is not only receiving the tuition & hostel fee but also has receipts by way of donations / grants which are eligible for deductions u/s. 80G of the Act. The fee receipts are nothing but the revenue generated out of the regular activity carried on by the assessee trust and the assessee trust never gave 80G certificates on such fee receipts. We are of the considered opinion that mere fact of the assessee being an educational institution which received tuition & other fees along with hostel fees, the approval u/s 80G of the Act cannot be denied specially when it is established for the charitable purposes within the meaning of section 2(15) of the Act and the registration u/s 12A of the Act has already been granted after verifying the genuineness of the activities carried out by the Assessee trust. The issues, whether receipts in the form of tuition and other fees, hostel fees do not fall under the definition of donation are not at all relevant in the present proceedings of the assessee trust.

7.4 We are of the considered opinion that, for the purpose of granting approval u/s 80G of the Act, the only relevant section is sub-sections (5). The Id. Commissioner (Exemptions) after receiving the application for granting approval u/s 80G of the Act shall call for such document or information and make such enquiry as he/she thinks necessary in order to satisfy himself/herself about the

genuineness of the activity of such institution or fund and the fulfillment of all the conditions laid down in clause (i) to (v) as follows:

(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 fulfills 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 [* *] [Certain words omitted by Act 21 of 1998, Section 29 (w.e.f. 1.4.1999).] [* * *] [Certain words omitted by Act 20 of 2002, Section 30 (w.e.f. 1.4.2003).] [or clause (23-AA) or clause (23-C)] [Substituted by Act 11 of 1987, Section 35, for " or clause (23-C)" (w.e.f. 1.4.1988).] 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; [[] [The word " and" omitted by Act 32 of 1994, Section 24 (w.e.f. 1.4.1994).]*

(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,] [Inserted by Act 11 of 1983, Section 39 (w.e.f. 1.4.1984).] [[* *] [Certain words omitted by Act*

20 of 2002, Section 30 (w.e.f. 1.4.2003).][or is an institution financed wholly or in part by the Government or a local authority;] [Inserted by Act 11 of 1983, Section 39 (w.e.f. 1.4.1984).][*] [The word " and" omitted by Act 33 of 2009, Section 33 (w.e.f. 1.4.2009).]

7.5 In view of the above, we are of the opinion that at the time of granting of approval u/s 80G of the Act, the authority has to satisfy herself that the charitable institution is established in India for charitable purposes and the activities of the assessee trust are genuine and the assessee trust also fulfilled all the conditions as mentioned above. The ld. CIT(Exemptions) in our view has also not brought any material on record to show that the activities of the assessee trust are not genuine or the conditions as specified above are not fulfilled by the assessee trust.

7.6 In view of the above discussion, we allow the appeal of the assessee trust and direct the ld. CIT(Exemptions) to grant approval u/s 80G of the Act to the assessee as applied in form 10AB on 10.08.2024. It is ordered accordingly.

8. In the result, appeal filed by the assessee is **allowed**.

Order pronounced in the open court on 17th June 2025

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 17th June, 2025.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.