

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3250/MUM/2016
Assessment Year: 2011-12**

Credit Guarantee Fund Trust for Micro and Small Enterprises 7 th floor, SME Development Centre, G-Block, BKC, Bandra(E), Mumbai-400051 PAN No. AAATC2613D	Vs.	ITO-1(1), (Exemptions) Piramal Chambers, Parel, Mumbai-400012.
Appellant		Respondent

Assessee by	:	Mr. Shailesh S. Shah, AR
Revenue by	:	Mr. Rajesh Kumar Yadav, DR

Date of Hearing	:	14/12/2017
Date of pronouncement	:	26/02/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-1, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. Briefly stated, the facts of the case are that the assessee had received Corpus Contribution from Government of India of Rs.200,00,00,000/- and Corpus Contribution from SIDBI of

Rs.50,00,00,000/- which was not offered for tax. The Assessing Officer (AO) concluded that:

(i) the provision of section 2(24)(ia) are applicable to the receipts of Rs.250,00,00,000/- which amount have not been shown as income in return of income,

(ii) the assessee has not claimed exemption u/s 11 in the original return of income.

In view of the above, the AO brought to tax Rs.250,00,00,000/- u/s 2(24)(ia) of the Act.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) followed the order of his predecessor-in-office for the AY 2010-11 and dismissed the appeal filed by the assessee.

4. Before us, the Ld. counsel of the assessee relies on the order of the Tribunal in assessee's own case for the AY 2010-11 and files a copy of it. It is stated by him that as the appeal for AY 2010-11 has been allowed by the Tribunal and facts being same, the same order be followed in the impugned assessment year.

The Ld. DR fairly agrees that the Tribunal has allowed the assessee's appeal in the AY 2010-11.

5. We have heard the rival submissions and perused the relevant materials on record. As mentioned hereinbefore, the Ld. CIT(A) has followed the order of his predecessor-in-office for the AY 2010-11 while

dismissing the appeal filed by the assessee. We find that the ITAT 'C' Bench Mumbai in assessee's own case for the AY 2010-11 (ITA No. 6282/Mum/2014) has allowed the appeal filed by the assessee holding that:

5.10 In view of the legal position explained in the aforesaid judgments, it can be safely deduced that in the context of the application of the proviso to section 2(15) of the Act, what is critical is to examine as to whether the assessee Trust has been established for charitable purpose or not; and, the fact that it earns some income, by itself, would not be fatal and conclusive to determine that the assessee Trust is not established for charitable purpose. In other words, the existence or otherwise of the profit motive in the activities carried out by the assessee Trust would be crucial to determine the applicability of the proviso to section 2(15) of the Act; may it be to examine whether its activities are in the nature of trade, commerce or business or whether it is rendering any service in relation to any trade, commerce or business, as prescribed in the proviso to section 2(15) of the Act.

5.11 In this background, now we may go back to the facts of the present case. In the instant case, the object and purpose of the assessee Trust is to enable the small scale industries and micro enterprises to pursue their income generation activities. The said object is sought to be achieved by providing guarantees or counter guarantees to the lending institutions who disburse loans or provide other credit facilities to the small scale industries and micro enterprises. We may again emphasize that the object and purpose of the assessee Trust is to help the small scale industries and micro enterprises by ensuring that they get ability to obtain loans from lending institutions. No doubt, there is an element of fee or charges levied by the assessee Trust, but the point is, is there a profit motive

which would enable such activity to be characterized as a trade, commerce or business. In the orders of the authorities below as well as before us, there is no charge made by the Revenue that the quantum or object of fee charged by the assessee Trust betrays any profit motive. In fact, the income-tax authorities do not dispute the fact that the purpose and object behind the assessee Trust is not to carry on trade, commerce or business, but the only point made is that certain fee/charges have been levied for activities rendered to the beneficiaries, and therefore, it should be seen as 'trade, commerce or business'. As we have seen earlier, mere action of charging fee for services, by itself, would not justify invoking of the proviso to section 2(15) of the Act unless it is established that the purpose and object is profit motive. Considering the entirety of circumstances we are unable to find any credible reasoning taken by the Revenue to say that the purpose and object of the assessee Trust falls within the meaning of expression 'trade, commerce or business' used in the proviso to section 2(15) of the Act. In fact, as we had noted earlier, the assessee Trust has been settled on 27/07/2000 by the Government of India and SIDBI. The trust deed brings out the objects and purpose for which the assessee Trust has been set up, namely, to mitigate the difficulties faced by the small scale industries and micro enterprises in availing credit facilities from various lending institutions. It is also to be noted that the object and purpose of the Trust is focussed on small scale industries and micro enterprises and is not available to entrepreneurs at large. Apart there-from, it is also prescribed in the scheme operationalized by the Trust that the benefits are to be made available only to credit facilities aggregating upto Rs.10.00 lacs sanctioned and disbursed by the lending institutions. Therefore, considering the focused area of the Trust, it could not be inferred that there is any profit motive so as to view the activities to be 'trade, commerce or

business' as understood for the purposes of proviso to section 2(15) of the Act. Therefore, in our considered opinion, on facts, it is not possible to infer that assessee Trust is carrying on any regular 'trade, commerce or business' and on the contrary it is an entity which is essentially existing for charitable purposes but conducting some activities for consideration or fee. In this background, the proviso to section 2(15) of the Act cannot be invoked to exclude assessee Trust from the purview of section 2(15) of the Act since the said proviso only seeks to exclude institutions which are carrying on regular business, as inferred by us following the legal position explained by the Hon'ble Delhi High Court in the cases referred herein above.

5.12 In conclusion, we therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to allow the claim of the assessee for exemption under section 11 & 12 of the Act.

6. To sum up, the order of the assessment year 2010-11 followed by the Ld. CIT(A), has now been set aside by the Tribunal in the above case. The AO has been directed to allow the claim of the assessee for exemption under section 11 & 12 of the Act. Facts being identical, we follow the above order of the Co-ordinate Bench and allow the appeal filed by the assessee.

Order pronounced in the open Court on 26/02/2018.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 26/02/2018

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai