

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

श्री रमेश सी० शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH. C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 883/JP/2018  
निर्धारण वर्ष / Assessment Year : 2018-19

Sakhi-Saheli Microfinance Forum B-49, LS Nagar, Nayakhera, Vidhyadhar Nagar, Jaipur.	बनाम Vs.	The CIT, (Exemption) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAYCS 5974 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri G. M. Mehta (C.A.)  
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 27/03/2019  
उदघोषणा की तारीख / Date of Pronouncement: 14/05/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 25.05.2018 of the Id. CIT(E), Jaipur passed U/s 12AA(1)(b) of the I.T.

Act. The assessee has raised following grounds:-

*"1. Ld. CIT(E) has erred in law and on facts in refusing registration under section 12AA of the IT Act by invoking provisions of Section 12AA(1)(b) of Income Tax Act and treating the assessee Charitable company registered under rule 19(2) of*

*the Companies (incorporation) Rules-2014 as a business/services entity for the purpose of earning interest.*

*(2) Ld. Pr. CIT(c) was not justified refusing registration U/s 12AA of IT Act by ignoring its objects (incorporated in Memorandum of Association):-*

*(a) of charitable activity of the assessee company in providing micro finance to economically and financially weaker section without any discrimination as to caste, creed, religion or sex for earning their livelihood at nominal rate of interest on their personal guarantee only;*

*(b) of relief and help to poor, old, infirm and destitute people of society or like institutions or establishments;”*

2. The assessee-institution was formed U/s 8 of the Companies Act vide certificate of incorporation dated 01.05.2017. The main aims and objects of the assessee are to provide unsecured loans to economically and financially weaker section of the society. The assessee filed an application in form 10A for registration U/s 12AA of the IT Act on 24.11.2017. The Id. CIT(E) found that none of the objects of the assessee can be considered as charitable but the objects itself talk about the business activities. Since, the assessee's major receipts are in the nature of interest on the amount financed, therefore, the Id. CIT(E) was of the view that the whole of the activity of the assessee is commercial in nature and cannot be termed as charitable within the

meaning of Section 2(15) of the Act. Accordingly the application of the assessee seeking registration U/s 12AA of the Act was rejected.

3. Before us, the Id. AR of the assessee has submitted that the main objects of the assessee is to provide unsecured loan to economically weaker section of the society in general at very concessional rate of interest and to meet their day to day expenses. He has referred to the memorandum of articles of associations of assessee and submitted that it provides that no profit or surplus is payable to promoter or trustee. Thus, the Id. AR of the assessee has submitted that the objects of the assessee to provide loan to economically and financially weaker section society at concessional rate of interest is charitable in nature as the assessee is working on no profit and no loss basis and further, the surplus if any earned by the assessee is not liable for payment to promote or trustee but has to be applied only for the objects of the assessee. The rate of interest charges on unsecured loan/micro finance ranging between Rs. 10,000/- to Rs. 30,000/- per person is just 9% per annum. The said charge of interest is to meet day to day administration and office expenses. The major beneficiaries from such finance are poor and widow ladies having no or negligible support or source of income and whom, finance is not available without security. Therefore, the

activity of the assessee falls in the ambit of the term "as advancement of any other object and general public utility" U/s 2(15) of the Act. The Id. AR has pointed out that the Id. CIT(E) has heavily relied upon the inquiry report of the AO while rejecting the application of the assessee without giving an opportunity to the assessee to comment on report of the AO. The Id. AR has referred to the income and expenditure account for the period w.e.f. 01.04.2017 to 24.01.2018 which shows that even after charging the interest and processing fee there is loss of Rs. 1,19,952/- on gross receipts of Rs. 2,50,536/-. Therefore the processing fee and interest charged at concessional rate were much lower than the expenditure. No interest was payable to promoters who had contributed in shape of shares, loans or otherwise, nor any remuneration was paid or payable to them. The assessee institution was working as per strict direction of the Central Government as the institution is registered U/s 8 of the Companies Act as charitable company. The beneficiaries in getting loans are poor, infirm and destitute people of the society at large to whom the assessee provides loan without security therefore, the rejection of application for registration U/s 12AA of the IT Act by the Id. CIT(E) is not justified. In support his contentions, he has relied upon the following decisions:-

- CIT vs IILM Foundation Academy (2016) 290CTR 583.
- CIT vs. Gopi Ram Goyal Charitable Trust (2017) 392 ITR 285.
- CIT vs. Yamuna Express Ind. Dev. Authority (2017) 395 ITR 18.
- CIT Vs Ameliorating India (2017) 399 ITR 196.

4. On the other hand, the Id. DR has submitted that the Id. CIT(E) has carried out necessary enquiry to satisfy itself about the activities of the assessee. On examination of the record and particularly profit and loss of the assessee the Id. CIT(E) found the activities of the assessee cannot be termed as charitable as per Section 2(15) of the Act but all these activities are in the nature of trade and commerce/business. Therefore, when the gross receipts for such activity exceed 20% of the total receipt then it will not be termed as charitable activity as per proviso to Section 2(15) of the IT Act. He has relied upon the order of the Id. CIT(E).

5. We have considered the rival submissions as well as relevant material on record. The assessee institution was registered as a company U/s 8 of the Companies Act, therefore the object of formation of the assessee company itself is charitable as provided U/s 8 of the Companies Act. However, at the time of granting registration U/s 12AA of the act the competent authority has to consider whether the objects

of the institution are charitable in nature and activities are carried out to achieve or promote such objects. Thus the scope of inquiry is only to ascertain the charitable nature of objects and genuineness of the activities. The Id. CIT(E) has carried out the inquiry through AO as alleged by the Id. AR of the assessee however, we find that there is no bar for such inquiry to be conducted for ascertaining genuineness of the activities of the assessee subject to the condition that the assessee should be confronted and given an opportunity to reply the outcome of such inquiry if any against the assessee. Further, the Id. CIT(E) has arrived to the conclusion that the activities of the assessee are not charitable in nature by considering the nature of objects and activities being providing finance to weaker and destitute persons of the society and primarily to the economically weaker women. Therefore, the primary object of the assessee is to provide micro finance assistance to the weaker section of the society at concessional rate of interest and without any security. The activity of the assessee has to be analyzed in light of the objects of the assessee that the formation of the assessee company with charitable objects and not with profit motive. The expression charitable purpose as per provisions of Section 2(15) of the Act includes any other objects and general public utility and therefore, if

the objects of the assessee are in advancement of any object to benefit to public or a section of public then it is distinguished from benefit to an individual or group of individual and would be regarded as charitable purpose. We find that the primary and predominant object of the assessee are to promote the welfare of the economically weaker and destitute persons of the society by way of providing finance at concessional rate of interest and without asking for any security. Thus prima facie the object of the assessee are charitable in nature in terms of Section 2(15) of the Act. However the Id. CIT(E) has conducted inquiry through AO and the assessee was not given an opportunity to reply to such adverse inquiry against the assessee. Further, the Id. CIT(E) has also not considered the very purpose of formation of the assessee U/s 8 of the Companies Act with charitable object. It is pertinent to note that Section 8 of the Companies act provides the registration of companies with charitable objects and also ensures that the activity as well as the funds of the company cannot be used for the individual benefit but it should be strictly as per the objects of the company. Even in the case of winding up/ dissolution of the company if any asset remains after satisfaction on debt and liability the same shall be transferred to another company register U/s 8 of the Companies Act

therefore, ample safeguard has been provided U/s 8 of the Companies Act to prevent to misuse of the funds and activity of such company. Since, the Id. CIT(E) has not considered all these aspect while passing the impugned order, therefore, in the facts and circumstances of the case, we set aside this matter to the record of the Id. CIT(E) for considering all the relevant facts as well as the contentions of the assessee and also to give an opportunity to the assessee of hearing and present its case to explain each and every objection of the Id. CIT(E) before passing fresh order.

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

Order pronounced in the open court on 14/05/2019.

Sd/-  
( रमेश सी0 शर्मा )  
(Ramesh. C. Sharma)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 14/05/2019.

\*Santosh.

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

1. अपीलार्थी / The Appellant- Sakhi-Saheli Microfinance Forum, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 883/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar