

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1323 to 1325/Chny/2019  
निर्धारण वर्ष /Assessment Years: 2013-14 to 2015-16

The Dy. Commissioner of-  
Income Tax,  
Central Circle-1,  
Madurai.

(अपीलार्थी/Appellant)

**Vs.** M/s.Mahasemam Trust,  
No.2/47-B, Melur Road,  
Uthangudi, Madurai-625 107.

**[PAN: AAATM 7040 C]**  
(प्रत्यर्थी/Respondent)

Department by  
Assessee by

: Mr. Sridhar Dora, CIT  
: None (AD card for service of  
hearing notice on record)

सुनवाई की तारीख/Date of Hearing

: 05.08.2019

घोषणा की तारीख /Date of Pronouncement

: 30.09.2019

**आदेश / O R D E R**

**PER INTURI RAMA RAO, ACCOUNTANT MEMBER:**

These are the appeals filed by the Revenue directed against the order of the learned Commissioner of Income Tax (Appeals)-19, Chennai, in ITA Nos.119, 120 & 121/17-18 dated 11.01.2019 for the AYs 2013-14 to 2015-16.

**2.** The appeals filed by the Revenue are delayed by 10 days. The Revenue had filed petition praying for condonation of delay by stating that the relevant income tax assessment records and documents, which were

on transit from the higher authorities. The Ld.AR did not raise any objection in this regard. Hence, we condoned the delay in filing of these appeals and admitting the appeals on merits.

**3.** Briefly, the facts of the case are as under:

The Respondent is a charitable trust duly registered under the provisions of Sec.12AA of the Income Tax Act. The objects of the Respondent-Trust were to work for uplift of poor, destitute and downtrodden people irrespective of their cast, creed and religion. There was a search and seizure was conducted u/s.132 of the Act in the case of Dr.S.Gurushankar & others on 26.11.2014. It is mentioned by the AO that during the course of search and seizure in the case of Dr.S.Gurushankar & others, certain documents alleged to be incriminating pertaining to the Respondent-Trust, were found. Consequently, the notices u/s.153C of the Act were issued for the AYs 2013-14 to 2015-16. In response to such notices u/s.153C, the Respondent-Trust filed the return of income on 21.04.2016 disclosing 'nil' income. Against the said return of income, the assessment was completed by the Asst. Commissioner of Income Tax, Madurai, (hereinafter called as "AO") vide an order dated 30.11.2016 passed u/s.143(3) r.w.s.153C of the IT Act at a total income of Rs.1,43,96,703/- for the AY 2013-14, Rs.2,29,37,011/- for the AY 2014-15 & Rs.3,20,94,872/- for the AY 2015-16. While doing so, the AO had denied the exemption u/s.11 by invoking the proviso to Sec.2(15) of the IT Act by holding that the Respondent-Trust was

indulging in micro finance activities, which tantamount to business activities. To come to the conclusion, the AO had taken note of the fact that the Respondent-Trust was engaged in the activity of lending money to self-help groups and the method of charging interest at the rate of etc., and therefore inferred that the Respondent-Trust has indulged in the business activities and accordingly invoked the proviso to Sec.2(15) of the IT Act and denied the exemption. Further, the AO taking note of the fact that the president of the Respondent-Trust namely Dr.N.Sethuraman was paid honorarium of Rs.12.00 lakhs in violation of provisions of clause (c) of sub-section (1) of Section 13 of the Act. The AO held that 15% of the honorarium, such payment is unreasonable and accordingly disallowed a sum of Rs.1,80,000/-. Thus, the AO completed the assessment by assessing the excess of income over expenditure and addition made on account of excessive remuneration paid to the precedent to the Respondent-Trust.

**4.** Being aggrieved by the above Assessment Order, the appeals were filed before the Ld.CIT(A) who vide impugned order by following the decision of the Tribunal in the assessee's own case in ITA Nos.2919 & 2920/Mds/2016 for the AYs 2011-12 & 2012-13 dated 09.08.2017, allowed the appeals.

**5.** Being aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us in the present appeals. The Ld.Sr.DR placed orders of the lower authorities. The Ld.Sr.DR submitted that the activities of the

Respondent-Trust are in the nature of trade, commerce and business and therefore, proviso to Sec.2(15) of the Act is squarely application and he placed reliance on the Assessment Order. The Ld.DR submitted that the Respondent-Trust continues to enjoy the exemption u/s.11. The question of denial of exemption u/s.11 does not arise. He further submitted that the issues in these appeals are squarely covered by the decision of the co-ordinate Bench of this Tribunal in the assessee's own case for the AYs 2011-12 & 2012-13.

**6.** We heard the rival contentions and perused the materials placed on record.

**7.** The issues in these appeals are squarely covered in favour of the Respondent-Trust by the decision of the co-ordinate Bench of this Tribunal in the assessee's own case for the AYs 2011-12 & 2012-13, referred to supra, wherein the Tribunal has held as under:

*".....7. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, it is apparent that the Revenue had withdrawn the benefit of Section 11 & 12 of the Act to the assessee only for the reason that the assessee's activity is micro-financing by obtaining loan from bank and lending them to SHGs at a higher interest. However, surprisingly we find that the Revenue has granted registration to the assessee trust whose main objective is micro-financing. Further from the decision cited by the assessee herein above, it is clear that the activity of micro-financing by itself cannot be consider as not providing 'relief to the poor' unless and until there is a finding that the micro-financing activity is rendered to service the rich and the affluent. In the case of the assessee, there is no finding by the Revenue that the assessee trust has extended the micro-financing facility to rich and the affluent. Moreover, the assessee has claimed throughout in the assessment proceedings as well as the proceedings before the first Appellate Authority, that the Trust has been extending service to the poor in rural areas for uplifting the downtrodden; however the Revenue had not made any finding otherwise. Further from the Hon'ble Apex court decision in the case of Thanthi Trust supra, it can be inferred that mere generation of surplus cannot frustrate the provisions of Section 2(15) of the Act, when such surplus is utilized for obtaining the objects of the Trust. The claim of the assessee which is supplemented by the paper book furnished by the assessee is that, the assessee's Trust is rendering service to the poor and needy by extending micro-finance loans in order to help the poor and downtrodden to earn their livelihood. This claim of the assessee is not negated by the Revenue in any of their findings which establishes the fact that the assessee trust is lending only to SHG's consisting of poor and downtrodden. Further it is apparent from the orders of the Ld.AO that for the assessment year 2011-12,*

*the assessee Trust has earned interest income of Rs.24,46,05,545/- and Rs.14,40,12,032/- for the assessment year 2012-13. Even though the assessee had received such enormous interest income, the excess of income over expenditure for the assessment year 2011-12 and 2012-13 computed by the Ld.AO is only Rs.21,22,319/- and Rs.91,51,142/- respectively. Thus it is evident that most of the income earned by the assessee is utilized for attaining the objects of the assessee trust. Proviso to Section 2(15) of the Act also does not bar the assessee from earning income during the course of its activities such as relief to the poor. When the assessee has utilized its entire funds for micro-financing in order to uplift the poor then the benefit of Section 11 & 12 of the Act cannot be denied to the assessee just because the assessee has charged some markup in its lending rates of interest. It is pertinent to mention that some markup in the lending rates is essential to cover up the administration cost and bad debts arising out of the advances. It is also a well-known fact that to obtain loan from Banks is a cumbersome process which any ordinary persons cannot succeed. Entities such as the assessee Trust only has a potential to reach out to such persons and effectively avoid loss of capital and yet lift the poor and the downtrodden. Considering the facts and circumstance of the present cases before us, we are of the considered view that the assessee Trust has rendered service in the nature of 'providing relief to the poor' as envisaged in the Act and therefore the benefit of Section 11 & 12 of the Act cannot be denied. Hence, we hereby set aside the Order of the Ld.A.O and the Ld. CIT(A) and further direct the Ld.AO to grant the benefit of Section 11 & 12 of the Act, to the assessee. We have also examined the various extensive activities conducted by the assessee Trust and the considerable time spent by the trustees as well as their relatives and is of the considered view that the consultation fee ranging from Rs.4 lakhs to Rs.12 lakhs paid to the Trustees is quite reasonable. Therefore, we do not find the assessee's trust to have violated any of the provisions of the Act".*

**8.** The decision of the Ld.CIT(A) is based on the order of the Tribunal in the assessee's own case in the preceding years and therefore, we do not find any merit in the grounds of appeals filed by the Revenue.

**9.** In the result, the appeals filed by the Revenue are dismissed.

Order pronounced on the 30<sup>th</sup> September, 2019 in Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(इंटूरी रामा राव)

**(INTURI RAMA RAO)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 30<sup>th</sup> September, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant       | 4. आयकर आयुक्त/CIT      |
| 2. प्रत्यर्थी/Respondent     | 5. विभागीय प्रतिनिधि/DR |
| 3. आयकर आयुक्त (अपील)/CIT(A) | 6. गार्ड फाईल/GF        |