

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

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामन, लेखा सदस्य समक्ष

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.: 664/Chny/2017

निर्धारण वर्ष/Assessment Year : 2012-13

M/s. Dawoodi Bohra Jamaat Trust,
Burhani Masjid, Burhani Colony,
Peelamedu,
Coimbatore – 641 004.

The Assistant Commissioner of
Vs. Income Tax (Exemptions),
Coimbatore.

[PAN: AABTD 5410B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. K. Raghu. CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. G. Johnson, Addl. CIT

सुनवाईकीतारीख/Date of Hearing

: 26.07.2021

घोषणाकीतारीख/Date of Pronouncement

: 26.07.2021

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)- 2, Coimbatore in ITA No. 149/15-16 dated 30.12.2016 for the assessment year 2012-13.

2. The case was heard through video conferencing. The Ld. AR submitted that while making the assessment for assessment year 2012-13 in the case of M/s. Dawoodi Bohra Jamaat Trust, the assessee, the Assessing Officer added Muvasaat fund of Rs. 4,69,000/- and corpus fund of Rs. 77,78,700/- to the returned income, re-worked the application of income and arrived deficit in application of Rs. 45,31,437/- and taxed the same. Aggrieved against that order, the assessee filed an appeal before the Ld. CIT(A) in which it was pleaded that Rs. 77,78,700/- donations collected from our members was lent to members without charging any interest or charges in accordance with our services called as Qardan Hasana. Since, Qardan Hasana is one of the main objectives of the trust, apart from other objectives, this amount had been credited to our trust as corpus account which was added to the returned income by the AO in the assessment order. It was pleaded before the Ld. CIT(A) that even this amount of Rs. 77,78,700/- collected from the members and credited to the corpus fund, is treated as an income of the trust, then the corresponding outgo from the account towards interest free loans to the members has to be taken as an application of income. If it is done so, the assessee would have complied with the statutory requirements of applying 85% of the income of the trust. Rejecting the assessee's plea, the Ld. CIT(A) held that if these loans meant to encourage Qardan Hasana concept are lent to the members interest free but they have to be returned within the specified time. So, it is not an out flow of cash so as to qualify itself as application of income. Loans and advances are never considered as expenditure or application of income while arriving at the income of the

religious/charitable trusts and accordingly dismissed the appeal. Aggrieved against that order, the assessee is on appeal before this Hon'ble Tribunal. The Ld. AR submitted that the assessee's activities are held religious charitable activity. He invited our attention to the page No. 11 of the paper book wherein, a copy of the computation of application of gross receipts u/s. 11(1) of the Income Tax Act is placed, and submitted that the assessee's gross receipts including the impugned corpus donation and Muvasaat fund was at Rs. 2,05,27,187/-. The assessee's application which includes the loans lent for Qarzan Hasana is at Rs. 2,67,94,690/-. Therefore during the year, the assessee applied excess of its income of Rs. 62,67,503/-. Thus, even after including the impugned corpus donation, the assessee's application is in excess of its income at Rs. 62,67,503/- and hence pleaded that the assessee's appeal be allowed. In this regard, the Ld. AR invited our attention to the circular issued by the CBDT in Circular No. 100 [F.No. 195/1/72-IT(A-I)], dated 24.01.1973 and relied on. Further, he relied on the Jurisdictional Madras High Court judgment in the case of M/s. Nadigar Sangam Charitable Trust, in TCA No. 951 of 2008 dated 12.02.2019.

3. Per contra, the Ld. DR submitted that loans and advances are never considered as expenditure or application of income while arriving at the income of the religious/charitable trusts. As per the balance sheet, the assessee trust itself got a loan of Rs. 50,50,000/- as Qardan Hasana from a different trust and shown it as a liability. Going by the assessee's logic, this amount received by

other trust should have been treated as an income of the assessee. Having not done so, the assessee cannot plead now that the amounts lent interest free to its members as Qardan Hasan can be treated as application. Therefore, he supported the orders of the lower authorities.

4. We heard the rival submissions and gone through relevant material. In this case the CIT has granted registration u/s. 11. Thus, Qardan Hasan, the business of giving interest free loans is accepted as a religious activity in line with the tenets of Islam. While making the assessment, the Assessing Officer disallowed the corpus donation for the reason that the assessee has not established that the impugned donation is towards the corpus funds and accordingly re-quantified the income. However, before the appellate authority, the assessee pleaded that even if the corpus donation is treated as its income, it has excessively applied its income and hence the assessee is not taxable at all during the assessment year. When such claim is made before the Ld. CIT(A), since this issue was not examined by the AO from such point of view, the Ld. CIT(A) ought to have sought remand report from the Assessing Officer and examined the issues appropriately. We find from the computation of application of gross receipts, the assessee has included the repayment of loans received from its members under Qardan Hasan as its receipts and included the loans lent for Qardan Hasan as an application which is in accordance with the Board Circular No. 100, supra. Hence, the donations received for this purpose should be treated as assessee's income and the amount lent to others without interest

should be treated as an application of assessee's income. In the above facts and circumstances, we are of the view that the other issue requires re-examination before the AO. The nature of other loans/advances received by the assessee needs examination and due decision. Therefore, we set aside the order of the Ld. CIT(A) and remit the issues back to the AO for a fresh examination in the light of the above observation. The assessee shall place relevant material in support of its contentions and comply with the requirements of the AO in accordance with law. The AO on due examination of them and after affording adequate opportunity to the assessee shall decide the issues in accordance with law.

5. In the result, the assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced on 26th July, 2021 at Chennai.

Sd/-
(धुव्वुरु आर. एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/Judicial Member

Sd/-
(एस जयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated: 26th July , 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |