

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1437/CHNY/2016**
निर्धारण वर्ष / Assessment Year: 2009-10

M/s. Sarvodaya Mutual Benefit Trust, Vs **The Income Tax Officer,**
No.10, Reddiyar Street, Ward-I(5),
Thellar Village Post, Vellore – 632 001.
Tiruvannamalai – 604 406.

PAN: AAETS 2748F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: **1438/CHNY/2016**
निर्धारण वर्ष / Assessment Year: 2009-10

M/s. Sarvodaya Mutual Benefit Trust, Vs **The Income Tax Officer,**
No.77, Chetpet Road, Ward-I(5),
Mazhiyur Village, Vellore – 632 001.
Mazhiyur – 604 502
Vandavasi Taluk.

PAN: AAETS 5150R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri K. Venkatesh Prabhu, CA
: Shri AR.V. Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 08.12.2021

घोषणा की तारीख/Date of Pronouncement

: 24.01.2022

आदेश / O R D E R**PER MAHAVIR SINGH, VP:**

These appeals by the assesseees are arising out of different orders of the Commissioner of Income Tax (Appeals)-13, Chennai in ITA No.125/CIT(A)-13/2009-10 & 126/CIT(A)-13/2009-10, vide orders dated 23.02.2016 & 29.03.2016. The assessments were framed by the Income Tax Officer, Ward-I(5), Vellore for the assessment year 2009-10 vide even dated 26.12.2011 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act').

2. The facts and circumstances are identical in both the appeals and grounds raised are exactly identically worded except the quantum. Both these appeals are remanded back by the Hon'ble Madras High Court in TCA No.682 of 2018, dated 03.07.2019 & TCA No.397 of 2020, dated 03.11.2020 by observing as under:-

“5. In the result, the appeal by the appellant / assessee is allowed, impugned order is set aside and the matter is remanded to the Tribunal for fresh consideration. We make it clear that we have not ventured into the merits of the matter nor we have made an attempt to answer the substantial questions of law and we have disposed of this appeal by following by our earlier judgment in T.C.A. No.682 of 2018 dated 03.07.2019 and the Tribunal to take a decision in accordance with law. No costs.”

Similar are the observations in TCA No.682 of 2018.

3. The first issue in these appeals is as regards to distribution of surplus among its members i.e., members of Self Help Groups. For this, the assessee has raised following Ground No.3:-

“3. The Commissioner of Income tax (Appeals) erred in verifying the facts present in the Trust deed and the Rules and Regulations framed and concluded that the share of the appellant trust is indeterminate or unknown and that maximum marginal rate of tax as provided in Section 164(1) had to be applied to the entire income.”

4. At the outset, the Id.counsel for the assessee stated that the issue is covered by the Co-ordinate Bench decision in assessee's own case by following orders:-

- i) ITAT, Chennai 'C' Bench in ITA No.1098/Mds/2012 & ITA No.1100 to 1104/Mds/2012 decided on 05.02.2013
- ii) ITAT, Chennai 'C' Bench in ITA No.1288 to 1322/Mds/2014, decided on 27.08.2014
- iii) ITAT, Chennai 'C' Bench in ITA Nos.2577 to 2581/Mds/2014, decided on 21.01.2015

When these facts were confronted to Id.CIT-DR, he could not controvert the above submissions. We noted that the issue raised in present set of appeals is similar to the one adjudicated by the Co-ordinate Bench of this Tribunal in ITA Nos.1288 to 1322/Mds/2014 in assessee's own case and Tribunal in the aforesaid appeals has followed the order of Co-ordinate Bench in assessee's own case in ITA Nos.1100 to 1104 & 1098/Mds/2012, order dated 05.02.2013.

The relevant extract of the order of the Tribunal in ITA Nos.1100 to 1104 & 1098/Mds/2012 is reproduced as under:-

“3. The assessee is a prominent NGO working among the rural folk in different parts of India, with the aim of raising the living standard of poor villagers, especially scheduled casts, tribes and other backward communities. The assessee trusts are registered, in these cases in Tamil Nadu, to manage Self-Help Groups (SHGs for short). These SHGs are group of villagers and their families numbering around ten to fifteen and they undertake a particular programme of generating income for the benefit of the members of that SHG. The assessee trust SMBT is leading and managing about ten to twenty SHGs in their activities. The assessee SMBT, around twenty to thirty in numbers, working in Tamil Nadu, are under the common umbrella of M/s.Sarvodaya Nano Banking Finance Company Limited (SNBFCL for short). SNBFCL is approved by the Reserve Bank of India for carrying out the activities of micro financing. SNBFCL obtains loans from statutory corporations like SIDBI and nationalized banks. SNBFCL obtains loans from the above stated sources and distributes to different SMBTs, like the assessee. The assessee SMBTs, in turn, lend the money to different SHGs under them. SNBFCL is charging interest at the rate of 12 per cent on the net balance method for the amount advanced by it to different SMBTs, like the assessee. SMBTs like the assessee, in turn, advance these loans to their SHGs at a flat rate of 12 per cent. At the last point of SHGs, it is for the group to decide the interest rate chargeable on the individual members of that SHG. The assessee SMBTs are getting funds from SNBFCL at 12 per cent rate on net balance, whereas they are advancing amounts to SGHs at a flat rate of 12 per cent. This differential method generates surplus income in the hands of SMBTs like the assessee in the present appeals. The bylaws of assessee trusts provide that 95 per cent of such surplus will be distributed among the members of SHGs working under them and 5 per cent of the surplus is to be retained by the assessee-trusts for their own maintenance and other administrative overheads.

4. These SMBTs are operating in the above-stated operational model in helping the villagers.

5. All these institutions mentioned above are the field organizations of an All India National Apex Body called “Association of Sarva Seva Farms”

(ASSEFA for short). ASSEFA is a national level trust formed for the upliftment of poor villagers who had received in the past, parcels of land distributed by Boodhan Movement initiated by Acharya Vinoba Bave. The Boodhan Movement had collected good extent of land in different parts of India. Those lands were allotted to landless poor villagers. But, the villagers were not in a position to raise resources to carry on agricultural and other related activities in the land allotted to them. It created a situation that inspite of land allotted to them, the poor people were not in a position to make a livelihood out of the land. ASSEFA was formed in the above context. They made out a programme for the sustainable growth of Boodhan land allottees. On the security of the Boodhan land, ASSEFA will arrange funds from nationalized banks for distributing among the Boodhan land allottees, so that they can indulge in different activities including agricultural, for creating an environment of sustainable growth. ASSEFA is a national nodal agency engaged in the upliftment of rural people through programmes designed for sustainable development. In that way, the national apex body ASSF is a charitable institution by the nature of the work carried on by it. Needless to say, it is a nonprofit organization.

6. It is under the overall guidance and policy formulation of ASSEFA that field organizations like SNBFCL, the assessee trusts and individual SHGs are working. SHGs are working at grassroot level in villages. The assessee trusts arrange finance to these grassroot level SHGs by availing funds from SNBFCL. As already stated, SNBFCL arranges the finance from statutory institutions and nationalized banks.

7. The issues involved in all these appeals, which are common, arise out of the scenario of activities explained in the above paragraphs.

8. As already stated, because of the differential plans of charging of interest, the assessee trusts are generating surplus in their hands. They are distributing 95 per cent of the surplus to member SHGs, as mandated by the by-laws of the assessee trusts, and they retain 5 per cent of the surplus.

9. In the course of the assessments of these assessee trusts, the Assessing Officer held that the assessee trusts are in the status of Association of Persons (AOP for short) and they are liable for taxation on the surplus income at the maximum marginal rate. The reason pointed out by the Assessing Officer is that the distribution of 95 per cent made by the assessee trusts to member SHGs is not determinate with reference to

individual recipients. In other words, the distribution of 95 per cent of surplus is indeterminate. Therefore, he held that 95 per cent of surplus distributed by the assessee trusts to their member SHGs has to be treated as income of the respective trusts. It is to be seen that the assessee trusts have already offered for taxation 5 per cent of the surplus retained by them. The dispute is only with reference to 95 per cent of the surplus distributed to member SHGs.

Paras 10 to 16 :

17. First we will consider the question of treating 95 per cent of the surplus distributed to the member SHGs, as income liable for taxation or not. 18. We have broadly stated the organizational model of the assessee trusts working under the guidance of a national apex NGO. On the grassroots level, SHGs are working, for whom the assessee trusts are arranging funds availed from the umbrella organization SNBFCL. Every SHG contains ten to fifteen members. The details of every member belonging to a SHG are available on record. The details of loans availed by the various SHGs are properly recorded and further distribution of funds by SHGs to their individual members are also properly documented. It is on the basis of these documentations and details that interest is computed and paid off. The assessee trusts are returning back 95 per cent of the surplus to the various SHGs working under them for the purpose of ultimately distributing among the members. There cannot be a case, in such circumstances, that the share of every SHG, or the share of every individual member is indeterminate. That is a finding of fact arrived at by the assessing authority without any basis. The assessee trusts are not distributing the 95 per cent of the surplus to a large crowd at their own whims and fancy. The assessee trusts are distributing the 95 per cent of surplus on the basis of proper accounts, formula and procedure. Every beneficiary is identified. The share of every beneficiary is quantified. Therefore, we find that the Commissioner of Income tax(Appeals) is justified in coming to the conclusion that the assessee trusts and the SHGs are inter-related and they are all concerns governed by the principles of mutuality. The 95 per cent surplus distributed by the assessee trusts to the various SHGs working under them is nothing but the income of those SHGs themselves. It is not something that those groups are getting from outside by way of income. It is the fruit of their efforts. After finalising the accounts and computing the surplus, the profits are divided among those members, whose shares are determinate and whose roles are well defined. Therefore, we endorse the view of the Commissioner

of Income-tax(Appeals) that all these SHGs working under the assessee trusts are concerns governed by the principles of mutuality and accordingly the 95 per cent of surplus distributed among them are not in the nature of income. The Commissioner of Income-tax(Appeals) has rightly held that 95 per cent of the surplus distributed by the assessee trusts cannot be brought to tax. His orders on this point are confirmed and the grounds raised by the Revenue on this point are rejected.”

Since the issue is exactly identical and facts are also exactly identical in the present case, which are not disputed by Revenue, taking a consistent view, we allow these appeals of assessee on this issue.

5. The next issue in these appeals of assessee is as regards to TDS u/s.194A of the Act, on the Act on the interest payment made by the assessee’s trust. For this, the assessee has raised identically worded grounds in both the appeals and the relevant Ground No.4 reads as under:-

“4. The learned Commissioner of Income-tax (Appeals), ought to have appreciated that the appellant-trust is only a facilitator. Therefore, the appellant-trust has to be treated only as representative assessee. The Self Help Groups are mutual concerns and ultimately the interest burden is by the individual members of the group. Therefore, de facto speaking, the interest burden is by the individual members of the group. Therefore, de facto speaking, the expenditure by way of interest is incurred by the members and in fact the interests are paid by those members. These individual members do not have taxable income and are not liable for audit u/sec 44AB, Hence the provisions of Section 194A are not applicable to them. What is not applicable to the members is not applicable to the representative assessee also. Since the appellant-Trust is the representative

assessee for the Self Help Groups, the question of deducting tax u/s.194A by the appellant-Trust while making interest payments does not arise.”

6. At the outset, the Id.counsel for the assessee stated that this issue also came up for hearing before Co-ordinate Bench in assessee's own case in earlier years in ITA Nos.1100 to 1104 & 1098/Mds/2012 wherein the Tribunal exactly on same facts held that no disallowance can be made u/s.40(a)(ia) of the Act, as there is no need for deducting TDS u/s.194A of the Act. The Tribunal in Para 21 & 22 observed as under:-

21. Now, coming to the facts of the case, we agree with the Commissioner of Income-tax(Appeals) that the assesseees are not liable to deduct any tax on payment of interest to SNBFCL. The assesseees are availing loans from SNBFCL and passing over the loans to various SHGs working under them. In fact, the loan amounts are not utilized by the assessee trusts. They are utilized by the SHGs working under the trusts. The ultimate payer of the interest is not the assessee trusts, but the SHGs. Therefore, we have to see that the interest by way of expenditure is incurred in the cases of SHGs and not in the hands of the assessee trusts. The assessee trusts are facilitators. They are to be treated as representative assesseees of the SHGs, who are ultimately utilizing the loan and incurring interest by way of expenditure. The SHGs are mutual concerns and ultimately the interest burden is shared by the individual members of the group. Therefore, de facto speaking, the expenditure by way of interest is incurred by the members of the SHGs and in fact the interests are paid by those members of SHGs to SNBFCL. These individuals, not being liable for audit under section 44AB, the provisions of section 194A are not applicable to them. What is not applicable to the members, will not apply to representative assesseees. In the present case, all the assessee trusts are representative assesseees of the members constituting the self help groups.

22. Therefore, on facts, we find that the Commissioner of Income-tax(Appeals) is justified in holding that the assesseees are not bound by the law stated in section 194A. Therefore, there is no need of deducting any tax at source while making the interest payments to SNBFCL. Accordingly, we uphold the order of the Commissioner of Income-tax(Appeals) in deleting the additions made by the assessing authorities under section 40(a)(ia) of the Income-tax Act, 1961.

7. Now, the Id. senior DR could not controvert the above factual situation and as the issue is squarely covered, we allow this issue in both the appeals of the assessee.

8. The next issue in these appeals of assessee is regards to claim of exemption u/s.10(10c) of the Act. For this, assessee has raised identical worded grounds in both appeals and Ground No.6 reads as under:-

“6. The appellant, therefore, prays that for the grounds urged hereinabove and for the further grounds that may be urged at the time of hearing of this appeal with the leave of this Hon’ble Forum, the Hon’ble Appellate Tribunal may be pleased to allow this appeal by granting the impugned exemption u/s.10(10C) of the Income-tax Act, 1961 and render justice.”

9. At the time of hearing, the Id.counsel for the assessee conceded this ground and stated that in case the above two grounds are allowed, he will not press this ground. Since, we have allowed the above two issues in favour of assessee, we need not adjudicate this ground. Hence, this ground is dismissed as un-academic.

10. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the court on 24th January, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 24th January, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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