

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 346/Srt/2018 (Assessment Year: 2014-15)
(Physical hearing)

I.T.O. (Exemption), Ward-Surat, Room No. 105, 1 st Floor, Anavali Business Centre, Aayakar Bhavan, Adajan Hazira Road, Surat-395009.	Vs.	Saifee Qardan Hasana Trust, 3/873, Yusuf Manzil, dawat Properties Trust, Pathanwada, Zampa Bazar, Surat-395003 (Gujarat). PAN No. AAGTS 5990 P
Appellant/ assessee		Respondent/ revenue

Department represented by	Shri H.P. Meena (CIT-DR)
Assessee represented by	None
Date of hearing	29/07/2022
Date of pronouncement	05/09/2022

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-3, Surat (in short, the Id. CIT(A) dated 27/02/2018 for the Assessment year 2014-15. The revenue has raised following grounds of appeal:

- “1. The CIT(A) has erred in law and on facts in deleting the disallowance of exemptions claimed u/s 11(1)(d) of the Act of Rs. 2,20,99,166/- without appreciating the facts of the case.*
- 2. The Revenue craves to add, alter, amend, modify, substitute, delete and/or rescind all or any Grounds of Appeal on or before the final hearing, in necessity so arises.*

2. Brief facts of the case are that the assessee is a Trust having registration under Section 12A(a) of the Income Tax Act, 1961 (in short, the Act). The assessee filed its return of income for the Assessment Year (AY) 2014-15 on 07/10/2014 declaring NIL income. The case of assessee was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has shown corpus donation of Rs. 2.20 Crores and claimed its exemption under Section 11(1)(d) of the Act in respect of entire corpus donation. The assessee was asked to provide necessary evidence to show that the donation was received with specific direction to make it part of corpus of trust. The assessee was also asked to furnish copy of donation receipt. The assessee vide its reply dated 27/10/2016 furnished copy of confirmation of donor Dawat-e-Hadiyah that an amount of Rs. 2.15 crores have been paid to assessee trust vide cheque No. 910710 dated 12/09/2013 towards Trust corpus. During the assessment, the Assessing Officer on further verification find that the assessee has not invested the corpus fund of Rs. 2.20 crores in the modes prescribed under Section 11(5) of the Act. The assessee has utilized it for the purpose of giving interest free advance to various persons. Accordingly, the Assessing Officer issued show cause notice dated 05/12/2016 as to why provisions of Section 13(1)(d) of the Act should not be invoked for the violation of Section 11(5) of the Act. The assessee filed its reply vide reply dated

12/12/2016. The contents of reply of assessee are extracted on page Nos. 3 to 10 of assessment order. In the reply, the assessee in sum and substance submitted that the assessee has given/used the corpus donation for giving qardan hasana to Moumeneen/ Ibadulla as per principles of al-Qardan, Shariat Mohammediyah and the Fatemi Philosophy. In other words, the assessee also claimed that amount was given as an interest free loan as the charging of interest is prohibited under the Muslim Personnel Law. The amount is given qardan hasana (interest free loan) as per object of the Trust. The object of trust is not in dispute. The reply of assessee was not accepted by the Assessing Officer. The Assessing Officer treated the amount utilized for giving qardan hasana as in violation of Section 11(5) of the Act and thereby disallowed Rs. 2.20 crores at the time of assessment order on 28/12/2016.

3. Aggrieved by the additions/disallowance, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submissions. In the written submissions, the assessee in sum and substance, repeated the similar contention as submitted before the Assessing Officer. In addition to, the assessee submitted that the assessee trust has received corpus donation of Rs. 2.20 crores with specific direction from donor that the same shall be become part of corpus and has to be utilized for giving interest free advance (qardan

hasana) to Moumeneen/Ibadulla i.e. members of the Dawoodi Bohra community which is one of the object of the assessee trust. Thus, the corpus donation was utilized for the object of trust, hence, no accumulation of funds remained to be invested under Section 11(5) of the Act. The assessee also relied upon the decision of Hon'ble Delhi High Court in the case of Director of Income Tax Vs Society for Development as well as decision in the case of Sri Dwarkadheesh Charitable Trust Vs ITO (1975) 98 ITR 557 (All) and the decision of Kolkata Tribunal in Shri Shankar Bhagwan Estate Vs ITO (1997) 61 ITD 196 (Cal). The assessee on the basis of aforesaid decisions, submitted that there is no provision under the Income Tax Act that corpus donation cannot be received for any specific purpose. Therefore, any donation received in the nature of corpus are also corpus fund and eligible for exemption under Section 11(1)(d) of the Act. The assessee specifically contended that neither in Section 2(24)(a) nor of Section 12 of the Act, there is any condition that the amounts meant of forming part of corpus, even if spent for the purpose of the furtherance of the objects of the trust, the trust would lose the exemption. The contribution received in the form of corpus were spent for the purpose of object. The assessee also relied upon the decision of Hon'ble M.P. High Court in the case of CIT Vs Dawoodi Bohra

Jamat 184 taxmann.com 222 (MP) and Dharma Pratisthanam Vs ITO 11 ITD 40 (Del).

4. The Id. CIT(A) after considering the submission of assessee and the contents of assessment order, recorded that there are certain undisputed facts i.e. the assessee is a trust registered under Section 12A of the Act. The assessee received 2.20 crores from another trust Daawat a Hadiyah with specific direction that it shall be used for giving interest free loan (Hardan Hasanah) to Moumeneen/Ibadulla. Giving qardan hasana is one of the objects of the assessee trust. The amount had been spent/utilized in giving qardan hasana. The assessee is maintaining separate account of this fund, which is shown separately in its balance sheet. This amount is not claimed by assessee as application of income under Section 11(1) or 11(b) of the Act. The Id. CIT(A) also recorded the various object clauses of the assessee trust in para 7.2 of his order. After making the aforesaid observation, the Id. CIT(A) held that it is an admitted fact that qardan hasana is one of the main objects of the trust, the assessee is granted registration under section 12(a). It is not the case of Assessing Officer that objects of the trust are not charitable or in violation of its objects. The Id CIT(A) held that Hon'ble Supreme Court in Dawoodi Bohara Jamat (2014) 43 taxman.com 243 (SC) and Hon'ble Madras High Court in the case of Dawoodi Bohra Jamat Trust in Tax appeal NO. 608 of 2014 dated

14th December, 2016 held that the activity of grant of loans to businessmen and women of the Bohra community constituted 'Qardan Hasanah' is acceptable and the fact encouraged as per the tenets of Islam practiced by the community. The object of the trust was in furtherance of religious activities and are entitled to grant of registration. The Id. CIT(A) after following the decisions of Hon'ble Madras High Court and the Hon'ble Supreme Court held that the assessee utilized the amount in furtherance of its objects and deleted the disallowance. Aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before this Tribunal.

5. None appeared on behalf of assessee despite the service of notice on more than three occasions, therefore, we left no option except to decide the appeal on the basis of hearing of Id. CIT-DR and the material available on record.
6. We have heard the submissions of learned Commissioner of Income Tax/ Departmental Representative (Id. CIT-DR) and have also perused the orders of the lower authorities carefully. The Id. CIT-DR for the revenue has supported the order of the Assessing Officer. The Id. CIT-DR for the revenue submits that the assessee has distributed the corpus donation to various persons which is not in accordance with provisions of Section

11(5) of the Act. The assessee was required to deposit the surplus in the manner prescribed under Section 11(5) of the Act.

7. We have considered the submissions of Id. CIT-DR and have also perused the orders of the authorities below carefully. We have also deliberated on the various case laws relied upon by the Id. CIT(A) in his order. We find that the assessing officer disallowed exemption to the assessee by taking view that the assessee has received corpus donation of Rs. 2.20 Crore, which has not invested in the modes prescribed under Section 11(5) of the Act and that the assessee has utilized it for the purpose of giving interest free advance to various persons.
8. The Id CIT(A) allowed relief to the assessee by holding that the assessee is a trust registered under Section 12A of the Act. The assessee received Rs. 2.20 crores from another trust Daawat a Hadiyah with specific direction that it shall be used for giving interest free loan (Hardan Hasanah) to Moumeneen/Ibadulla. It was held that qardan hasana is one of the objects of the assessee trust. The amount had been spent/utilized in giving qardan hasana. The assessee is maintaining separate account of this fund, which is shown separately in its balance sheet. This amount is not claimed by assessee as application of income under Section 11(1) or 11(b) of the Act. We find that the Id. CIT(A) also recorded the various object clauses of the assessee trust in para 7.2 of his order, which

includes “ *to give qardan hasana to Dawoodi Bohra as in particular and mankind at large, directly or through Anjumans and any other organisation*”. On the basis of his observation, the Id. CIT(A) held that it is an admitted fact that qardan hasana is one of the main objects of the trust, the assessee is granted registration under section 12(a). It is not the case of Assessing Officer that objects of the trust are not charitable or in violation of its objects. The Id CIT(A) held that Hon’ble Supreme Court in Dawoodi Bohara Jamat (2014) 43 taxman.com 243 (SC) and Hon’ble Madras High Court in the case of Dawoodi Bohra Jamat Trust (supra) held that the activity of grant of loans to businessmen and women of the Bohra community constituted ‘Qardan Hasanah’ is acceptable and the fact encouraged as per the tenets of Islam practiced by the community. We find that the Id CIT(A) in his finding has clearly held that entire voluntary contribution received by the assessee have been utilised for giving qardan hasana as per the specific direction of donors as well as in furtherance of object, therefore, the reason of disallowance by assessing officer is not accordance with law. No contrary facts or law is brought to our notice to take other view, hence, we affirm the order of Id CIT(A) that the assessee utilised the donation as per the wishes of the doner and the object clause of the assessee. In the result, the grounds of appeal raised by the revenue are dismissed.

9. In the result, this appeal of revenue is dismissed.

Order pronounced in the open court on 05th September, 2022 in open court and result was also placed on notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 05/09/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat