

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 128/Kol/2021
Assessment Year : 2016-17

Society For Model Gram Vikash Kendra	Vs.	CIT (Exemptins), Kolkata
PAN: AAABS 1664 A		
Appellant		Respondent

Date of Hearing	19.06.2023
Date of Pronouncement	26.06.2023
For the Assessee	None
For the Revenue	Shri Subhrajyoti Bhattacharjee, CIT, DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2016-17 is directed against the order of CIT(Exemptions) dated 12.03.2021 framed u/s 263 of the I.T. Act. The assessee has raised following grounds of appeal:

"1. That the learned Commissioner of Income Tax (Exemptions)/Kolkata was not justified in assuming jurisdiction under section 263 of the Income Tax Act, 1961 without satisfying the basic requirement for holding the impugned assessment order passed u/s 143(3) of the Act as erroneous and prejudicial to the interest of revenue when the said order was very much in conformity with the stand taken by the previous Assessing Officers in assessing the income of the society in the past which was not subject to any such revision under the self-same set of facts.

2. That the learned Commissioner of Income Tax (Exemptions)/Kolkata was not justified in concluding that the microfinance activities undertaken by the assessee was for providing relief to the poor womenfolk of villages is actually advancement of other object of general public utility as per first proviso to section 2(15) whereas in reality such activities are covered directly under the six specified charitable purpose and such object was specified in the Memorandum of Objectives of the Society on the

basis of which registration under section 12A/12AA was granted to it.

3. That the learned Commissioner of Income Tax (Exemptions)/Kolkata has failed to appreciate the legal position that under section 11(4A) of the Act, there is no bar on the organizations registered under section 12A/12AA of the Act to engage themselves into business activities which are incidental to the attainment of the objectives of the Society when all the past assessments, right from AY 2012-13 onwards have been completed on the basis of the same principles without any objections.

4. That the learned Commissioner of Income Tax (Exemptions)/Kolkata was not justified to ignore the written objection mailed / uploaded on 17-02-2021/12-03-2021 wherein a mention was made about the CBDT Circular No. 5 (LXX-6) of 1968 dated 19-6-1968 which was mandatory and binding on all the subordinate officers of the CBDT and instead, the CIT(Exemptions) went on to pass an order under section 263 on the basis of a decision of Kolkata ITAT in Sreema Mahila Samity (ITA No. 2826/Kol/2013) which was decided against the Appellant where no discussion or reference was made by either side on section 11(4A) of the Act.

5. The action of the learned Commissioner of Income Tax (Exemptions)/Kolkata, is, otherwise, perverse and violates the principles of natural justice.

6. The Appellant craves leave to add, alter or abandon one or more grounds of appeal in the course of hearing of the appeal by the Hon'ble Bench."

2. At the time of hearing, no one appeared on behalf of the assessee. On perusal of the record, it shows that since several opportunities has been given to the assessee. However, assessee did not appear on various dates 24.11.2022, 12.01.2023, 09.03.2023 including even today. In these circumstances, we have no other option left but to proceed for adjudication of issue raised in this appeal with the assistance of ld. DR. On perusal of the above-mentioned grounds of appeal, we find that assessee has challenged

the validity of the jurisdiction invoked by the CIT(Exemptions) u/s 263 of the Act holding that the order passed by the ld. AO dated 04.12.2018 passed u/s 143(3) of the Act as erroneous and prejudicial to the interest of revenue. During the hearing before the Tribunal, the ld. DR vehemently argued and supporting the order passed by the ld. PCIT.

3. We have heard ld. departmental representative and also gone through the records placed before us. We have noticed that the ld. PCIT issued show cause notice u/s 263 of the Act by pointing out that the following issues alleging them to have been remained to be examined by the AO (which is incorporated in para no. 2 of the order) which reads as under:

“On further perusal of the records, it appears that:

(i) Assessee mainly earned revenue from Micro finance activities i.e. interest on loan, service charges/fees etc. The total receipt from micro finance activity during the year was 2,81,88,076/- which is 79.23% of gross receipt of Rs. 3,55,76,399/- where income from charitable receipts is only Rs. 73,88,323/-.

(ii) The income from Micro finance activity has been computed at Rs. 44,88,226/- after reducing the expenditure for Micro finance activity of Rs. 2,37,01,850/- and allowed exemption u/s 11(1)(a) of the I.T. Act, 1961.

The activity of the assessee society being Micro finance is held as business, which is hit by the amendments to the extended provisions to section 2(15) of the I.T. Act, 1961 which states that:

...Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use or application or retention of the income from such activity, unless:

(i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) The aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts of the trust or institution undertaking such activity or activities of that previous year.”

4. During the course of revisionary proceedings, assessee made general statement without furnishing necessary details so as to how the issue raised in the show cause notice has been examined by the AO. Therefore, the Id. PCIT after considering the submission of the assessee held that the assessment order dated 04.12.2018 erroneous and prejudicial to the interest of revenue by observing as under:

“The reply and objection of the assessee is not tenable. It is seen from the Income & Expenditure account of the assessee for the year under consideration that, Income from Microfinance activity during the year was Rs. 2,81,88,076/- and a major part of this amount of Rs. 2,37,01,850/- was claimed as expenses for Micro finance. Assessee has also earned income from some development activities amounting of Rs. 73,88,323/- which was applied to its social welfare activities amounting to Rs. 74,16,541/- during the year under consideration. From the above fact, it is clear that a very meagre amount of Rs. 28,218/- (74,16,541/- minus Rs. 73,88,323/-) was applied from the income of micro finance activity to the attainment of the objective of the society, as per memorandum of association of society dated 22.02.2005, during the year under consideration. The assessee was supposed to apply the income from Micro Finance for the other objectives of the trust declared in the deed of incorporation. In reality the assessee did not do any such things and only earned profit in crores, every year and accumulated the same. It is well settled that when a profit is used towards the achievement of the charitable objects of the trust, it would be considered to be incidental to the achievements of objects of the trust notwithstanding the profit and gain involved therein.

Other contention of the assessee in his reply dated 17.02.2021 was that, micro finance activity is aimed at relief of the poor women in the form of self-help groups mainly in the rural and sub-urban areas

by making small loan available to those people who cannot approach banks for finance for want of assets/properties / securities to be pledged as security. Such an object/activity comes within the purview of the direct charitable purpose as contained in section 2(15) of the Act.

In this regard it is to state that, Banks also provided Small loans to rural people and SHGs, which are now falls under the priority sector of the banks like SBI, Banigya Gramin Vikash Bank etc. No collateral security is required to be furnished by the borrower. The bank disburses entire amount of sanctioned loan to the borrower. There is no entrance fee, membership fee, beneficiary security or insurance premium. Such interest rate is approx 10 to 12% p.a.

On the other hand, the assessee is availing of loan facility from Banks/Financial Institution at interest rates ranging from 10 per cent to 12 per cent and such loan facility is extended to so called poor people in rural and sub-urban areas at rates ranging between 24% to 26% per annum in addition to burden of processing and service charges between 1 to 2 per cent. The assessee is not giving loans directly to the beneficiaries but lending of finances to self help group is a pre-dominant activity and taking advantage of the poor families the assessee charged interest @ 26%. This activity of the assessee must not come in the preview of the direct charitable purpose as contained in section 2(15) of the Act.

"Relief of the poor" encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that-

(i) the business should be incidental to the attainment of the objectives of the entity,

and

(ii) separate books of account should be maintained in respect of such business.

Thus to be covered under the definition of relief to poor, the micro-financing should be incidental to the attainment of the objectives of

the entity. In this case as seen from the Audited accounts, micro financing is the predominant activity and not to be considered as charitable activity.

Reliance in this regard is also placed in judgment of ITAT, Bench A", Kolkata in the case of Sreema Mahila Samity, in ITA No. 2826/Kol/2013, where it was held that, the micro financing on commercial lines in the nature of trade, commerce or business. Therefore, it is not covered under the definition of "charitable purpose".

In view of the above discussion, the objection of the assessee does not hold good and treated to be stand disposed off.

Alternatively, while going through the records it is seen that in the present case the aggregate receipt from micro finance activity is more than 79% of the total receipt. The income from Micro financial of Rs. 44,88,226/- is the income of the assessee from its services conducted in commercial line in the nature of trade, commerce or business from which the exemption by following statutory provision is not acceptable. Hence, activity of the assessee society being micro finance is held as business, which is hit in the amendment to the extended provision to section 2(15) of the I.T. Act, 1961.

In view of the above discussion, it is concluded that the assessee trust is not eligible for exemption u/s 11. This exemption has resulted in loss of revenue and therefore the action of the AO is prejudicial to the interest of revenue.

The Assessing Officer is directed to compute income without allowing exemption u/s 11 and give necessary effect as per law."

5. On perusal of the above findings of ld. PCIT and also considering the judicial precedent referred therein, we find that neither any details were filed by the assessee during the course of revisionary proceeding nor any details were filed before us and even there is no discussion on the alleged issue referred to show cause notice in the assessment order. Therefore, all these facts indicate that the issue raised by the ld. PCIT giving rise to revisionary

proceeding has not been examined properly by the ld. AO during the course of assessment proceeding and the same needs to be re-examined as per direction given by the ld. PCIT in the impugned order. We therefore find no reason to interfere in the findings given by the ld. PCIT in the impugned order passed u/s 263 of the Act. Accordingly, all the grounds raised by the assessee are dismissed and revisionary proceedings u/s 263 of the Act is held to be valid and we hold that the PCIT has rightly invoked the jurisdiction and carried out the revisionary proceedings u/s 263 of the Act.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 26.06.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 26.06.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- Society For Model Gram Vikash Kendra, 13/2, Asutosh Chatterjee Road, Dhakuria, West Bengal-700031.
2. Respondent – CIT (Exemptions), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata