

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.324/Bang/2023
Assessment year : 2016-17

The Assistant Commissioner of Income Tax (Exemptions), Circle 1, Mangaluru.	Vs.	Navodaya Grama Vikas Charitable Trust, No14-7-1005, SCDCC Bank Ltd., Head Office Building, Kodialbail, Mangaluru – 575 003. PAN: AAATN 7594E
APPELLANT		RESPONDENT

Appellant by	:	Shri Mehere Yogesh Prabhakara Rao, Jt.CIT(DR)
Respondent by	:	Ms. Sunaina Bhatia, CA

Date of hearing	:	09.08.2023
Date of Pronouncement	:	23.08.2023

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is against the DIN & Order No.ITBA/APL/M/250/2022-23/1049926639(1) dated 20.02.2023 CIT(Appeals)-2, Panaji, for the AY 2016-17 on the following grounds:-

- “1. The order of the Ld.CIT(A), is opposed to facts and circumstances of the case;

2. The Ld. CIT(A) has erred in Law in holding that the Board Circular No. 100 dated 24/1/1973 is applicable to loans advanced to SHGs(Self Help Groups) as it was issued in the context of granting of student scholarship loans for higher studies by the trust.
3. The Ld. CIT(A) has erred in not considering the fact that the money advanced to Self Help Groups out of funds received from SCDCC Bank and lent on higher rate of interest to the SHGs is in the nature of business activity and not a charitable activity.
4. The Ld. CIT(A) has erred in not considering the fact that the similar issue in the assessee's case has not reached finality, as Revenue's appeal is pending before the Hon'ble High court in the assessee's case for A.Y: 2014-15.
5. The appellant craves leave to add, alter or amend all or any of the grounds of Appeal before or at the time of the hearing of the appeal.
6. The order of the learned CIT(A) may be set-aside and the order of the A.O. may be confirmed.”

2. The brief facts of the case are that the assessee is a charitable trust registered u/s. 12AA of the Act by order dated 10.1.2005 by the CIT, Mangaluru. The assessee filed its return declaring NIL income on 13.08.2016. The case was selected for scrutiny and statutory notices were issued to the assessee. From the details submitted by the assessee, the AO observed that assessee is mainly engaged in formation of Self Help Groups [SHGs] and financing them using funds from SCDCC Bank at a rate adding 4 to 5% from the rate of receipt from Bank. Over and above, the assessee gives loans out of its own funds. This is wholly the income of the trust. The assessee has computed gross receipts as under:-

Gross income as per income & expenditure account -

11,18,42,390

Interest income received on FD	32,21,550
Recovery of SHG loan	<u>26,58,85,912</u>
	<u><u>38,09,49,860</u></u>

3. The application of income u/s. 11 as per the return is claimed as under:

Adjustments on account of section 10 & 11		
Income available for application u/s.11		38,09,49,860
11(1): applied for charitable purposes in India		
Applied in india	26,63,87,896	
Investment in Fixed Asset	4,40,000	
Add: Expenditure of earlier years considered		
In the current year	11,41,21,964	38,09,49,860
Excess Expenditure carried forward		
	21,20,11,028	
-11(1): Accumulation to the extent of 15%	0	38,09,49,860
Income after application		<u>0</u>
Taxable income		<u>0</u>
Net amount of all adjustments		<u><u>-38,09,49,860</u></u>

4. From the above, the AO observed that Rs.47,88,38,924 (inclusive of Rs.21,20,11,028) has been claimed as exemption u/s. 11 towards application of income for charitable purposes along as investment in fixed assets . The total receipts and payments have been considered as source of income and application of income respectively by the assessee. The AO did not accept the recovery of SHG Loan as application of income as well as not accepted the Loan granted to SHG

and Chaitanya insurance claims paid as application of income whereas the Chaitanya insurance collections were considered as application of income. Accordingly, the AO calculated the gross total income of Rs. 10,08,07,948 after reducing the grant receipt of Rs. 1,42,56,600/- and allowed as application of income to the extent of Rs. 7,43,94,305 and assessed income of Rs.2,64,13,642.

5. Aggrieved by the assessment order, the assessee filed appeal before the CIT(Appeals) which was allowed. Hence the revenue is in appeal before the Tribunal.

6. The Id. DR relied on the order of the AO and submitted that the AO has passed good and reasonable order after detailed analysis and the same should be upheld. He further submitted that the similar issue in the assessee's own case is pending with the Hon'ble High Court, therefore, the CIT (A) should not have decided the issue in favour of the Assessee.

7. The Id. AR reiterated submissions made before the CIT(A) and the AO and submitted that the assessee is registered u/s. 12AA of the Act and getting benefit of exemption u/s. 11. The assessee is treating the total receipts as source of income and the entire payments including disbursement of loan is treated as application of income which is clear from the statement of facts submitted before the CIT(A). The excess application of income has been carried forward. The CIT(A) has rightly considered the claim of the assessee as per CBDT Circular No.100 dated 24.01.1993 and relying on the judgments of Hon'ble

jurisdictional High Court and the ITAT decision in assessee's own case for AY 2014-15 in ITA No.553/Bang/2018 dated 16.10.2020 allowed the appeal of the assessee.

8. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, we note that the AO concluded the assessment determining total income of Rs.2,64,13,642 as against NIL income reported by the assessee. The assessee is advancing loans to SHGs and treating entire receipts as source of income and entire payments as application of income. The assessee has computed the income as under:-

Gross Receipts adopted in the computation	
[a] Recovery of SHG Loans	26,58,85.912
[b] Chaitanya insurance Collections	3,43,96,482
[c] Grants from SCDCC Bank	1,42,56,000
[d] Other receipts [incl interest]	6,64,11,466
Total Income [A]	38,09,49,860
Less: Income applied during the year	
[a] Loan granted to SHG	34,97.00542
[b] Chaitanya insurance claims paid	5,56,09,273
[c] Animator Expenses	1,76,04,447
[d] Other expenses	5,54,84,662
[e] Capital Expenditure	4,40,000
[f] Excess expenditure of earlier years	11,41,21,964
TOTAL APPLICATION [B]	59,29,60,888
Excess Expenditure to be carried forward [A] – [B]	21,20,11,028

9. On going through the assessment order, it is noted that the AO has considered certain receipts as income based on Income & Expenditure account ignoring the entire receipts. The assessee has claimed application for the year under consideration including the capital expenditure of Rs.4,40,000 based on Receipts & Payments

account to the extent of Rs.47,88,38,924. The AO has ignored the following items of application:-

Sl. No.	Nature of receipt	Amount	Remarks
1	Grants and Subsidies	1,42,56,000	Discussed in para 5 of the assessment order. Net of expenses adopted by AO and it does not affect the overall computation.
2	Recovery of SHG loans	26,58,85,912	Discussed in Para 4 of the assessment order. Regarded the Loan and recovery as not affecting the income and expenditure
	TOTAL	28,01,41,912	

10. We have also gone through the order of the coordinate Bench in the assessee's own case for AY 2014-15 in ITA No.553/Bang/2018 where similar issue has been decided as under:-

“12. We have heard both the parties and perused the material on record. The learned Authorised Representative relied on the CBDT Circular No.100 Dt.24.01.1973 which read as follows :

“162. Repayment of debt incurred for purposes of trust/loans advanced by educational trusts to students for higher studies - Whether amounts to application of income

1. Section 11 requires 100 per cent of the income of a charitable and religious trust to be applied for religious and charitable purposes to be entitled to the exemption under the said section. Two questions have been considered regarding the application of income : 1. Where a trust incurs a debt for the purposes of the trust, whether the repayment of the debt would amount to an application of the income for the purposes of the trust ; and 2. Whether loans advanced by an educational trust to students for higher studies would be treated as application of income for charitable purposes.

2. Whether loans advanced by an educational trust to students for higher studies would be treated as application of income for charitable purposes.

2. The Board has decided that repayment of the loan originally taken to fulfil one of the objects of the trust will amount to an application of the income for charitable and religious purposes. As regards the loans advanced for higher studies, if the only object of the trust is to give interest bearing loans for higher studies, it will amount to carrying on of money-lending business. If, however, the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfilment of the objectives of the trust, granting of loans, even if interest-bearing, will amount to the application of income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of that year.”

Further as seen from the objects of the assessee trust deed, the assessee is engaged in fulfilling the objects of the Trust Deed read as under :

4. Main objects of the Trust:

1. To bring out people's awareness regarding financial, Social and Cultural Developments in rural areas and assist them to become good citizens.
2. To foster among rural women an awareness of their situation and promote their organization for their own betterment to promote self employment activities through trained people, to educate them in children care responsible parenthood, home science and happy family life.
3. To conduct and run nursery and kindergarten or Primary, Higher Primary, Secondary Schools and Colleges for facilitate children's full growth and to work for their healthy care and to assist poor school going children to have better education and health.
4. To provide guidance regarding wild life, perform inter nation wild life programme with principal ideas and make awareness of the same with the people of rural areas and also to conduct run and assist veterinary hospitals etc.
5. To provide proper knowledge about agriculture, run farm, animal centers etc. and provide profitable employment to the people of rural areas.
6. To make awareness of human rights and other new things in rural areas by providing good leadership, make arrangements for implementation of good ideas for them and to make awareness of strong will power, love, service and patriotism etc.

7. Offering the opportunity to develop personality and avenues for their intelligent participation in Nation building.
8. To guide them to equip themselves for the struggle for life in changing Society.
9. To open Schools, College and Technical Institutions in District, State and inter State level for providing proper training for rural people regarding cooperative Associates, Co-operative Bank etc. and regarding self employment, self unity and help etc.
10. To provide library, T.V., Data etc. to unemployed educated people in rural areas with a view to assist them to take self employment.
11. To strengthen rural youth clubs by giving proper guidance. In this connection, to work hand in hand with State and Central Government Departments.
12. To provide information about the plans of State and Central Government to the concerned persons of the Public.
13. To create training facilities in rural areas for development of Industry and self employment.
14. To enable the awakened and affected youth to come together to bring about development and new environments.
15. To provide security to the assets of Association, Co-operative concerns of rural and urban areas and to open training centers to such security. This facility will be provided to urban and rural areas if necessary.
16. To guide self helping clubs in developing financial, social and cultural activities in rural areas. To provide trained persons in that regard.
17. To assist for development and research of forest protection and herbal cultivation.
18. To gather information regarding public health and to assist in providing herbal and Ayurvedic treatments.
19. To assist for providing sports, games, yoga etc. and to arrange all round development.

20. To provide help to self helping institution by providing insurance or otherwise.

13. Being so, the assessee's case on hand is squarely covered by the above Circular of CBDT (supra). Accordingly, the assessee's claim that extending loan to Self Help Groups (SHGs) is in application of income and direct the Assessing Officer to grant the benefit as claimed by the assessee in this ground. The assessee's appeal in ITA No.553/Bang/2018 is allowed."

11. Respectfully following the above judgment, on going through the order of the CIT(Appeals), we do not find any infirming in the order of CIT(Appeals). The appeal of the revenue is rejected.

12. In the result, the appeal of the revenue is dismissed.

Pronounced in the open court on this 23rd day of August, 2023.

Sd/-
(GEORGE GEORGE K.)
VICE PRESIDENT

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 23rd August, 2023.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.