

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “C”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2684/M/2022
Assessment Year: 2018-19**

M/s. Credit Guarantee Fund Trust For Micro And Small Enterprises, SIDBI, Swavalamban Bhavan, C-11, G-Block , Bandra Kurla Complex, Bandra West, Mumbai – 400 051 PAN: AAATC2613D	Vs.	Income Tax Officer, DCIT (E)-1, 6 th Floor, MTNL Tel. Ex. Building, Cumballa Hills, Pedder Road, Mumbai – 400 026
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Karkhanis, A.R. &
Shri Jay Bharod, A.R.

Revenue by : Shri Manoj Kumar Sinha, D.R.

Date of Hearing : 10 . 11 . 2023

Date of Pronouncement : 24 . 11 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Credit Guarantee Fund Trust For Micro And Small Enterprises (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 22.08.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi]

(hereinafter referred to as CIT(A)] qua the assessment year 2018-19 on the grounds inter-alia that :-

“1. On the facts and in the circumstances of the case and in law, CIT(A) erred in passing the said order without giving opportunity of being heard through video conferencing in spite of specific request made by the appellant in written submission, thereby not followed the principle of natural justice and therefore the said order needs to be quashed.

2. On the facts and in the circumstances of the case and in law, CIT(A) erred in invoking the proviso to section 2(15) of the Income Tax Act and thereby rejecting the claim of exemption u/s 11 of the Act by relying on the findings given in assessment orders for AYS 2016-17 and 2017-18 without appreciating the facts that:

(i) the objects of the Trust are covered within the meaning of charitable purpose and the Trust was granted registration u/s. 12A of the Act. The Hon'ble ITAT has held in the appellant's own case for AY 2010-11, AY 2011-12 and AY 2014-15 that the proviso to section 2(15) of the Act cannot be invoked in appellant's case and that it is eligible for the benefits of sections 11 and 12 of the Act.

(ii) There is no change in the activity undertaken by the appellant trust during FY 2017-18 as compared to the previous years in respect of which cancelation of registration was restored. Thus, there is no reason for invoking the provisions of section 2(15) of the Act as said facts are already decided by the appellate authorities and accepted by the Income Tax Department in preceding year.

(iii) the appellant Trust has no profit motive and to fall within the proviso to section 2(15) of the Act, rendering of service to trade, commerce or business must be such that it is in the course of carrying on business and has a profit motive and considering the focussed area/ objects of the appellant trust, it cannot be said that there is any profit motive so as to view the activities to be trade, commerce or business within the meaning of the proviso to Section 2(15) of the Act.

(iv) the services rendered by the appellant Trust are purely incidental or subservient to the main objects of the Trust which is a "charitable purpose" and that the fees received by the trust is only to recover the administrative operational cost and not to earn any profit or as a business activity.

(v) that the amended proviso to section 2(15) w.e.f. 01.04.2016 does not affect the position of the appellant trust as it does not carry on any trade, commerce or business as held by the Hon'ble ITAT vide order dated 20.01.2017 in appellant trust's own case in ITA No. 6282/Mum/2014 for AY 2010-11.

(vi) that the object of the Trust can also be considered as for the benefit of underprivileged class of people and also falls within the meaning of 'relief to the poor' referred to in section 2(15) of the Act and that CBDT has vide circular No. 11/2008 dated 19.12.2008 clarified that newly inserted proviso to section 2(15) of the Act will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief.

3. (i) On the facts and in the circumstances of the case and in law, CIT(A) erred in disallowing the deduction of provision for guarantee claims of Rs. 3,47,04,32,777/- made on the basis of actuarial valuation and restricting the same to the actual payments during the year and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made thereunder.

(ii) On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in disallowing provision for guarantee claims to the extent of Rs. 3,47,04,32,777/- without appreciating the facts that:

a. The appellant trust follows mercantile system of accounting and has made the provision for guarantee claims in the books of accounts on the basis of the actuarial valuation;

b. Provision for guarantee claims is made as per the recognised and accepted accounting principles/ standards under mercantile system;

c. As regards to recognition of revenue from guarantee fees, the same is in accordance with the Accounting Standard 9-Revenue Recognition, as per which the revenue is recognised only when it is reasonably certain that the ultimate collection will be made;

d. The appellant has ensured that appropriate recognition criteria and measurement bases are applied to provisions and contingent liabilities in accordance with AS 29 Provisions, Contingent Liabilities and Contingent Assets.

e. The present value of a future liability, properly ascertained and discounted i.e. accounted for on actuarial basis, is allowable u/s 37(1) of the Act;

f. The provisions made in the books of accounts amounts to application of income u/s 11 of the Act

g. Provision is only 4.24% of the Guarantees issued and outstanding, which is fair and reasonable.

which is wrong and contrary to the facts of the case, the provisions of the Income Tax Act, 1961, and Rules made thereunder.

(iii) Without prejudice to the above, on the facts and in the circumstances of the case and in law, the ld. AO failed to appreciate that the provisions of section 14 are not applicable to the charitable organization and accordingly. provisions of section 145 of the Act mandating following of cash or mercantile system of accounting is not applicable in the appellant's case, which is wrong and contrary to the facts of the case, the provisions of the Income Tax Act, 1961, and Rules made thereunder.

(iv) CIT(A) erred in observing that:

a) there is no provision in the Income Tax Act, which allows deduction for provision for Guarantee claims without appreciating the method of accounting followed by the Trust.

b) the appellant does not have a mandate to keep the funds in Provisions and claim for such provisions exemption/deduction from Income Tax' and that there is no merit in the appeal of appellant, from the point of view of the mandate given to it by the Creator of M/S. CREDIT GUARANTEE FUND TRUST FOR MICRO AND SMALL ENTERPRISES which is wrong and contrary to the facts of the case.

4(i) On the facts and in the circumstances of the case and in law, the lower authorities erred in disallowing the sum of Rs. 56,25,61,823/- accumulated u/s. 11(2) of the Act and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made thereunder.

(ii) CIT(A) also erred in disallowing amount accumulated u/s 11(2) of the Act, without appreciating the fact that:

a) the Hon'ble ITAT has already held in the appellant's own case for AY 2010-11, AY 2011-12 and AY 2014-15 that the proviso to section 2(15) of the Act cannot be invoked in appellant's case and that it is eligible for the benefits of sections 11 and 12 of the Act.

b) as per CBDT - Circular No. 11/2008, dated 19-12-2008, the newly inserted proviso to section 2(15) of the Act will not apply in respect of the first three limbs of section 2(15) of the Act i.e. relief of the poor, education or medical relief and as the purpose of the appellant trust is relief of the poor, proviso to Section 2(15) will not apply in appellant's case.

5 (i) On the facts and in the circumstances of the case and in law, the lower authorities erred in disallowing deduction of Rs. 9,92,75,616/- being 15% of the income derived by the trust under section 11(1)(a) of the Act and not doing so is wrong and contrary to the facts of the case, the provisions of the Income Tax Act, 1961 and Rules made thereunder.

(ii) CIT(A) also erred in disallowing the sum of Rs. 9,92,75,616/- being 15% of the income derived by the trust under section 11(1)(a) without appreciating the facts that:

a) the Hon'ble ITAT has already held in the appellant's own case for AY 2010-11, AY 2011-12 and AY 2014-15 that the proviso to section 2(15) of the Act cannot be invoked in appellant's case and that it is eligible for the benefits of sections 11 and 12 of the Act.

b) as per CBDT - Circular No. 11/2008, dated 19-12-2008, the newly inserted proviso to section 2(15) of the Act will not apply in respect of the first three limbs of section 2(15) of the Act i.e. relief of the poor, education or medical relief and as the purpose of the appellant trust is relief of the poor, proviso to Section 2(15) will not apply in appellant's case.

(iii) Without prejudice to the above grounds of appeal, on the facts and in the circumstances of the case and in law, the ld. Assessing Officer ought to have given a deduction of 15% on assessed total income of Rs.4,13,22,70,216/- as determined by the ld. AO in the assessment order and not doing so is wrong and contrary to the facts of the case, the provisions of the Income Tax Act, 1961, and Rules made thereunder.

6. On the facts and in the circumstances of the case and in law, the Id. Assessing officer ought to have set off the brought forward deficit of the previous years against the income determined by him in the order and not doing so is wrong and contrary to the facts of the case, the provisions of the Income Tax Act, 1961, and Rules made thereunder.

7. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in initiating penalty proceedings under section 270A r.w.s. 274 of the Income Tax Act, 1961 in respect of addition made by him and the reasons assigned for doing so are wrong and contrary to the facts and the circumstances of the case, the provisions of the Income Tax Act, 1961 and Rules made thereunder.

The appellant craves leave to add, alter, amend and/or modify any or all of the grounds of appeal on or before the date of hearing."

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: the assessee trust is a irrevokable trust settled on 27.07.2000 by the Hon'ble President of India acting through the Ministry of Small Scale Industry (SSI) & Average Rate Index (ARI), Government of India and Small Industries Development Bank of India (SIDBI) for the purpose of

providing effective credit guarantee and/or counter guarantee for Micro, Small & Medium Enterprises (MSME) and advances extended by eligible scheduled commercial banks and rural banks [Member Lending Institutions (MLIs)] without collateral security and/or third party guarantee. Return of income filed by the assessee trust registered under section 12A of the Income Tax Act, 1961 (for short 'the Act') for the year under consideration claiming exemption under section 11 of the Act was subjected to scrutiny. The Assessing Officer (AO) by following the earlier year invoked proviso to section 2(15) of the Act and issued the notice under section 142(1) of the Act. Declining the submissions raised by the assessee trust and by following the earlier assessment order for A.Y. 2016-17 & 2017-18, the AO proceeded to hold that the assessee's case is hit by proviso to section 2(15) of the Act and thereby rejected the claim of exemption under section 11 of the Act. The AO also made a disallowance of the deduction of provision for guarantee claims of Rs.3,47,04,32,777/- made on the basis of collateral valuation and restricting the same to the actual payment on the ground that the provision of expenses are not allowable under the Act assessee's claim for deduction of provisions of guarantee to the tune of Rs.9,67,79,67,223/- [Rs.3,47,04,32,777/- (-)(minus) Rs.13,14,84,00,000/-] out of the aggregation of funds claimed during the year under consideration. The AO also disallowed deduction of Rs.9,92,75,616/- being 15% of the income derived by the assessee trust under section 11(1)(a) of the Act. The AO accordingly framed the assessment under section 143(3) read with section 144B of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. The assessee trust was settled by the Hon'ble President of India through the Ministry of Small Scale Industry, ARI, Government of India and SIDBI (jointly the settler) for the purpose of providing effective credit guarantee and/or counter guarantee for MSME loans and advances extended by eligible scheduled commercial banks and rural banks, qua member lending institutions (MLIs) without collateral security and/or third party guarantee being managed and administered by Board of Trustee consisting of four members as under:

- “(i) Chairman and Managing Director of SIDBI shall be the ex-officio Chairman;*
- (ii) Additional Secretary & Development Commissioner (SSI) of GOI shall be the ex-officio Vice-Chairman;*
- (iii) Executive Director (holding charge of priority sector) of Reserve Bank of India shall be the ex-officio Member;*
- (iv) SIDBI shall appoint one of its officials as the Chief Executive Officer, who shall be the Member Secretary.”*

6. As per declaration of trust dated 27.07.2000 available at page 11 to 28 the objectives of the assessee trust are as under:

“OBJECTIVES

7.1 The objects and purposes of the Trust are:

(a) To guarantee the loans and advances upto Rs. 10 lakh (term loan and/or working capital assistance), sanctioned and disbursed by the lending institutions without any collateral security and/or third party guarantees to the new or existing SSI manufacturing units including information technology (IT) and software industries or such other industry(ies) as may be decided by the settlors from time to time; and to levy guarantee fee / annual service fee / other charges on the lending institutions as may be decided by the Trust from time to time.

(b) To undertake securitisation of the guaranteed loans and to do all other acts or things as may be necessary therefor, either directly or otherwise, in such manner as may be decided by the Board of Trustees;

(c) To appoint staff, to acquire, hold and dispose of property, to meet all expenses necessary for the proper and efficient management of the Trust, and to do all other acts or things as may be necessary or conducive to the attainment of the objectives;

(d) To receive grants, donations, contributions from national and international donors / agencies.

(e) To do such other acts and things as may be incidental to, or consequential to the objectives hereinabove provided.”

7. Pursuant to the enactment of the Micro, Small & Medium Enterprises Development Act, 2006, the Ministry of SSI & ARI has been named as Ministry of Micro, Small & Medium Enterprises vide notification dated May 09, 2007 and as such the activities are also changed in the concept of Micro, Small & Medium Enterprises. Therefore, in order to carry out the activities of the trust SSI are substituted by the words “Micro & Small Enterprises (MSE)” and the “SSI loans” are substituted by the word “MSE Loans”.

Ground No.1

8. During the course of argument ground No.1 was not pressed hence, the same is dismissed as not pressed.

Ground No.2

9. In the backdrop of the aforesaid facts the assessee trust has claimed benefits available under section 11 & 12 of the Act. However, the AO by invoking the proviso to section 2(15) of the Act and by relying upon the assessment order for A.Y. 2016-17 & 2017-18 denied the claim of exemption under section 11 on the ground that levying/collecting fees for guarantee from MLIs shows profit motive. Assessment order has been upheld by the Commissioner of Appeals vide impugned order which is under challenge before the Tribunal.

10. Before proceeding further, we would like to extract the bare provisions of proviso to section 2(15) of the Act for ready perusal.

“proviso to section 2(15) of the Act amended w.e.f. 01.04.2016

“Charitable purpose” includes relief of the poor education, yoga, medical relief, preservation of environment (including watersheds forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

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 bieltaken 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;”

11. Undisputedly to ameliorate the difficulties being faced by the small scale industries in getting credit from primary lending institutions, namely banks, state finance corporation, state industrial development corporation and regional rural banks for want of collateral security and/or third party guarantee, the Government of India has introduced a credit guarantee fund for small industry. It is also not in dispute that the initial fund as well as further contribution to the trust are made by the Government of India and SIDBI. It is also not in dispute that the assessee trust was granted registration under section 12A of the Act on 18.10.2001, which was withdrawn vide order dated 07.12.2011 by the Director of Income Tax (Exemption) [DIT(E)], Mumbai. It is also not in dispute that order of withdrawal of registration under section 12A of the Act passed by DIT(E), Mumbai has been set aside by the Tribunal and Tribunal's order has been upheld by the Hon'ble Bombay High Court vide order dated 02.08.2017. It is also not in dispute that the assessee trust provides guarantee to the lending institutions who give loan to the MSME without collateral security and/or third party guarantee, for which it (assessee trust) charges guarantee fee and service charges to the lending institutions. It is also not in dispute that the issue as to the applicability of proviso to section 2(15) of the Act has already been decided by the Tribunal in favour of the assessee in A.Y. 2010-11, 2011-12 & 2014-15. It is also not in dispute that there is no change of activities being undertaken by the assessee trust during the year under consideration vis-à-vis earlier years. It is also not in dispute that in A.Y. 2016-17 & 2017-18 the AO has invoked the proviso to section 2(15) of the Act

by denying the benefit of section 11 of the Act, which orders are pending before the Ld. CIT(A) for adjudication.

12. In the backdrop of the aforesaid undisputed facts the sole question arises for determination by the Tribunal qua ground No.2 is as to whether:

“The AO and the Ld. CIT(A) have erred in denying the claim of exemption of the assessee trust under section 11 of the Act by invoking the proviso to section 2(15) of the Act?”

13. The AO as well as the Ld. CIT(A) have proceeded to deny the benefit of section 11 to the assessee trust on the premise that since the assessee trust is engaged in the advancement of general public utility and is charging fee in relation to the services rendered to trade, commercial etc. it is not entitled to the benefit under section 11 of the Act. The AO also relied upon the order passed by the Tribunal in case of Chandigarh Lawn Tennis Association vs. ITO (95 txaman.com 308). At the same time the Ld. CIT(A) has also denied the claim of the assessee trust seeking benefit under section 11 of the Act on the ground that “since the assessee trust is charging guarantee fee, which amount is substantial, the assessee trust is not carrying out any charitable activity. The Ld. CIT(A) denied the relief claimed by the assessee trust under section 11 on two fold basis;

(1) that the assessee trust having charged substantial guarantee fee is not into any charitable activities and

(2) that he has invoked proviso to section 2(15) of the Act also.

14. The Ld. A.R. for the assessee challenging the denial of benefit of section 11 & 12 of the Act by invoking the proviso to section 2(15) of the Act contended inter-alia that proviso to section

2(15) of the Act cannot be invoked in case of the assessee it being a charitable trust granted registration under section 12A of the Act and identical issue has already been decided in favour of the assessee in assessee's own case for A.Y. 2010-11, 2011-12 & 2014-15; that there is no change of activities undertaken by the assessee during the year under consideration vis-a-vis earlier years; that assessee's trust has no profit motive whatsoever so as to hit by proviso to section 2(15) of the Act, rendering of services to trade, commerce or business; that services rendered by the assessee trust are purely institutional or subservient to the main objects of the trust which are "charitable purposes"; that objects of the trust are to be considered for the benefit of underprivileged class of people and also falls within the meaning of relief to poor referred to in section 2(15) of the Act and the Central Board of Direct Taxation (CBDT) has issued circular vide circular No.11/2008 dated 19.12.2008 clarified that newly inserted proviso to section 2(15) of the Act will not apply in respect of 1st three limbs of section 2(25) of the Act i.e. relief of the poor, education or medical relief; that the Ld. CIT(A) has erred in not following the order passed by the Tribunal in assessee's own case for A.Y. 2010-11, 2011-12 & 2014-15 wherein it is held that proviso to section 2(15) of the Act cannot be invoked in case of the assessee.

15. The Ld. A.R. for the assessee challenging the impugned order contended that the assessee is into the charitable activities in as much as it is engaged in advancement of objects of general public utility and it is not hit by proviso to section 2(15) of the Act.

16. However, on the other hand, the Ld. D.R. for the Revenue in order to repel the arguments addressed by the Ld. A.R. for the

assessee relied upon the order passed by the Ld. CIT(A) by contending that since the assessee trust is promoting the activities of the banking institution by supporting their commercial activities who are lending loans to the MSME and drew our attention towards page 13 of the paper book which shows that the business of the assessee trust is thriving day by day and as such it is hit by proviso to section 2(15) of the Act. It is further contended by the Ld. D.R. for the Revenue that the assessee trust is silent that “whether there is any mark up to the cost being charged as guarantee fee by the assessee trust or they are charging on cost to cost basis”.

17. When we examine the contentions raised by the Ld. A.Rs for the parties to the appeal it has become clear on record that on the basis of objects of the activities of the assessee trust is a charitable trust as this issue has been decided by the Tribunal vide order dated 28.05.2014, which has been confirmed by the Hon’ble Bombay High Court vide order dated 02.08.2017 available on record at page 77 of the paper book. So the findings returned by the Ld. CIT(A) in the impugned order that “the assessee trust is not carrying out any charitable activity” are not sustainable. Moreover, the Ld. CIT(A) has not given any reason for this finding rather intermingled this finding with the issue if the claim of the assessee for exemption under section 11 is hit by proviso to section 2(15) of the Act. Now the sole question arises for determination in this case is as to whether:

“The claim of the assessee under section 11 & 12 of the Act is hit by proviso to section 2(15) of the Act?”

18. We are of the considered view that the answer to this question is in negative for the reasons given here under:

(i) that in A.Y. 2010-11, 2011-12 & 2014-15 the AO did invoke the proviso to section 2(15) of the Act, which order was upheld by the Ld. CIT(A). However, the Tribunal vide its orders overturned the findings returned by the AO/Ld. CIT(A) by holding that the assessee is a charitable trust and since it does not have any profit motive, the proviso to section 2(15) of the Act cannot be invoked.

(ii) that it is undisputed fact that there is no change in the facts of the year under consideration vis-à-vis A.Y. 2010-11, 2011-12 & 2014-15, order of which has already been attained finality. The AO in A.Y. 2016-17 & 2017-18 has taken a diverse view that the assessee is pursuing the activity of advancement of general public utility and is in activity of trade, commerce or business of charging fee for services, the assessment order passed by the AO for A.Y. 2016-17 & 2017-18 is pending adjudication before the Ld. CIT(A).

(iii) that in order to determine the issue raised in this case as to whether the assessee trust having pursued the activity of advancement of general public utility is into activity of trade, commerce or business of charging fee for services, we are to examine profile and activities carried out by the assessee trust.

(iv) that so far as profile of the assessee trust is concerned, the same has been constituted by the Hon'ble President of India and as per trust deed its settler viz. Government of India and SIDBI noticed that the small scale industries in India are facing difficulties in getting credit facilities from

primary lending institutions, banks, state finance corporation, state industrial development corporation, regional rural development banks etc. for want of collateral security and/or third party guarantee. It is a matter of common knowledge that small scale industries are facing real time difficulties in getting loan without arranging collateral security and/or third party guarantee. For inclusive growth of India unless small scale industry is not promoted overall growth of the country cannot be expected. So in order to provide easy credit facilities to the small scale industries who are unable to arrange collateral securities and 3rd party guarantee, the assessee trust has come to their rescue by providing third party guarantee by charging guarantee fees. With this profile we do not find any element of profit motive because the entire grant for providing third party guarantee to the small scale industries is being borne by the Government of India.

(v) that when we examine the receipt and expenditure of assessee trust for the preceding as well as succeeding years, which has been brought on record by the assessee trust in tabulated form, it is proved that the assessee trust is running into losses for carrying out the activities of providing guarantee to the small scale industries, which is tabulated for ready perusal as under:

<i>Sr. no.</i>	<i>A.Y.</i>	<i>Gross receipt from the activity of giving guarantee</i>	<i>Total expenses in respect of the activity of giving guarantee</i>	<i>Deficit from the activity of giving guarantee</i>

1.	2014-15	375.09	843.81	(468.72)
2.	2015-16	496.43	1115.04	(618.60)
3.	2016-17	597.44	1,027.86	(430.42)
4.	2017-18	728.04	1132.76	(404.72)
5.	2018-19	830.79	1322.76	(491.98)
6.	2019-20	936.16	1617.60	(681.44)
7.	2020-21	1,161.11	1,920.86	(759.76)
8.	2021-22	1,442.79	2,082.88	(640.08)
9.	2022-23	1,728.92	2,333.08	(604.16)

(vi) that when we take the figure of receipt by the assessee trust from collecting the guarantee fee and its expenditure for the year under consideration i.e. 2018-19, it is apparently clear that the assessee trust has received amount of Rs.830.79 crores whereas incurred the expenses in providing guarantees to the recipient of loan for setting up small scale industry is Rs.1322.76 crores and faced with the deficit of Rs.491.98 crores.

(vii) that right from A.Y. 2014-15 till 2022-23 the assessee trust is constantly running deficit from the activities of providing guarantee. These facts go to prove that there is no

profit motive or trading activity in running this trust. Had there been any such profit motive the activities would have been discontinued long back because of consistent loss.

(viii) that when we further examine the contribution made by the Government of India and SIDBI towards corpus of the assessee trust, available at page 13 of the paper book, annual report of the assessee it is proved that the assessee trust received Rs.3699.90 crores towards corpus contributed by the Government of India and Rs.500 crores contributed by SIDBI, which shows that the Government of India and SIDBI have contributed crores of Rupees to run the charitable activities of the assessee trust. Othwise had there been any motive of the assessee trust to earn profit or to be into trading activities crores of Rupees would not have been pumped into the corpus of the assessee trust. This fact shows that the assessee trust is being run purely for the purpose of general public utility without having any element of activity of trading, commerce or business by charging fee for services.

(ix) that Hon'ble Gujarat High Court in case of CIT (Exemptions) vs. Gujarat Industrial Development Corporation (2023) 452 ITR 27 (Guj.) wherein the assessee being a state industrial development corporation constituted for the purpose of securing and assisting rapid and orderly establishment and organization of industrial areas and industrial estates in the state and for the purpose of establishing the commercial centers in connection with

establishment and organization of such industries, was denied the benefit of section 11 by the AO by invoking the provisions contained under section 2(15) of the Act. However, the Tribunal had allowed the benefit of section 11 & 12 of the Act to the assessee corporation which was upheld by the Hon'ble High Court by relying upon the decision rendered by Hon'ble Supreme Court of India in case of CIT (Assst.) (Exemptions) vs. Ahmedabad Urban Development Authority (2022) 449 ITR 1 (SC) by holding as under:

“EXEMPTION - CHARITABLE PURPOSE-STATE INDUSTRIAL DEVELOPMENT CORPORATION-ACTIVITIES CARRIED OUT BY ASSESSEE NOT IN NATURE OF TRADE, COMMERCE OR BUSINESS, FOR CESS OR FEE OR ANY OTHER CONSIDERATION-PROVISO TO SECTION 2(15) NOT ATTRACTED- TRIBUNAL JUSTIFIED IN GRANTING BENEFITS UNDER SECTIONS 11 AND 12-INCOME-TAX ACT, 1961, ss. 2(15), prov., 11, 12.”

(x) that the answer to the reasoning given by the AO as well as the Ld. CIT(A) while denying the benefit of section 11 & 12 to the assessee trust is given by the Hon'ble Apex Court in the case of Ahmedabad Urban Development Authority (Supra) while replying the question of law framed therein, which are extracted as under for ready perusal:

“A. General test under Section 2(15)

A.1. It is clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration ("cess, or fee, or any other consideration");

A.2. However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that (i) the activities of trade, commerce or business are connected ("actual carrying out..." inserted w.e.f. 01.04.2016) to the achievement of its objects of GPU; and (ii) the receipt

from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (Rs. 10 lakhs w.e.f. 01.04.2009; then Rs. 25 lakhs w.e.f. 01.04.2012; and now 20% of total receipts of the previous year, w.e.f. 01.04.2016);

A.3. Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be "trade, commerce, or business" or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business". In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.

A.4. [Section 11\(4A\)](#) must be interpreted harmoniously with [Section 2\(15\)](#), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in [Section 11\(4A\)](#) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to [Section 2\(15\)](#), has not been breached. Similarly, the insertion of [Section 13\(8\)](#), seventeenth proviso to [Section 10\(23C\)](#) and third proviso to [Section 143\(3\)](#) (all w.r.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions."

(xi) that when we apply the aforesaid test laid down by the Hon'ble Apex Court in case of Ahmedabad Urban Development Authority (supra) for invoking the proviso to section 2(15) of the Act, we are of the considered view that the guarantee fee being charged by the assessee trust is not enough to run the activities of the assessee trust, rather the assessee trust is running into losses and government in order

to run the charitable activities pumped crores of Rupees in the same.

(xii) that the assessee trust is not even meeting with the cost from the guarantee fees being charged from the stake holders and as such it does not fall within the mischief of proviso to section 2(15) of the Act.

(xiii) that there is not an iota of element of trade, commerce and business or service in the activities being carried out by the assessee company in providing guarantee fees for the small scale industries who are unable to arrange for collateral security and/or third party guarantee and as such not hit by section 2(15) of the Act.

(xiv) that the assessee trust being a statutory body being run by Government of India has the only object of general public utility without having any element of trade, commerce or business in providing services to the small scale industries.

(xv) that the contention raised by the Ld. D.R. for the revenue trust that assessee is catering to commercial activities of the banks is not sustainable because banking institutions are running their business as per the rules and regulations formulated by the Reserve Bank of India and they are not giving any preferential treatment to the small scale industries rather insisting upon providing credit guarantee by the assessee trust in case of providing credit to the small scale industries, so element of commercial activities is not there

(xvii) that the nature of the activities being carried out by the assessee trust being charitable and for advancement of general public utility are further proved from the legislative changes carried out by the Parliament by inserting section 10(46B) by the Finance Act, 2023 w.e.f. 01.04.2024, which are though not applicable for the year under consideration but it certainly makes the intention of the legislature clear that the credit guarantee fund trust for micro and small scale enterprises, the assessee in this case has been exempted from any income tax. The relevant provisions contained under section 10(46B) are extracted for ready perusal as under:

"S. 10(46B) any income accruing or arising to-

- (i)
- (ii)
- (iii) *Credit Guarantee Fund Trust for Micro and Small Enterprises, being a trust created by the Government of India and the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989)."*

(xvi) that the assessee trust being a statutory authority constituted by the President of India with the funds being provided by the Government of India and SIDBI is purely involved in the advancement of the object of general public utility and as such to be considered as charity in the general public utility category.

(xviii) that the order relied upon by the AO rendered by the Tribunal in case of Chandigarh Lawn Tennis Association

(supra) is not applicable to the facts and circumstances of the case because in that case the assessee was not an organization of the state or any statutory or regulatory authority. Tribunal has categorically held that in that case the assessee had a profit motive, which is entirely missing in this case

(xix) that going by the objects and purposes for which the assessee trust was established, it is proved on record that its sole purpose was to ameliorate the difficulties being faced by the small scale industries who are unable to arrange for collateral security and/or third party guarantee to take the credit facilities from the banking and financial institutions to run their business. Apart from the activities being carried out by the assessee trust of general public utility, these are necessary for the economic growth of the country as well as for inclusive growth of India at large.

19. In other words the assessee trust is proved to be an enabler in the financial eco system to accelerate the inclusive growth by providing guarantee to the small and micro entrepreneurs who are otherwise unable to arrange for collateral security and/or third party guarantee.

20. In view of what has been discussed above and as a sequel to the findings returned in the preceding paras, we are of the considered view that assessee trust having been established by the Government of India with the object and purpose of ameliorating the difficulties of the small scale industries and micro enterprises in availing credit facilities from financial as well as banking

institutions without having collateral security and/or third party guarantee which is being provided by the assessee trust with cost to cost or with a small mark up is pursuing the activity of advancement of general public utility without having an iota of activity of trade, commerce or business. So in other words mere charging of guarantee fees for services by the assessee trust ipso facto is not sufficient to invoke the proviso to section 2(15) of the Act, that too without establishing that the object and purpose of the assessee is profit motive. Had it been so the assessee trust would not have been running into deficit of about Rs.400 crores every year. So in these circumstances the impugned findings returned by the Ld. CIT(A) that “since the assessee is charging guarantee fee on substantial scale, it is not carrying out any charitable activities, hence not entitled for benefit of section 11 & 12 of the Act”, are not sustainable, hence set aside. Ground No. 2 is determined in favour of the assessee.

Ground No.3

21. During the year under consideration the assessee trust has claimed provision for guarantee claims to the tune of Rs.13,14,84,00,000/-. During the year under consideration the payment of Rs.9,67,29,67,223/- were made towards guarantee claim. Declining the contentions raised by the assessee trust that the liability has accrued during this year and is ascertained through actuarial valuation and accordingly provision is made, the AO proceeded to disallow the same on the ground that since the assessee is a registered trust under section 12A of the Act the application is to be allowed on actuarial basis and no provision is allowable and that the assessee has itself recognized guarantee fee

income on payment basis as such provision for guarantee claim cannot be allowed. The Ld. CIT(A) has confirmed the disallowance on the disallowance of deduction claimed by the assessee trust.

22. It is a fact on record that the assessee trust is into providing guarantee to the financial and banking institution on behalf of the small entrepreneurs who are taking loans, for which the assessee trust receives guarantee commission from the lending institution and thereby undertakes the responsibility of making good any loss to them in case of the default of the borrower.

23. The Ld. A.R. for the assessee challenging the impugned provision for guarantee claims of Rs.3,47,04,32,777/- contended that the AO has proceeded on the wrong premise that the assessee is following “cash system of accounting” whereas the assessee is following “mercantile system of accounting” having been intimated to the AO vide letter dated 31.03.2021 which has been accepted by the Income Tax Department year after year and drew our attention towards schedule 9, i.e. note to account available at page 31 of the annual report.

24. We have perused the schedule 9, particular note 1(b) which says that the assessee trust is following “mercantile system of accounting”. We have also perused the assessment order passed by the AO for A.Y. 2013-14 wherein in the head note of the assessment order under the head method of accounting (mercantile is recorded) so it is proved that the assessee is following mercantile system of accounting qua its receipts as well as payments.

25. The Ld. A.R. for the assessee drew our attention towards explanation added to section 11 of the Act w.e.f. 01.04.2022 which reads as under:

"Explanation.- For the purpose of this section, any sum payable by any trust or institution shall be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it)."

26. When we peruse the explanation to section 11 it has come on record that w.e.f. 01.04.2022 any sum payable by the trust shall be considered as application of the previous year in which the payment is made irrespective of the year of incurring of expenditure. The AO proceeded on the wrong premise that the amount spent on the object of the trust is considered as application of the income in the case of trust "by holding that the assessee is following cash system of accounting" whereas assessee trust is proved to be following the mercantile system of accounting. So in these circumstances the amount not paid by the assessee trust cannot be treated as application of the trust.

27. So far as observation made by the Ld. CIT(A) that there is no provision in the Income Tax Act which allows deduction for the provision for guarantee claim, the Ld. A.R. for the assessee contended that the Ld. CIT(A) has arrived at wrong conclusion. Because under the mercantile system of accounting provisions have to be made in respect of all possible liabilities which is incurred but yet to be quantified and/or paid. When the accounting standard mandates creating of provision, so in the absence of such provisions financial result would give distorted picture of financial affair of the assessee trust.

28. Hon'ble Supreme Court of India in case of **Rotrock Control India Pvt. Ltd. vs. CIT 314 ITR 62** held provision on account of warranty in respect of product sold by the assessee as legitimate deduction. Hon'ble Supreme Court of India in case of **Parth Movers 245 ITR 428 (SC)** has also decided the issue at hand by returning following findings:

“Held, reversing the decision of the High Court, that the provision made by the assessee company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by the employees of the company, inclusive of the officers and the staff, subject to the ceiling on accumulation as applicable on the relevant date, was entitled to deduction out of the gross receipts of the accounting year during which the provision is made for the liability. The liability was not a contingent liability.”

29. When the provision for guarantee claim made by the assessee is otherwise proved to be legitimate deduction, the correct income of the assessee cannot be calculated and as such claim of the assessee for deduction of provision for guarantee claim is an allowable deduction. So the AO is directed to allow the amount of Rs.347.04 crores. Ground No.3 raised by the assessee is hereby allowed.

Ground Nos.4 & 5

30. The Ld. Lower Revenue Authorities have rejected the claim of the assessee trust for accumulation under section 11(2) of the Act on account of denial of claim under section 11 of the Act. Since the assessee is found to be entitled for benefit of claim under section 11 of the Act as per findings returned under ground No.2 in the preceding paras, this ground has become consequential. The AO is directed to process the claim of accumulation under section 11(2)

of the Act accordingly these ground Nos.4 & 5 being consequently in nature. So ground no. 4 & 5 are decided in favour of the assessee for statistical purpose.

Ground No.6

31. The Ld. Lower Revenue Authorities have also denied the claim of “set off” of brought forward deficit of the previous years against the current year income, due to the denial of benefit of section 11 & 12 to the assessee. Since the assessee is found to be entitled for benefit of section 11 & 12 as per findings returned under the head ground No.2 in the preceding paras the AO is directed to process the claim of “set off” of the assessee trust accordingly, this ground being consequential in nature. So ground No.6 is also determined in favour of the assessee.

32. In view of what has been discussed above, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 24.11.2023.

**Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 24.11.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.