

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकरअपील सं./ ITA Nos.1231 & 1232/Chny/2019
(निर्धारणवर्ष / Assessment Years: 2012-13 & 2013-2014.)

M/s. Kalanjiam Development
Financial Services,
Second floor, 1A,
Vaidyanathapuram East,
Kannett Cross Road,
Madurai 625 016.

Vs. The Income Tax Officer,
Exemptions,
Madurai.

[PAN: AABCK 9855F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. H. Yeshwanth Kumar, C.A.,

प्रत्यर्थी की ओर से /Respondent by

: Shri. G. Suresh, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 06.06.2024

घोषणा की तारीख /Date of Pronouncement

: 10.06.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

These two appeals by the assessee are directed against orders of even date 20.02.2019 passed by the Ld. Commissioner of Income-tax (Appeals)-2, Madurai [in short 'the Ld. CIT(A)'] for assessment year 2012-13 and 2013-14 respectively raising following grounds:

Grounds for AY 2012-13:

- '1. For that the order of Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.*
- 2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.*
- 3. For that the Commissioner of Income Tax (Appeals) erred in upholding the denial of exemption u/s. 11 to the appellant trust.*
- 4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the activities carried on by the appellant trust are charitable in nature.*
- 5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the activities of the appellant trust constitute "relief of the poor" in accordance with the provisions of section 2(15) and do not fall under the limb "the advancement of any other object of public utility".*
- 6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant trust would not fall under the ambit of the proviso to section 2(15).*
- 7. For that the appellant objects to the levy of interest u/s.234A and 234B".*

Grounds for AY 2013-14:

- '1. For that the order of Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.*
- 2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.*
- 3. For that the Commissioner of Income Tax (Appeals) erred in upholding the denial of exemption u/s. 11 to the appellant trust.*
- 4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the activities carried on by the appellant trust are charitable in nature.*
- 5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the activities of the appellant trust constitute "relief of the poor" in accordance with the provisions of section 2(15) and do not fall under the limb "the advancement of any other object of public utility".*

6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant trust would not fall under the ambit of the proviso to section 2(15).

7. For that the appellant objects to the levy of interest u/s.234A and 234B”.

2. Briefly stated facts of the case are that the assessee is a company limited by guarantee created on 19.09.2001 and registered u/s 25 of the Companies Act. The assessee was granted registration u/s 12A of the Act by the CIT, Madurai in C.No.464/164/02-02/CIT-1 dated 30.07.2003. The assessee company filed returns of income for the years 2012-13 and 2013-14 respectively on 27.09.2012 and 28.09.2013 declaring total income of Rs.Nil.

3. Ld.AR, Mr. H. Yeshwanth Kumar, CA and as well as Ld.DR, Mr. G. Suresh, JCIT at the outset pointed out that the present appeals are covered against the assessee by the order of Tribunal for AY 2009-10 in appellant's own case in *ITA No.625/Mds/2015 dated 07.08.2015*.

4. We have gone through the rival submissions, materials on record and the order of Coordinate bench decision in appellant's own case referred supra. The assessee is a micro finance company operating as a financial Intermediary between the banks and self help groups ('SHGs' in short). The main objective of the company is to bridge the gap in microfinance to SHGs. The A.O. observed that the assessee company took credit facilities from different banks at interest rate up to 11% and charged interest from SHGs at higher rate of 13%. The assessment was completed by denying exemption u/s 11 and 12 and by invoking provisions of section 2(15) on

the ground that the assessee was doing business of banking which fail under 4th limb of Proviso to Sec.2(15) i.e. 'any other object of public utility'. The CIT(Appeals) dismissed the appeals of the assessee following the order of Tribunal for AY 2009-10 in appellant's own case in ITA No.625/Mds/2015 dated 07.08.2015 titled ITO (Exemption), Madurai Vs. Kalanjiam Development Financial Services [(2015) 64 taxmann.com 255 = 156 ITD 213 (Chennai-Trib.)].

5. We have perused the order of Coordinate bench referred supra. The Coordinate bench in ITA No.625/Mds/2015 dated 07.08.2015 set aside the order of the CIT(Appeals) for AY 2009-10 decided the issue in favour of the Revenue holding as under:-

"8. We have heard both the parties and perused the material on record. Sec. 11 of the Act stipulates that the income from property held for charitable or religious purpose shall not be included in the total income of the previous year of the person in receipt of the income to be given effect in the manner as specified therein: The term 'charitable purpose' has not been defined under the statute; but for the inclusive nature of the term as specified under s. 2(15) of the Act, which as existed before the amendment is as follows :

'Sec. 2(15): "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.'

As per Finance Act, 2008, the said provision was amended adding a 'proviso' w.e.f 1st April, 2009 as follows:

"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."

The AO has taken a stand that by virtue of the amendment as above, the assessee is not entitled to exemption u/s.11 of the Act.

'8.1. The Id. AR submitted that, the idea and understanding of the AO with regard to the scope of amendment to sec.2(15) is thoroughly wrong and misconceived. There is no trade or business in the activities pursued by the assessee in running of micro finance business and will not take it outside the purview of charity and hence, that the "proviso" added to sec.2(15) of the Act, is not attracted to the case in hand. He also submitted that the statute, as it stood earlier, had clarified the charitable purpose mentioned in sec.2(15) of the Act, had clarified the charitable purpose mentioned in s. 2(15) by the words "not involving the carrying on of any activity for profit". By virtue of the existence of these clarifying words, if there was any element of profit it was enough liable to be reckoned as charitable purpose right from the inception of the Act in 1961 till 1st April, 1984, when the words "not involving the carrying on of any activity for profit" were deleted. Thus the contention is that after 1st April, 1984, there is no allergy to profit and if the profit feeds charity, it stands cleared for exemption under s. 11 of the Act.

8.2. To analyse the scope and object of the amendment, we have gone through the "Budget Speech" of the Minister for Finance in the Finance Bill 2008, reported in (298 ITR (St.) 33 at page 65:

"180. 'Charitable purpose' includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under 'charitable purpose'. Obviously, this was not the intention of Parliament and hence I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected" (Emphasis supplied).

8.3 The learned counsel points out that, the amendment was brought about as a measure of rationalization and simplification, streamlining the definition of charitable purpose and not as a measure of taxation. It is also stated that the concept of charity in India is wider, simultaneously adding that, by virtue of the amendment, the position that existed prior to 1st Feb., 1984 has been brought back and that is all. This however will not tilt the balance in any manner in the case of the assessee so as to take the activities outside the charitable purpose, particularly in view of the fact that micro finance business will not constitute any trade or business. According to the Id. AR, to perform charity, income is inevitable and contended that the activities being pursued by the assessee may constitute a trade or business, if it is not applied for the purposes of charity. Contrary to this, the Id. DR submitted that though the object of the assessee is to carry on charitable activities, but it does not carry those charitable activities, and it was only carrying on micro finance business in a commercial manner, which cannot be construed as charitable activity. In other words, it was contended by the Id. DR that the assessee carried on activities in a business oriented manner, it will definitely come within the fourth limb of the amended sec.2(15) of the Act, where the prohibition of activity in the nature of trade, commerce or business for any activity of rendering service or any other consideration, irrespective of the nature of the use or application or retention of the income of such activity is specified and hence, not entitled to any exemption.

8.4. To analyse the activities carried on by the assessee, we have to go through the nature of activities pursued by the assessee and perusal of that activities carried on by the

assessee, cannot be oust the involvement of "trade, commerce or business" or "any service in connection with trade, commerce or business" as contemplated under the statute. Further, we note that there is substantial variation in the statutory position as it existed earlier to 1st April, 2009, where the assessee has been given exemption under section 11 of the Act and the position available after amendment to section 2(15) of the Act, brought into effect from 1st April, 2009. Yet another important aspect to be noted in this context is that, after the amendment by incorporating proviso to section 2(15), the 4th limb as to the advancement of "any other object of general public utility" will no longer remain as charitable purpose, if it involves carrying on of:

- (a) any activity in the nature of trade, commerce or business,*
- (b) any activity of rendering any service in relation to any trade, commerce or business for a cess or a fee or any other consideration, irrespective of the nature of use or application or retention of the income from such activity.*

8.5. The first limb of exclusion from charitable purpose under cl. (a) will be attracted, if the activity pursued by the institution involves any trade, commerce or business. But the situation contemplated under the second limb [cl. (b)] stands entirely on a different pedestal, with regard to the service in relation to the trade, commerce or business mentioned therein. To put it more clear, when the matter comes to the service in relation to the trade, commerce or business, it has to be examined whether the words "any trade, commerce or business" as they appear in the second limb of cl. (b) are in connection with the service referred to the trade, commerce or business pursued by the institutions to which the service is given by the assessee. If the said words are actually in respect of the trade, commerce or business of the assessee itself, the said clause [second limb of the stipulation under cl. (b)] is rather otiose. Since the activity of the assessee involving any trade, commerce or business, is already excluded from the charitable purpose by virtue of the first limb [cl. (a)] itself, there is no necessity to stipulate further, by way of cl. (b), adding the words "or any activity of rendering any service in relation to any trade, commerce or business". As it stands so, giving a purposive interpretation to the statute, it may have to be read and understood that the second limb of exclusion under cl. (b) in relation to the service rendered by the assessee, the terms "any trade, commerce or business" refers to the trade, commerce or business pursued by the recipient to whom the service is rendered and in such circumstances, the activities carried on by the assessee cannot be considered as charitable activities.

8.6. The activities carried on by the assessée cannot be considered as activities of medical relief or education or relief of the poor. It is true that the activities carried on by the assessee take care of the poor people also. But those activities cannot be classified under any of the specific activities of relief of the poor; wducation or medical relief. The correct way to express the nature of the activities carried on by the assessee is to say that the assessee is carrying on 'advancement of any other object of general public utility'. When that is the case, the assessee is hit by the proviso given under section 2(15). The proviso reads that 'advancement of any other object of general public utility' shall not be a charitable purpose, if it involves carrying on 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 consideration, irrespective of the application of the money. Therefore, the case of the assessee is hit by proviso to section 2(15) and the assessee is not entitled for the benefit of section 11 for that part of income generated in the hands of the assessee from running its micro finance business. Alternatively, one has to look into section 11 (4A). Sub-

section (4A) provides that exemption shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of account are maintained by such trust or institution in respect of such business. In the present case, there is no dispute on the fact that the assessee is carrying on the business of micro finance. The assessee is maintaining separate accounts for the above business activities. But, the crucial question is whether running of micro finance is a business incidental to the attainment of the objectives of the trust or not. By any stretch of imagination, it is not possible to hold that the business of micro finance is incidental to the above stated objectives of the assessee-trust. "Incidental" means offshoot of the main activities; inherent by-product of principal activities. Activities to compliment and support the main objectives are not in the nature of incidental to the business. They are supporting activities, at the maximum. The genesis of incidental activities must be from the principal activities themselves. There cannot be one source for the principal activities and another source for incidental activities. In the present case, even if activities of the assessee were stated to be relief of poor, it was not possible to conclude that running of business in the form of micro finance is incidental to carrying on of main objective of the assessee-trust and it is the main business of the assessee. Therefore, the assessee is not protected by the provision stated in section 11 (4A), either."

8.7. In the present case, the assessee is having reserves and surplus at 50,89,576/-. Contrary to this, the assessee is having revolving fund at 66,33,800/-, which was availed by hypothecation of their debt to various necessary banks. Further, the assessee raised secured loans and unsecured loans @ 11% totalling to 16,35,54,090/-. Thus, it means that it has raised loans to advance to the customers by paying interest and the assessee is not having own corpus in a formal capital so as to advance the loan. The assessee is providing loans by association with various commercial banks by raising loans from them. Such kind of micro finance activity cannot be termed as charitable activity rather than it is a business activity. In order to become a charitable activity, the institution must have advance loans at a subsidised rate of interest. The assessee is availing loans from banks and advance the same and admitted that it has advanced the loans to the customers at 13%. It is a commercial rate prevailing in the market. By advancing loans at that rate of interest cannot be considered as an activity carried on by the assessee as charitable and for the benefit of the public. When the assessee carried on micro finance activity in a commercial line, then it is not a charitable activity but an activity to expand the finance business by contracting weaker section of the public and it does not involve any charitable activity. Therefore, looking into the activities carried on by the assessee, we fully agree with the findings of the AO and this view of ours is squarely covered by the decision of the Tribunal in the case of Janalakshmi Social Services (supra). The assessee relied on various judgments, which cannot be applied to the facts of the present case, as the assessee is carrying on micro finance business in a commercial manner so as to earn profit and there is no iota of charity carried on by the assessee so as to grant exemption under sec. 11 of the Act. Accordingly, we are inclined to uphold the order of the AO and reverse the order of the CIT (Appeals).

9. In the result, the appeal of the Revenue is allowed''.

6. Since in these two years under consideration, the issue in dispute is identical to the issue in dispute available before the Tribunal in assessment year 2009-10, thus, respectfully following the above finding of the Tribunal, which is a binding precedent, we uphold the order of the Ld. CIT(A) on the issue in dispute and dismiss both the appeals of the assessee.

7. In the result, both appeals of the assessee are dismissed.

The order is pronounced in the open court on 10th day of June, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 10-06-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF