

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **164/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2013-14

**Innovative Microfinance for
Poverty Alleviation &
Community Transformation,**
No.16, V.O.C. Main Road,
Kodambakkam,
Chennai – 600 024.

**The Deputy Commissioner
of Income Tax (Exemption),**
Chennai Circle,
Chennai.

PAN: AABCI 4110P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri M.V. Swaroop, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 27.05.2024
घोषणा की तारीख/Date of Pronouncement : 10.07.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1058109186 (1) dated 21.11.2023. The assessment was framed by the DCIT(Exemptions), Chennai Circle, Chennai for the

assessment year 2013-14 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 14.03.2016.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in presuming that the activities carried out by the assessee falls under the category of commercial activities due to the higher interest rate charged compared to its borrowing rates thereby disallowing / withdrawing the claim of exemption u/s.11 of the Act. For this, assessee has raised various grounds numbering 1 to 18, which are argumentative, factual and case law citations and hence, need not be reproduced.

3. Brief facts are that the assessee filed return of income for the relevant assessment year 2013-14 claiming exemption u/s.11 of the Act at Rs.76,36,477/- declaring 'nil' total income. Assessment was completed u/s.143(3) of the Act after examining the aims and objects of the assessee and also examining the claim of assessee with regard to charitable activities, held that 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 out by the assessee so as to continue enjoying exemption u/s.11 of the Act. Therefore, the AO vide para 9 to 11 denied exemption u/s.11 of the Act as under:-

“9. 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 it is a business activity. In order to become a charitable activity, the institution must have advanced loans at a 'subsidised rate of interest'. The assessee is availing loans from banks and advances the same and admitted that it has advanced the loans to the customers or the poor beneficiaries at "25.13%". It is a exorbitant rate.

10. By advancing loans at that rate of interest when compared with the market rates 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 its micro finance activity in commercial line, then it is not a charitable activity but an activity to expand a finance business by bringing in its fold the economically section of the public and it does not involve any charitable activity.

10. The assessee relied on various judgments, which cannot be applied to the facts of the present case, and as there are differences in the reliance placed to the see under discussion. It is clear that 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 continue to enjoy exemption under sec. 11 of the Act Hence, the activities of the assessee is considered as an object of general public utility and the assessment is completed accordingly by denial denial of 11 placing reliance on Sec. 13(8) as microfinance can be held as d as a charitable activity dedicated to helping the poor people by providing finance at a reasonable rate is permissible but the larger question would be the element of charity which will be lost if the rate of interest and service charge is high & unreasonable as is found here.”

Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of the AO after considering the applicability of proviso to section 2(15) of the Act by observing in paras 6.5 & 6.6 as under:-

6.5 From the plain reading of the above assessment, it is found that the larger question is the element of charity which is lost in this case when the rate of interest and service charge is high & unreasonable as is found here. The appellant has heavily relied as regard to continuing to be a charitable organization, validly registered u/s.12AA of the Act, activities carried out by it as micro finance, applicability of Section 2(15) of the Act, CBDT's Circular No.11 of 2008, dated 19.12.2008 as also the Memorandum regarding Delegated Legislation – Rationalisation and Simplification Measures and a reference of extract from the Speech of the Minister of Finance on 29.02.2008 and reply of the Hon'ble Finance Minister to the Debate in the Lok Sabha on the Finance Bill, 2008, Circular issued by RBI for Section 25 companies engaged in Micro Finance Activities and also applicability of Sec. 13(8) of the Act. However, it is found from the perusal of the submission of the appellant that the appellant has failed to provide any specific counter comments on the main observation of the AO that it charged higher interest than the market rates which cannot be considered as an activity carried on by the assessee as charitable and for the benefit of the public. In the absence of any reasonable, cogent and valid arguments/contentions advanced by the appellant, I am unable to accept the grounds of appeal raised by the appellant and have no other option but to concur with the findings of the Assessing officer that the appellant has carried on its micro finance activity in a commercial line and it is not a charitable activity but an activity to expand a finance business by bringing in its fold the economically weaker section of the public and it does not involve any charitable activity. The appellant has heavily relied on various judgments including of Hon'ble Supreme Court, however, the same cannot be applied to the facts of the present case as they are distinguishable to the facts of the present case as as the appellant has failed to make its case of proving its activities as charitable activities and for the benefit of the public particularly when it has charged higher interest than the market rates which is on a commercial line and therefore, the exemption claimed u/s.11 of the Act cannot be allowed. It is pertinent to mention that Hon'ble SC in the case of CIT Vs. GSI India 153 Taxmann.com 388 (2023)(SC) has denied the benefit of exemption claimed u/s.10(23) (iv) by interpreting the activities of registered trust GSI India. Therefore, registration under 12AA of the Act does not have relevance to enjoy benefit of exemption if its activities are hit by proviso of Section 2(15) of the I.T. Act. In the instant case, above cited case law is squarely applicable.

6.6 *The appellant has raised one of the contentions that it has been filing its return with similar facts and circumstances in past Assessment years and relied upon the decision of the Delhi High Court in the case CIT Vs. Lagan Kala Upvan (2003)179 CTR (Del) 243, (2003) 259 ITR 489 (Del), (2003) 126 TAXMAN 205 (De) and contended that in the absence of any change in the objects and activities of the assessee, the AO was not justified in taking a different view only in respect of a particular assessment year and cannot change the precedence of various assessment made in the past in the absence of any new findings. In this regard, it is pertinent to mention that each assessment year is a separate assessment and if in one assessment year, the issue is considered in favour of the assessee on a particular situation, facts and circumstances, the Department will not be in a disadvantageous position to consider the same issue in favour of the assessee though the provisions of law do not permit. In a number of judgment, it has been held that the principle of res-judicata is not applicable in income tax proceedings.*

Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee filed copy of Memorandum of Association and argued that the assessee before AO as well as before CIT(A) has brought out how the assessee is doing charity. The Id.counsel pointed out the following charities carried out:

- i. Provides self-employment opportunities for women by providing them access to credit;*
- ii. Reduces migration and poverty by providing them employment opportunities;*
- iii. Provides capital for small entrepreneurs;*
- iv. Improves the well being of children as the families have income generation;*
- v. Provides 100% of its loan ONLY for Income generation activities;*

- vi. *Targets the scheduled castes, Schedule tribes, landless small and marginal farmers;*
- vii. *Offers dignity of life by freeing people from the clutches of moneylenders.*
- viii. *Does not charge any processing fees, Documentation charges and does not collect any collateral from the poor and provides loan at the door step of the borrower.*
- ix. *Does not offer multiple loans to the poor who borrow from us and helps prevents over indebtedness.*
- x. *Does not compound the interest or charge overdue interest or penal interest in any form.*
- xi. *The Directors work on an honorary capacity on the board of IMPACT and NO consideration is paid for.*
- xii. *has lent to 81% of the borrowers whose monthly income is below the poverty line. According to the GOI Planning commission's poverty line where the monthly consumption expenditure of a family is Rs.4,860 in rural areas and 7,035 in Urban areas.*

Further, it was argued that the AO has disallowed exemption on the basis that the assessee charging higher rate of interest and carrying out activities of micro finance on commercial lines and considered it as a violative of proviso to section 2(15) of the Act. It was argued that the assessee is not carrying out any activity on commercial lines, however if there are some surplus generated then also the provisions of section 2(15) of the Act are not applicable and the Id.counsel referred to proviso to section 2(15) of the Act and the Id.counsel referred to the proviso to section 2(15) of the Act and referred to various case laws. The Id.counsel for the assessee particularly referred to the decision of Bangalore Bench of this

Tribunal in ITA Nos.172/Bang/2022 in the case of M/s. Navodaya Grama Vikas Charitable Trust, vide order dated 31.08.2023, wherein the Tribunal considering the entire factual aspect on identical facts allowed the claim of assessee allowing exemption u/s.11 of the Act by observing in paras 33 to 39 as under:-

33. We find that the main focus of the objects of the assessee before us is alleviation of poverty by extending micro credits to poor rural women. The brief description regarding the services rendered to SHG's by the assessee has been reproduced. In addition, several other objects which are of Public charitable in nature such as providing training and support programmes for poverty alleviation, education are also listed as its other aims and objects. The For all these activities of the assessee small SHG's are formed who are provided with finance assistance by the assessee to carry out the objects of the trust.

34. From the table reproduced at page 18 of this order, it is clear that the application of income by the trust are towards animator expenses, donations, New India Assurance Health Scheme Premium, Santhwana, Training expenses, uniform, SHG formation expenses, Sahayadhana, Insurance Premium and Scholarship for students. All these activities are carried on by assessee for the members of Self Help Group (SHG) was through self help group for people who approach for financial assistances. On analysis of the balance sheet and accounts of the assessee for the year under consideration, it is found that the corpus fund for the year under consideration carry forwarded is Rs.50,000/- at page 37 in the balance sheet. General fund that has been carried forwarded from the preceding assessment year is approximately Rs.23.02 crores and the current year balance after adding the excess income over expenditure amounting to Rs.5.74 crores approximately totals to Rs.28.76 crores approximately. The assessee has been accumulating the income year by year by providing financial assistance to the beneficiaries of the self help group. Further from the balance sheet it is noted that assessee has obtained loans and advances from SDCC bank amounting to Rs.15.51 crores approximately and the loans advanced to SHG is Rs.38.60 crores approximately. This itself reveals that the entire money is sourced from corpus fund, general fund and loans and advances received by assessee during the year.

35. Coming to the objection of the Ld.DR that assessee has been charging interest at 15% as against 10% at which assessee itself pays interest, it is noted that the assessee does not demand any security towards the loans advanced by it to the SHG members considering the social and economic conditions of the SHG members. The Hon'ble Andhra Pradesh High Court in case of CIT vs. M/s. Spandana (Rural & Urban Development Organisation) in ITA No. 304/2013 dated 10.07.2013 while considering the similar situation has observed as under:

“The learned Tribunal has concluded on fact that the activities of the assessee are in the nature of charitable activities. It has been further held on appreciation of fact that micro financing activity in the instant case is a charitable activity. The learned Tribunal has also relied upon the judgment of the Bangalore Bench of the Tribunal on identical fact that the micro financing to the poor people is a charitable activity. Under such circumstances, the assessee was granted exemption u/s. 11 of the Income Tax Act, the Learned Tribunal further found that in order to achieve the main purpose of the charitable activity, the assessee has joined hands in some other financial organizations and banks. Such steps to collect money for micro financing does not defeat the real object in order to deprive of the exemption. We do not find any infirmity in the order of the learned Tribunal, which is based on fact finding and such facts attract the provision of exemption.”

36. The ratio expressed by Hon'ble Andhra Pradesh High Court would answer the objection of the Ld.DR that the main purpose of the public charitable activity undertaken by assessee has to be looked into as a dominant purpose test and that collection of money for micro financing in the form of interest on the loans advanced to the self help group members will not defeat the real object in order to deprive of the exemption.

37. Hon'ble Supreme Court in case of Addl. CIT vs. Surat Art Silk Cloth Mfrs. Association reported in (1980) 121 ITR 1 also has held that the main test to find out whether an institution is run for charitable purpose is to find out what is the dominant or the primary purpose of the assessee. Hon'ble Supreme Court observed that it is necessary to analyse whether the purpose was to promote commerce and trade in Art Silk etc. or the advancement of the object of the general public utility. It was also held if the primary or dominant purpose of an institution is charitable, another object which by it may not be charitable but which is merely ancillary or incidental to the

dominant purpose would not prevent the institution from being a charitable institution. It was further held that if the purpose of an institution is the advancement of an object of general public utility, it is that object and not its accomplishment which must not involve the carrying on of any activity for profit. So long as the dominant purpose of the institution does not involve the carrying on of any activity for profit, it is immaterial how the money for achieving that purpose is found, whether by carrying on an activity for profit or not. The Hon'ble Supreme Court has emphatically clarified that the primary activity cannot be run for profit, once the primary activity is not run with profit motive the organization can have other activities which may generate profit. There is a fundamental difference between running the primary activity for profit and having incidental profit-making activities.

38. To sum up, in our opinion, it is undisputed that the assessee was granted registration under s. 12A w.e.f. 8th July, 2004. The Department also accepted the returns for the last many years allowing exemption under s. 11. It is only for the asst. yr. 2017-18, the Department is taking a different view. It is not in dispute that the assessee's work is lending money to the poor women for income generating activities. The financial assistance given to Self Help Group (SHG) members are borrowed from bank to certain extent. The beneficiaries are poor families. If the SHG members have to borrow money from the moneylenders, they would have to pay many times higher interest along with security than what the assessee has charged. It is also not in dispute that the assessee incurs financial costs for obtaining loans from banks. The assessee also have to make payment towards salaries and other administrative activities of the trust. There is nothing on record to suggest that the assets and income of the trust were available for the personal benefit of the trustee and the board members. These are only used towards advancing credit to poor women for their poverty alleviation and for the benefit of the socio-economically weaker sections of the society. The Ld.AO has not substantiated his findings, that the work of the trust is not charitable and the interest charged by the assessee does not commensurate with the cost incurred by it. The Ld.AO placed nothing on record to show that the assessee is charging exorbitant interest. The action of the Ld.AO might have justified, in case the poor ladies of SHG have option to avail credit at lower interest from other sources. In present case, the credits are available at interest rate without any security. There was no compulsion over parties to avail financing at the rate of interest offered by the assessee. The assessee can carry out its

activity only after charging marginal higher rate of interest to run its activities. This perse cannot be the basis to come to the conclusion that the assessee is in money lending activity. The assessee is running various activities like Animator activities, Donations, Health Insurance premiums, Santhwana, Training, Uniform, SHG Formation, Sahayadhana, Insurance Premium & Scholarship for students in rural area to make the poor ladies aware of the scheme and to encourage their participation as the principle objects of the trust. All these things need some expenditure. The facts and circumstances show that the assessee is carrying out its charitable activities and the surplus funds are used for charitable purposes.

39. Therefore the argument advanced by the Ld. DR that micro financing activity is merely a money lending activity without any charitable object cannot be accepted. There is nothing on record brought by the Ld. DR or the authorities below that the objects of the assessee is not towards advancement of any other object of general public utility. As considered hereinabove, the various activities carried on by assessee by providing finances to the members of self help group reveals that it is working towards the alleviation of economically backward section more importantly the rural women folk who do not have any security to offer for availing loan. These women folk belong to low income households and the finances provided to such groups help them to provide education to their children, improve the household condition etc. In our considered opinion, the activity being charitable in nature towards general public utility cannot be equated with a money lending activity carried out in a corporate world. Therefore the decisions relied by the Ld.DR on this issue is factually different with the present facts of the assessee before us. The assessee therefore has the benefit of the decisions rendered by Hon'ble Supreme Court and Hon'ble Andhra Pradesh High Court referred to hereinabove. We also draw support from the ratio laid down in decision by Hon'ble Supreme Court in case of Vegetable products reported in 88 ITR 192. Thus based on the above discussions and respectfully following the ratios laid down by Hon'ble Supreme Court and Hon'ble High Court, we are of the opinion that the provisos to section 2(15) shall not be applicable o the present facts of the case. So, the lower authorities are not justified in holding that the assessee is not engaged in charitable activities and denying exemption under section 11 of the Act. Thus, we allow the grounds raised by the assessee.

In view of the above, the Id.counsel stated that the denial of exemption u/s.11 of the Act, be deleted.

6. On the other hand, the Id.senior DR relied on the assessment order and the order of CIT(A). He also relied on the decision of Bangalore Bench of this Tribunal in ITA Nos.744 & 745/Bang/2023 in the case of Sanghamitra Rural Financial Services, order dated 03.01.2024.

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that in the case law cited by Id.counsel for the assessee, it is a case of assessee holding self-help group comprising of rural poor people to avail the benefit of insurance and micro-finance. From the above reproduction, from the case law of Navodaya Grama Vikas Charitable Trust, *supra*, in that assessee, the assessee is running a various activities like Animator activities, Donations, Health Insurance premiums, Santhwana, Training, Uniform, SHG Formation, Sahayadhana, Insurance Premium & Scholarship for students in rural area to make the poor ladies aware of the scheme and to encourage their participation as the principle objects of the trust. All these things need some expenditure. The facts and circumstances show that the assessee is carrying out its charitable activities and the surplus funds are used for charitable purposes.

Finally, the Tribunal held that even the Revenue could not brought on record that the object of the assessee is not towards advancement of any other object of general public utility and hence, the Tribunal held that the assessee is engaged in charitable activities and allowed exemption u/s.11 of the Act.

7.1 We noted that the there is a categorical finding by the AO and CIT(A) that the assessee is providing loans by associating with various commercial banks and by raising loans from them. The assessee is obtaining loan from various commercial banks at the rate of 12% to 14% and advancing loan to its customer or the so called power beneficiaries at 25.13% which is exorbitant rate. The AO noted that the rate charged by assessee from its poor customers or board beneficiaries, allegedly at 25.13% cannot be compared with market rate and once it cannot be compared with market rate which is almost 12 to 14% or 15%, assessee's activity cannot be called charitable or for the benefit of poor. We noted that exactly identical issue was considered by Co-ordinate Bench of ITAT, Bangalore in the case of Sanghamitra Rural Financial Services, *supra*, wherein considering various case laws exactly on identical facts denied exemption u/s.11 of the Act by observing in para 6.7 to 6.28 as under:-

6.7 In the present case, from the details given in the assessment order, it is seen that the assessee was charging interest @ 18% to 20% per annum from its clients. The assessee admitted that they were taking loan from commercial banks at an interest rate below 11.75% per annum for disbursing these loans. Therefore, the difference between these rates was 6% to 8% which is very substantial. As per the Trust Deed, the main object of the assessee is shown as providing finance to the poor. If that is the real object, they would have provided loans at interest rate below bank rates or by taking a nominal margin on the money they borrowed from banks. This shows that the assessee is in the business of lending at 18% to 20% per annum to the poor, which is not as envisaged in the assessee-Trust's objects. By collecting interest at such a higher rate the assessee has deviated from its objective of doing charity, especially in view of the fact that the difference of interest over deposits and disbursement in cases of banks and nonbanking financial companies is less than 12%. As such the micro finance activity conducted by the assessee is strictly commercial in nature and with profit motive. The assessee had even collecting overdue interest from their defaulter which clearly shows that the trust was not even considerate with the poor loanees and was purely acting just as any money lender. From the above the activity of the assessee is business in nature and there is no element of charity involved in the activities of the assessee and it is purely commercial.

6.8 Further the Ld. AR made an argument that the assessee was already granted approval under section 12AA of the Act after considering the object clause of the assessee-Trust. As such granting of exemption u/s. 11 is automatic and it cannot be disturbed. As discussed earlier, granting of exemption u/s 11 of the Act is not automatic and it could be examined at each stage of assessment in each assessment year. Trust was not even considerate with the poor borrowers and the assessee-Trust is nothing but doing money lending business as like a private banker and there is no element of charity in its activities.

6.9 Further, contrary to the findings in the assessment order, the Ld. AR submitted that the assessee has borrowed funds for advancing loans to the public at interest of 11.75% per annum from the Banks. Later, the assessee lent that amount to the public at average rate of 18% to 20%. It means that even there is a gap of 6 to 8% between borrowing and lending the amount to the public.

6.10 According to the Ld. AR, it was recommended by the various committees to charge interest from the public at 24% per annum since there was administrative expenditure incurred by the micro finance institutions. Even going by the Malegam Committee Report of the RBI, the interest charged by the assessee is 18% to 20% which is very high. Hence, the activity carried on by the assessee cannot be considered as charitable so as to grant exemption u/s. 11 of the Act.

6.11 The Ld. AR relied on various judgments of Tribunals and Supreme Court. The Ld AR relied on the decision of the ITAT, Visakhapatnam in the case of Spandana

(Rural & Urban Development Organisation) vs. ACIT in ITA No. 364/Vizag/2009 dated 17/02/2019 which is related to grant of approval u/s. 12AA of the Act. In this order, the Tribunal considered the micro finance activities as charitable activities as the assessee was charging interest at 15% per annum. In the order of the ITAT, Delhi Benches in the case of Disha India Micro Credit vs. CIT in ITA No. 1374/Del/2010 dated 28/01/2011, the issue was related to approval u/s. 12AA of the Act and not with regard to granting of exemption u/s. 11 of the Act while passing assessment order u/s. 143(3) of the Act.

6.12 The assessee relied on the following judgements which we will consider one by one.

(A) The Bangalore Bench of the Tribunal in the case of ADIT(E) v. Bharatha Swamukhi Samsthe [2009] 28 DTR 13 (Bangalore - Tribunal) has held that the work of lending money to poor women for income generating activities was charitable in nature as there was nothing on record to show that the interest charged by the assessee was exorbitant, which is missing in present case. The following extract from the case is crucial to understand the statutory and judicial interpretations in this regard:

"It is not in dispute that the assessee's work is lending money to the poor women for income generating activities. The loan given to project members are borrowed from bank; the beneficiaries are poor families. If the women in the assessee's project have to borrow money from the money lenders they have to pay many times higher interest than what the assessee has charged. It is also not in dispute that the assessee incurs financial costs for ling loans from banks. The assessee also have to make payment towards salaries and other administrative activities of the Trust. There is nothing on record to suggest that the assets and income of the trust were available for the personal benefit of the trustee and the board members, are only used for micro credit to poor women for their poverty alleviation and for the benefit of the socio-economically weaker sections of the society. The AO has not substantiated its findings that the work of the trust is not charitable and the interest charged by the assessee is exorbitant. The AO placed nothing on record to show that the assessee is charging exorbitant interest. The AO may justify the exorbitant rate of Interest charged, in case the poor ladies in question have option to avail credit at lower Interest from other sources. In case, the credits are available at lower interest to the poor women in question then they were free to avail the same. There was no compulsion over parties to avail credit at higher rate of Interest. In case they have option to avail loan at lower rate of interest. The assessee can carry out its activities on or after charging marginal higher rate of interest to run its activities. The assessee is running seminar in rural area to make the poor ladies aware of the scheme and to encourage their participation. All these things need some expenditure. Initially, the assessee was in loss

and it is only in the year under consideration some surplus is with the assessee trust. The facts and circumstances show that the assessee is carrying out its charitable activities and the surplus funds are used for charitable purposes. So, the CIT (A) was justified in holding that the assessee is engaged in charitable activities and qualify for exemption under section 11."

(B) Further, the ld. A.R. relied on the decision of the Delhi Bench of the Tribunal in the case of Disha India Micro Credit v. CIT 120111 Tax Pub (DT) 873 (Del-Trib)/38(II) ITCL 301, where the assessee was a micro finance company registered under section 25 of the Companies Act, 1956. It had applied for registration under section 12A in Form No. 10A. The assessee's application for registration under section 12A was rejected by the CIT. The CIT had observed that the various clauses of the Memorandum of the company would clearly show that the assessee had a motive of profit also, along with the stated motive of service to the poor and needy people as claimed by the assessee. He further observed that such profit even if to be ploughed back as claimed by the assessee, liable to income-tax under IT Act. It was held that merely because there was a surplus from the activity of micro financing, that by itself, cannot be a ground to say that the assessee did, not exist for charitable purpose particularly when under the Memorandum of Association and Articles of Association, it had been clearly provided that the profit shall not be distributed amongst the members but shall be utilized towards its objects, and in the case of dissolution, any property remaining after meeting out the liability shall be transferred to the association having similar object. Therefore, the rejection of the registration of trust on this score was also found by the Hon'ble Tribunal as unjustified. This case Disha India Micro Credit also does not help the assessee as it is about treating micro finance a charitable activity at the time of 12A registration, which in any case is not disputed. At the assessment stage only the application and charitable nature is seen.

(C) The ld. A.R. further referred to the decision of the Cuttack Bench of the Tribunal in the case of Bharat Integrated Social v. CIT, Sambalpur [ITA NO.115/CTK/2011], wherein, it was held that the micro finance activity are per se charitable in nature and earning of interest was incidental in nature. The interest earned was also within permissible market rates, therefore, could not be treated as business of earning interest. The relevant extract is as under:

"CIT has interpolated the activities of the charitable nature carried on by the assessee trust with that of the income resulting in interest earning against which he has not been able to establish whether he was trying to hold the activities as noncharitable on the basis of surplus identifiable as interest only. Obviously the assessee is said to have borrowed the amounts from banks and gives to the ultimate borrower by becoming a coborrower, stands guarantee, surety concerned they have not given money for charitable purpose which the assessee has identified itself of

carrying out the charitable activities. Earning of interest becomes Incidental for governing and controlling all the funds as utilized cannot be Isolated to derive a trading or commercial activity therein. We find merit in the contention of the learned Counsel for the assessee that having received various grants for the charitable purposes from the Government and semi Government concerns, the interest received is not beyond the permissible market rates in order to render surplus to the assessee to hold a view that the assessee is conducting the business of earning Interest." It was again noted that the Hon'ble ITAT, Cuttack Bench, Cuttack again has been consistent with the various other rulings, in both the above cases the facts and circumstances did not reflect surpluses made from MFI activity to justify profit intent. The observation, "the interest received is not beyond the permissible market rates in order to render surplus to the assessee to hold a view that the assessee is conducting the business of earning interest" The Judgment of the Hon"ble ITAT, Cuttack in these two cases makes it clear that two conditions should be complied with; firstly, the rate should be comparable with the market and secondly, it should not be such that it generates profit at the cost of the beneficiaries. "] The appellant has cited the Supreme Court ruling in CIT v. Thanthi Trust [2001] 247 ITR 785. In this case the Hon'ble Apex Court held that income from incidental business was permissible if the amount was applied for charitable purposes. The appellant has totally misunderstood the ruling and nowhere it suggests that the primary charitable activity can be run for profit on commercial principles. The ruling was specifically confined to sub section (4A) of section 11 which regulates incidental businesses and therefore not relevant."

(D) In the case of Sakhi-Saheli Micro finance Forum reported in [2019] 108 taxmann.com 435 (Jaipur-Trib.), wherein it was held;

"5....Further, the ld. CIT(E) has arrived to the conclusion that the activities of the assessee are not charitable in nature by considering the nature of objects and activities being providing finance to weaker and destitute persons of the society and primarily to the economically weaker women. Therefore, the primary object of the assessee is to provide micro finance assistance to the weaker section of the society at concessional rate of interest and without any security. The activity of the assessee has to be analyzed in light of the objects of the assessee that the formation of the assessee company with charitable objects and not with profit motive. The expression charitable purpose as per provisions of Section 2(15) of the Act includes any other objects and general public utility and therefore, if the objects of the assessee are in advancement of any object to benefit to public or a section of public then it is distinguished from benefit to an individual or group of individual and would be regarded as charitable purpose. We find that the primary and predominant object of the assessee are to promote the welfare of the economically weaker and destitute persons of the society by way of providing finance at concessional rate of

interest and without asking for any security. Thus prima facie the object of the assessee are charitable in nature in terms of Section 2(15) of the Act.”

As seen from the above order of the Tribunal, primary and predominant object of the assessee was to promote the welfare of the economically weaker and destitute persons of the society by way of providing finance at concessional rate of interest and without asking for any security and object was charitable in nature and there was no finding that assessee has charged exorbitant rate of interest and the resource has been used to help the weaker sex, poor socially and weaker sections of society and the activities of those assessee companies are in consonance with the objects. However, in the present case, the activity carried on by the assessee is of microfinance activity with the predominant intention of making profit and no activity other than microfinance activity was conducted by the assessee in the nature of charity. Therefore, the facts of that case is not similar to the facts of the present case before us.

(E) Hon'ble Supreme Court in the case of Surat Art Silk Cloth Mfrs. Association cited (supra) has held that main test to find out whether an institution is run for charitable purpose is to find out what is the dominant or primary purpose of the assessee. It was observed by Hon'ble Supreme Court that it is necessary to analyse whether the purpose was to promote commerce and trade in Art Silk etc. or the advancement of the object of the general public utility. It was also held if the primary or dominant purpose of an institution is charitable, another object which by it may not be charitable but which is merely ancillary or incidental to the dominant purpose would not prevent the institution from being a charitable institution. It was further held that if the purpose of an institution is the advancement of an object of general public utility, it is that object and not its accomplishment which must not involve the carrying on of any activity for profit. So long as the dominant purpose of the institution does not involve the carrying on of any activity for profit, it is immaterial how the money for achieving that purpose is found, whether by carrying on an activity for profit or not. The Hon'ble Supreme Court has emphatically clarified that the primary activity cannot be run for profit, once the primary activity is not run with profit motive the organization can have other activities which may generate profit. There is a fundamental difference between running the primary activity for profit and having incidental profit-making activities. Hence, the argument of ld. A.R. is that microfinance activity is itself a charitable activity cannot be accepted as the activity of the assessee carried on by it with a predominant and principal object of making profit and no charitable activity has been carried out and it also cannot be said that it was carried on towards advancement of any other object of general public utility. Hence, ratio of above Hon'ble Supreme Court judgement cannot be applied.

(F) The Apex Court in the case of Queens Educational Society cited (supra) wherein held that predominant object test to be applied.

In the present case, if we apply the ratio of above judgement, it could be seen that the assessee has carried on the microfinance activity solely with the motive of making profit and charged exorbitant rate of interest and the ld. AO has clearly brought on record that assessee has been earning profit @ 28.76% in the assessment year 2016-17 and 24.94% in the assessment year 2018-19 and accumulated huge reserves without carrying on any charitable activities. The activities of the assessee are just like any other commercial banks for which exemption u/s 11 of the Act cannot be granted.

(G) In the case of M/s Janodaya Trust v. ACIT(E) in ITA No.763/Bang/2016 dated 16.02.2021, wherein the ITAT, Bangalore 'B' Bench held as under;

“16. Now we shall examine various reasons given by the AO for rejecting the claim of exemption u/s 11 of the Act. The first reason given is that the assessee is charging exorbitant interest rates on the loan given to the women. The AO has observed that the assessee has availed loans from banks, financial institutions etc at interest rate ranging from 9.5% to 11.50% and it has charged interest on the loans given by it @ 14%. The AO has also observed that the assessee has charged Rs.200/- - Rs.300/- over and above the interest rate of 14%. Accordingly he has held that the effective rate of interest would work out to 17% to 18%. As contended by Ld A.R, the AO has not given the basis for observing that the effective rate of interest would work out to 17% to 18%. Hence, we are of the view that it is merely a surmise entertained by the AO. The question is whether the rate of interest of 14% charged by the assessee is an exorbitant rate?. The Ld A.R submitted that the assessee is constrained to charge interest at a higher rate than the cost of borrowing, so that it can absorb administrative and allied expenses and also possible defaults by the borrowers, which is an inherent risk in the financing activities. The Ld A.R submitted that the assessee has charged interest @ 14%, which is normal interest charged by commercial banks for lending during the period under consideration. Accordingly the ld A.R has contended that the rate of interest charged by the assessee cannot be considered to be exorbitant. We find merit in the said contentions. As submitted by Ld A.R, the rate of interest of 14% is the normal rate charged by the banks for its lending and hence the said rate cannot be considered to be at exorbitant rate, as observed by the tax authorities. Hence the case laws relied upon by the tax authorities, viz., Kalanjiam development financial services (supra) and Janalakshmi Social Services (supra) are distinguishable on facts.

17. The next reason given by the AO is that the assessee is generating surplus year after year. Further, its income from financing activities has been increasing year after year. The important point to be noted here is that, so long as the assessee has been utilizing its income derived from the

property held under the trust for its charitable objectives, the provisions of sec.11 do not deny exemption to a charitable trust. Hence, mere generation of surplus cannot be a reason to deny exemption u/s 11 of the Act. The AO might have highlighted this aspect to drive the point that the activities of the assessee are carried on commercial lines and hence the proviso to sec.2 (15) would be hit. Before us, the Ld A.R placed her reliance on the decision rendered by Hon'ble Allahabad High Court in the case of Lucknow Development Authority (supra) and Ahmedabad Urban Development Authority (supra). In both the cases, it was held that when the profit making was neither the aim nor object of the trust, then the incidental surplus generated while carrying on its activities would not render any activity in the nature of trade, commerce or business. Hence, this reasoning of the AO would also fail.

18. The next reasoning given by the AO is that the micro finance activities carried on by the trust would be hit by the proviso to sec. 2(15) of the Act. The decision rendered by Hon'ble Allahabad High Court in the case of Lucknow Development Authority (supra) and Ahmedabad Urban Development Authority (supra), which is referred above, also addresses this point. In the absence of profit motive, the activities cannot be considered as involving trade, commerce or business. The Ld A.R further submitted that the activities carried on by the assessee would fall under the category of "relief to poor" and hence the proviso to sec,2(15) would not be applicable. In view of the above, this reasoning would also fail."

As seen from the above judgement, ld. AO has not given basis for observing that the rate of interest would work out to 17 to 18% and it was only surmise. It was also noted by the Tribunal that assessee has been utilizing income derived from property held under the trust for its charitable activities, as such exemption u/s 11 of the Act cannot be denied. It was also noted by the Tribunal that profit motive was absent and the activities of that assessee cannot be considered as involving trade, commerce or business. But in the case of present assessee, the ld. AO clearly brought on assessee is charging interest at 18 to 20% after borrowing the same @ 10 to 11.75% and made huge profit from year to year, after analyzing the facts of the assessee's case and his finding is not surmice or conjecture.

(H) The ld. A.R. placed further reliance on the decision of the Visakhapatnam Tribunal in the case of SPANDANA (Rural and Urban Development Organisation) in ITA No. 364/Vizag/2009 dated 17.2.2010, wherein it was held;

"19. In the aforesaid case assessee was mainly engaged in micro financing activities and the money was lent to its project members at a rate of interest higher than that of the rate of interest the loan was borrowed. In that case also assessee has borrowed the funds either from the bank or other financial

institutions and was lent to the project members. The Tribunal has taken a view that this micro finance activity was undertaken to alleviate the poverty and for the benefit of socio-economically weaker sections of the society and for doing this activity a proper organized sector is required in which lots of expenses are to be incurred. To meet that expenses, assessee is bound to charge higher rate of interest from the project members. Otherwise, assessee could not undertake the microfinance activities at the same rate of interest. The similar is the position in the instant case. Since the Tribunal has taken a view in a particular set of facts and held that micro finance activity is a charitable activity as it alleviates the poverty and also for the benefit of the socioeconomically weaker sections of the society, we find no reason to take a contrary view in this appeal with regard to the nature of activity undertaken by the assessee. We therefore hold that the micro finance activity in the instant case is a charitable activity. Since the registration has already been granted to the assessee under s. 12A assessee is eligible for exemption under s. 11 of the Act.”

(1) In the case of Spandana (Rural & Urban Development Organisation) v ACIT [2010] 40 DTR 153 (Visakha-Trib.) which held that micro finance activity is a charitable activity as it alleviates poverty and also benefits socio-economically weaker sections of the society. The Hon'ble Tribunal held that the Micro finance activity was charitable in nature because of the following reasons:

(i) The loan is advanced to weaker sections of the society to meet their urgent needs.

(ii) Even if reasonable or slightly higher interest is charged, it cannot be held uncharitable because the cost of recovery is very high and the possibility of bad debt is also high.

(iii) The funds are given without any surety or guarantee.

The relevant extract from the case are provided as under;

"Micro finance activity requires an organised sector for procuring a loan from the banks or other financial institutions for its disbursement/advancement of loan to poor or weaker sections of the society in which the assessee has to incur a lot of expenditure. Moreover, when a loan was given to the poor women, they do not have any surety or guarantee to stand and most of the times the loan could not be recovered from them and that aspect is also to be taken into account by the assessee while granting a loan to the poor woman. Suppose a loan was given to some of the poor women and they would not be in a position to repay the loans what the assessee will do. He cannot enforce the recovery of the loan by other means and ultimately he has to write off the loan. Meaning hereby, in these types of micro finance activities most of the times the assessee could not recover the loans granted to the poor women as no one stood as the guarantor for them at the time of advancement of the loan. No doubt assessee is that

charging higher rate of interest from the poor women or the downtrodden or socio-economically weaker section of the society. The reason behind is that most of the time the assessee could not recover the loan from these poor and weaker sections of the society, besides incurring heavy expenditure in maintaining the organised sector. These poor and weaker sections happily agreed with the assessee for loan at higher rate, because they could not get advancement of certain funds by the assessee to other organisations who were also engaged in similar type of activities are concerned, by advancing a fund on interest to other organisations, assessee has accomplished its of microfinance to the socio-economically weaker sections of the society and to alleviate poverty beside collecting the interest on the advancement loan. Moreover, this fund was advanced for a shorter period and the assessee has also earned an interest thereon which was utilised in micro financing activity to the poor people. By joining hands with the banks or financial institutions for procuring funds/loans for its advancement to poor or needy people exemption under section 11 cannot be denied.

While rejecting the claim of the assessee, the Revenue has not taken into account these factors that by doing this activity, assessee is helping the needy people or the socio-economically weaker sections of the society as no one is going to finance them to meet their requirements. By doing this, the assessee is at least helping the poor and weaker sections of the society in meeting their urgent needs."

It is evident that the society was facing non-recovery of loan and therefore the Hon'ble ITAT in its wisdom rightly held that only high rate of interest was not enough to deny the charitable nature. The ratio of the case clearly exemplifies the absence of profit motive, as the assessee was not making any real surplus or profit due to high cost and NPAs. Therefore, the rate of interest in itself could not have been the determining factor to pass a judgement on the charitable character of the institution. The case in fact casts a greater responsibility on the AO to study the Income and expenditure to ensure that the assessee is not benefiting at the cost of the beneficiaries. In the present case in hand, the assessee is making huge profits on a consistent basis. Therefore, the facts and circumstances of this case do not provide any credible support to the assessee regarding the charitable character of activities. In the above case, the ld. AO has not substantiated his findings that the work of the trust is not charitable and the interest charged by the assessee is exorbitant. The ld. AO placed nothing on record to show that the assessee is charging exorbitant interest. Further, the assessee was also running a seminar in rural area to make the poor ladies aware of the scheme and to encourage their participation. It was noted that in the above case the assessee was sustaining losses in all the previous years and therefore the, Hon'ble ITAT rightly upheld the charitable character of the assessee as there was no reason to believe that the assessee was benefiting at the cost of the beneficiaries and there was profit intent.

Again, the fact and circumstances of this case do not provide any credible support to the claim of the assessee regarding the charitable character of activities due to its high profit margin maintained consistently for several years.

6.12 Further, specifically in the case of Navodaya Grama Vikas Charitable Trust cited (supra) relied by the assessee counsel, there was a specific finding by the Tribunal that funds are utilized to the benefit of the poor and also carrying out various charitable activities and assessee was running various activities like animator activities, donations, payment of Health insurance premiums, Shantwana training, Uniform giving, SHG formation, Sahaya Dhana, Insurance premium payment, Scholarship awarding for students in rural area to make the poor ladies aware of the scheme and to encourage their participation, which are the principal objects of the assessee trust. Further, there was a clear finding that assessee is carrying out its charitable activities and surplus funds are used for charitable purpose., which is evident from the following para of that order.

“38. To sum up, in our opinion, it is undisputed that the assessee was granted registration under s. 12A w.e.f. 8th July, 2004. The Department also accepted the returns for the last many years allowing exemption under s. 11. It is only for the asst. yr. 2017-18, the Department is taking a different view. It is not in dispute that the assessee's work is lending money to the poor women for income generating activities. The financial assistance given to Self Help Group (SHG) members are borrowed from bank to certain extent. The beneficiaries are poor families. If the SHG members have to borrow money from the moneylenders, they would have to pay many times higher interest along with security than what the assessee has charged. It is also not in dispute that the assessee incurs financial costs for obtaining loans from banks. The assessee also have to make payment towards salaries and other administrative activities of the trust. There is nothing on record to suggest that the assets and income of the trust were available for the personal benefit of the trustee and the board members. These are only used towards advancing credit to poor women for their poverty alleviation and for the benefit of the socio-economically weaker sections of the society. The Ld.AO has not substantiated his findings, that the work of the trust is not charitable and the interest charged by the assessee does not commensurate with the cost incurred by it. The Ld.AO placed nothing on record to show that the assessee is charging exorbitant interest. The action of the Ld.AO might have justified, in case the poor ladies of SHG have option to avail credit at lower interest from other sources. In present case, the credits are available at interest rate without any security. There was no compulsion over parties to avail financing at the rate of interest offered by the assessee. The assessee can carry out its activity only after charging marginal higher rate of interest to run its activities. This perse cannot be the basis to come to the conclusion that the assessee is in money lending activity. The assessee is

running various activities like Animator activities, Donations, Health Insurance premiums, Santhwana, Training, Uniform, SHG Formation, Sahayadhana, Insurance Premium & Scholarship for students in rural area to make the poor ladies aware of the scheme and to encourage their participation as the principle objects of the trust. All these things need some expenditure. The facts and circumstances show that the assessee is carrying out its charitable activities and the surplus funds are used for charitable purposes.”

6.13 However, in the present case, surplus funds are not at all used for charitable purpose and used for carrying out further microfinance activities as such ratio of that order cannot be applied.

6.14 Further, the High Court of Bombay ruling in the case of Commissioner of Income-tax v. Agricultural Produce and Market Committee [2007] TAXMAN 359 (BOM.). In this ruling, it was held that even if there was some profit in activity carried on by trust/institution, so long as dominant object was of general public utility, it cannot be said that said trust/ institution is not established for charitable purposes. The case was at the stage of 12AA registration where it was held that existence of some profit or charging of fees could not be a reason for denying 12AA registration as long as the dominant objects remained charitable. In this case the court relied on the Supreme court decision in Addl. CIT v. Surat Art Silk Cloth Mfrs. Association [1980] 121 ITR 1 (SC) where held that the main test to find out whether an institution is run for charitable purposes is to find out what is the dominant or primary purpose of the assessee - whether the purpose was to promote commerce and trade in art silk, etc., or the advancement of an object of general public utility. It was also held if the primary or dominant purpose of an institution is charitable, another object which by it may not be charitable but which is merely ancillary or incidental to the dominant purpose would not prevent the institution from being a charitable institution. It was further held that if the purpose of an institution is the advancement of an object of general public utility, it is that object and not its accomplishment which must not involve the carrying on of any activity for profit. So long as the dominant purpose of the institution does not involve the carrying on of any activity for profit, it is immaterial how the money for achieving that purpose is found, whether by carrying on an activity for profit or not. The Hon'ble Supreme Court has emphatically clarified that the primary activity cannot be run for profit, once the primary activity is not run with profit motive the organization can have other activities which may generate profit. There is a fundamental difference between running the primary activity for profit and having incidental profit-making activities. In assessee's case, micro finance is the primary activity under which profits are generated continuously and throughout the years.

6.15 Further, in our opinion, the dominant activity should not be in the nature of business: The Hon'ble Supreme Court decision in the case of Commissioner of Sales Tax v. Sai Publication Fund (2002) 258 ITR 70 (SC) held that:

"Thus, if the dominant activity of the assessee was not business, then any incidental or ancillary activity would also not fall within the definition of business."

6.16 The above ruling again re-affirms the law that a charitable organization cannot be allowed to run its primary activity on commercial principles with profit intent. The incidental activity may generate income and feed the primary activity but if the primary activity is with profit intent then there will be no primary purpose left for the organization. The primary activity may have profit but cannot have profit intent to benefit out of the beneficiaries.

6.17 In the case of ITO (Exemption), Madurai Vrs. Kalanjiam Development Financial Services reported in [2015] 64 taxmann.com 255, the assessee is a micro finance company registered u/s.25 of Company Act and also u/s.12AA of IT. Act, 1961 operating as a financial Intermediary between the banks and SHGs. 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 much higher rate so much so that net profit out of the above operations was 20.4% in the F.Y.2009-10. The assessment was completed by assessing the income at Rs.30,33,950/- by denying exemption u/s.11 and 12 and by invoking provisions of sec.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(Appels) granted exemption u/s.11 & 12 of the Act by holding that the assess is carrying on charitable activities u/s.2(15) of the Act. The Revenue was in Appeal before Hon'ble Tribunal, Chennai Bench-C, and Chennai. The Hon'ble Tribunal set aside the order of the CIT(Appels) and decided the issue in favour of the Revenue by following thus:-

"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 is 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. OR 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)J 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)J 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 assessee 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; education 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 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 byproduct 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 Rs. 50,89,576/-. Contrary to this, the assessee is having revolving fund at Rs. 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 Rs. 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 business activity. In order to become a charitable activity, the institution must have advanced loans at a subsidised rate of interest. The assessee is availing loans from banks and advances 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(A).

9. In the result, the appeal of the revenue is allowed.”

6.18 Further, same view was taken by Cochin Bench of Tribunal in the case of Shalom Charitable Ministries of India Vs. ACIT in ITA Nos.79 & 80/coch/2017 & SP Nos.17 & 18/Coch/2017 dated 25.4.2018.

6.19 Further, in the case of Sreema Mahila Samity Vs. DCIT reported 167 ITD 420, wherein held as under: “Amendment came into force by the Finance Act 2008, wherein proviso was added to section 2(15) states that the advancement of any other object of general public utility shall not be charitable purpose if it involves carrying on

“Amendment came into force by the Finance Act 2008, wherein proviso was added to section 2(15) states that the advancement of any other object of general public utility shall not be charitable purpose if it involves carrying on ITA Nos.744 & 745/Bang/2023 Sanghamitra Rural Financial Services, Bangalore Page 48 of 54 any activity in the nature, trade, commerce or bus/ness or any activity of rendering in services in relation to trade, commerce or business. Therefore, the exemption is not available in view of adding of proviso to section 15 particularly the 4th limbs definition of the charitable purpose. We find that the assessee did not lend loans to beneficiaries directly as it was advanced to various self-help groups. The said loans also raised on commercial lines and the profit was being generated by levying higher rate of interest and CIT-A by distinguishing the case laws held that the said microfinancing as conducted by the assessee was on commercial lines and confirmed the order of the AO denying the exemption in view of adding proviso to section 2(15) of the Act. The CIT-A also discussed and distinguished the decisions in the case of Disha India Micro Credit of Delhi Tribunal with that of Janalakshmi Social Services and held that the facts of Janalakshmi Social Services are clearly, applicable to the case of hand and held that the assessee undertaken only business of micro financing and had not done any activity to show that it had been done as charitable act. (Para 22)

Before Tribunal the Id.AR placed his reliance on the decisions of various High Courts and Supreme Court and argued that the AO has no power to deny the exemption as registration u/s 12AA is in force. Tribunal find that the registration u/s. 12AA is granted subject to fulfillment of certain conditions contemplated in section 2(15) of the Act. Therefore, we are not in agreement with the arguments of the Id.AR that the AO has ignored the registration of the assessee granted u/s. 12AA of the Act in denying the

claim of exemption. The Id.AR also argued that rule of consistency should be followed by placing his reliance on the decision of the Hon'ble SC in the case of Radha Swamty Satsang supra, which held that the AO should not interfere with the fundamental aspect permitting through the difference assessment years. In Tribunal opinion that prior to adding proviso to section 2(15), the entities which got registration u/s. 12AA engaged in commercial activity claimed exemption on the ground that such activities were for advancement of objects of general public utility in terms of 4th limb of definition to section 2(15) of the Act. Tribunal find that the said benefit was taken away by adding proviso to section 2(15) of the Act, wherein it explains that the advancement of any other object, general public utility shall not be charitable purpose. In Tribunal opinion that the AO and the CIT-A opined that the assessee conducted its activities on commercial line in the nature of trade, -commerce or business. Therefore, they rightly denied the exemption by following statutory provisions. Tribunal do not find any infirmity in the impugned order of the CIT-A. Tribunal find that the ratio laid down by the decisions as relied upon by the Id.AR are not applicable to the facts of this case. Tribunal uphold the same. This issue of the assessee is dismissed. (Para 23)

Conclusion: Where assessee conducted its activities on commercial line in nature of trade, commerce or business, therefore, addition made on account of income from micro finance justified.”

6.20 Further, in the case of Janalakshmi Social Service Vs. DIT (Exemptions) reported in 27 CCH 618 (2008) (Bang.), wherein held that “where assessee being a company registered u/s 25 of the Companies Act, was engaged in providing microfinance to traders charging interest at 25% on commercial lines, there being no charitable activity, it is not entitled to registration u/s 12AA of the Act.”

6.21 Further, in the case of ACIT Vs. Grama Vidiyal Trust reported in 180 TTJ 559 (2016) (Chny), wherein held as under:

“Even if activities of Assessee were stated to be relief of poor, it was not possible to conclude that running of business in form of micro finance was incidental to carrying on of main objective of Assessee and it was main business of Assessee. Assessee was not protected by provision stated in s.1 1 (4A). (Para 8.6) Assessee was lending money at commercial rate prevailing in market. By advancing loans at that rate of interest, it could not be considered as activity carried on by Assessee as charitable and for benefit of public. When Assessee carried on micro finance activity in commercial line, then it was not charitable activity but activity to expand finance business by contracting weaker section of public and it did not involve any charitable activity. Assessee carrying on micro finance business in commercial

manner so as to earn profit and there was no iota of charity carried on by Assessee so as to grant exempt/on u/s. 11. (Para 8.7)

CIT(A) not justified in granting exemption u/s.11 to Assessee. Regarding allowing of bad debts CIT(A) was not justified in granting deduction as bad debts as that business of Assessee trust, which was not continuing during relevant period and in case of discontinued business, claim of Assessee u/s.36(l)(vii) could not be allowed. (Para 11)

Conclusion:

Assessee carrying on micro finance business in commercial manner so as to earn profit and there is no iota of charity carried on by Assessee so as to grant exemption u/s.11.”

6.22 The ld. A.R. has also submitted that benefit of judgments which are in favour of the assessee to be given in view of the judgement of Hon'ble Supreme Court in the case of Vegetable Products reported in 88 ITR 192 (SC). As we noted earlier, the assessee is not at all carried on any charitable activities and carried the microfinance activities with the sole motive of earning profit. There is no question of following the ratio laid down by judgements, which are in favour of the assessee as the facts are not similar to the assessee's case. In our opinion, when the facts considered by the Courts are similar to assessee's case the ratio of that judgements could be applied to the assessee. However, in the present case, it is not the case.

6.23 It has been observed that the proviso to section 2(15) which restricts incidental business activities to Rs.25 lakh per year, in Asst. Year 2011-12, gets attracted if the organisation is engaged in business activities or the charitable activities are masked commercial activities. The explanatory Circular No. 11/2008 [F.No.134/34//2008-TPL on proviso to Section 2(15) has provided the clarification regarding its applicability. It provides that the entities which run commercial activities under the mask of charitable activities are also covered. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of charitable purpose.

6.24 In our opinion, whether the assessee has for its object the advancement of any other object of general public utility is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service In relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and

no generalization is possible. Assessee, who claim that their object are charitable purpose within the meaning of section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business.

6.25 In our opinion, the AO is required to see whether the assessee eligible to claim application under section 11 and whether the proviso to section 2(15) gets attracted in the light of commercial nature of activities. Particularly, if the primary activity of the organization is in the nature of trade or business, then it is important to ensure that there is no dominant profit motive involved and it is not used as a mask for commercial activities and benefitting at the hands of the beneficiaries. If an organisation which has no source of generating surplus from its activity other than the beneficiary then existence of consistent and substantial surplus does raise a question regarding the commercial nature of the activity. If this question is not successfully defended and justified by the assessee then the invocation of the proviso to section 2(15) by the AO cannot be questioned. In the present case, assessee is only carrying the microfinancing activity by charging exorbitant rate of interest like any other commercial banks which is not expected from this assessee, which is registered u/s 12AA of the Act so as to claim exemption u/s 11 of the Act. The activity of the assessee is nothing but commercial activity carried on with the intention of making maximum profit. If we consider the plea of the assessee, then the exemption u/s 11 of the Act could also be claimed by the Co-operative Societies, Regional Rural Banks and Commercial banks also as the activity of these banks are similar to the assessee's case.

6.26 We have also taken into account of the 'Report of the Subcommittee of the Central Board of Directors of Reserve Bank of India' issued during the year January, 2011 produced before us by the Ld. A.R, which is reproduced herein below:-

“2. The Micro finance sector

2.1. Microfinance is an economic development tool whose objective is to assist the poor to work their way out of poverty. It covers a range of services which include, in addition to the provision of credit, many other services such as savings, insurance, money transfers, counselling, etc.

2.2. For the purposes of this report, the Sub-Committee has confined itself to only one aspect of Microfinance, namely, the provision of credit to low income groups. 2.3 The provision of credit to the Microfinance sector is based on the following postulates:

- a) It addresses the concerns of poverty alleviation by encouraging the poor to work their way out of poverty.*
- b) It provides credit to that section of society that is unable to obtain credit at reasonable rates from traditional sources.*

- c) It enables women's empowerment by routing credit directly to women, thereby enhancing their status within their families, the community and society at large.
- d) Easy access to credit is more important: for the poor than cheaper credit which might involve lengthy bureaucratic procedures and delays.
- e) The poor are often not in a position to offer collateral security to the credit.
- f) Given the imperfect market in which the sector operates and the small size of individual loans, high transaction costs are unavoidable. However, when communities set up their own institutions, such as SHG federations and co-operative the transaction costs are lower.
- g) Transaction costs, can be reduced through economies of scale.

However, increases in scale cannot be achieved, both for individual operations and for the sector as a whole in the absence of cost recovery and profit incentive.

2.4 Given the above considerations, the essential features of credit for Microfinance which have evolved are as under:-

- a) The borrowers are low-income groups.
- b) The loans are for small amounts.
- c) The loans are without collateral.
- d) The loans are generally taken for income-generating activities, although loans are also provided for consumption, housing and other purposes.
- e) The tenure of the loans is short.
- f) The frequency of repayments is greater than for traditional commercial loans.

2.5 The players in the Microfinance sector can be classified as falling into three main groups

- a) The SHG-Bank linkage Model accounting for about 58% of the outstanding loan portfolio
- b) Non-Banking Finance Companies accounting for about 34% of the outstanding loan portfolio
- c) Others including trusts, societies, etc, accounting for the balance 8% of the outstanding loan portfolio. Primary Agricultural Co-operative Societies numbering 95,663, covering every village in the country, with a combined membership of over 13 crores and loans outstanding of over Rs.64, 044 crores as on 31.03.09 have a much longer history and are under a different regulatory framework. Thrift and credit co-operatives are scattered across the country and there is no centralized information available about them.”

6.27 If we examine the activities of the present assessee in the light of above report of Sub-committee of the Central Board of Directors of Reserve Bank of India, the assessee is only doing the microfinancing activities by charging exorbitant interest, which does not commensurate with the prevailing rate. It is also noted that the activity is not also in lieu of any benefit to low-income group who are very vulnerable and are not in a position to cope up with such financial burdens. In order to consider the activity to be charitable in nature, the services rendered must commensurate with the benefit that may arise to such low-income group. The facts of the case relied by the ld. A.R. is quite opposite to the facts of the present case, which has been brought out in the earlier paragraphs of this order. It is also noted that nothing has been spent by the assessee, which could be considered in the nature of charity and therefore, the benefit under the proviso to section 2(15) of the Act is not available to the assessee. The facts of the case relied by the ld. A.R. therefore, does not help the present facts of the case in hand.

6.28 In view of this, we do not find any merit in the argument of the ld. A.R. to support various grounds raised by the assessee. Accordingly, all the grounds of assessee are dismissed and appeals of the assessee are dismissed.

7.2 There is a concurrent finding by AO as well as CIT(A) that the activities carried on by the assessee cannot be classified under any of the specific activities of relief of the poor, education or medical relief and held that the correct way to express the nature of activities carried on by the assessee is that the assessee is carrying on advancement of any other object of general public utility and the case of the assessee is hit by the proviso to section 2(15) of the Act, which 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 application of money. Both the authorities below has given a concurrent finding that the

assessee is providing loans by making association with commercial banks by raising loans at the rate of 12 to 14% from them and advancing these loans to the customers or the alleged poor beneficiaries at the rate of 25.13%. It means that the assessee is carrying out organized commercial activity of micro financing predominantly with the intention of making profit and no activity other than micro finance activity was conducted by the assessee in the nature of charity. It can be called as a business in the nature of adventure. From the very activities practically carried out by the assessee it is financing to the poor people at the rate of 25.13% after taking loans from commercial banks at the rate of 12 to 14%, it means that the assessee's organized activity is for earning profit only, being business of micro finance. This issue now stands covered by the decision of Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority, Civil Appeal No.21762 of 2017, order dated 19.10.2022, wherein the Hon'ble Supreme Court held as under:-

171. Therefore, pure charity in the sense that the performance of an activity without any consideration is not envisioned under the Act. If one keeps this in mind, what Section 2(15) emphasizes is that so long as a GPU's charity's object involves activities which also generates profits (incidental, or in other words, while actually carrying out the objectives of GPU, if some profit is generated), it can be granted exemption provided the quantitative limit (of not exceeding 20%) under second proviso to Section 2(15) for receipts from such profits, is adhered to.

172. Yet another manner of looking at the definition together with Sections 10(23) and 11 is that for achieving a general public utility object, if the charity involves

itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted - if the quantum of such profits do not exceed 20% of its overall receipts.

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253. In view of the foregoing discussion and analysis, the following conclusions are recorded regarding the interpretation of the changed definition of "charitable purpose" (w.e.f. 01.04.2009), as well as the later amendments, and other related provisions of the IT Act. 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. B. Authorities, corporations, or bodies established by statute

B.1. The amounts or any money whatsoever charged by a statutory corporation, board or any other body set up by the state government or central governments, for achieving what are essentially 'public functions/services' (such as housing, industrial development, supply of water, sewage management, supply of food grain, development and town planning, etc.) may resemble trade, commercial, or business activities. However, since their objects are essential for advancement of public purposes/functions (and are accordingly restrained by way of statutory provisions), such receipts are prima facie to be excluded from the mischief of business or commercial receipts. This is in line with the larger bench judgments of this court in Ramtanu Cooperative Housing Society and NDMC (supra).

B.2. However, at the same time, in every case, the assessing authorities would have to apply their minds and scrutinize the records, to determine if, and to what extent, the consideration or amounts charged are significantly higher than the cost and a nominal mark-up. If such is the case, then the receipts would indicate that the activities are in fact in the nature of "trade, commerce or business" and as a result, would have to comply with the quantified limit (as amended from time to time) in the proviso to Section 2(15) of the IT Act.

B.3. In clause (b) of Section 10(46) of the IT Act, "commercial" has the same meaning as "trade, commerce, business" in Section 2(15) of the IT Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration – i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of "commercial activity". However, in the case of such notified bodies, there is no quantified limit in Section 10(46). Therefore, the Central Government would have to decide on a case-by-case basis whether and to what extent, exemption can be awarded to bodies that are notified under Section 10(46).

B.4. For the period 01.04.2003 to 01.04.2011, a statutory corporation could claim the benefit of Section 2(15) having regard to the judgment of this Court in the Gujarat Maritime Board case (supra). Likewise, the denial of benefit under Section 10(46) after 01.04.2011 does not preclude a statutory corporation, board, or whatever such body may be called, from claiming that it is set up for a charitable purpose and seeking exemption under Section 10(23C) or other provisions of the Act.

C. Statutory regulators

C.1. The income and receipts of statutory regulatory bodies which are for instance, tasked with exclusive duties of prescribing curriculum, disciplining professionals and prescribing standards of professional conduct, are prima facie not business or commercial receipts. However, this is subject to the caveat that if the assessing authorities discern that certain kinds of activities carried out by such regulatory body involved charging of fees that are significantly higher than the cost incurred (with a nominal mark-up) or providing other facilities or services such as admission forms, coaching classes, registration processing fees, etc., at markedly higher prices, those would constitute commercial or business receipts. In that event, the overall quantitative limit prescribed in the proviso to Section 2(15) (as amended from time to time) has to be complied with, if the

regulatory body is to be considered as one with 'charitable purpose' eligible for exemption under the IT Act.

C.2. Like statutory authorities which regulate professions, statutory bodies which certify products (such as seeds) based on standards for qualification, etc. will also be treated similarly.

D. Trade promotion bodies Bodies involved in trade promotion (such as AEPC), or set up with the objects of purely advocating for, coordinating and assisting trading organisations, can be said to be involved in advancement of objects of general public utility. However, if such organisations provide additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc. then income or receipts from such activities, would be business or commercial in nature. In that event, the claim for tax exemption would have to be again subjected to the rigors of the proviso to Section 2(15) of the IT Act.

E. Non-statutory bodies

E.1. In the present batch of cases, non-statutory bodies performing public functions, such as ERNET and NIXI are engaged in important public purposes. The materials on record show that fees or consideration charged by them for the purposes provided are nominal. In the circumstances, it is held that the said two assesseees are driven by charitable purposes. However, the claims of such nonstatutory organisations performing public functions, will have to be ascertained on a yearly basis, and the tax authorities must discern from the records, whether the fees charged are nominally above the cost, or have been increased to much higher levels.

E.2. It is held that though GSI India is in fact, involved in advancement of general public utility, its services are for the benefit of trade and business, from which they receive significantly high receipts. In the circumstances, its claim for exemption cannot succeed having regard to amended Section 2(15). However, the Court does not rule out any future claim made and being independently assessed, if GSI is able to satisfy that what it provides to its customers is charged on cost-basis with at the most, a nominal markup.

F. Sports associations

So far as the state cricket associations are concerned (Saurashtra, Gujarat, Rajasthan, Baroda, and Rajkot), this Court is of the opinion that the matter requires further scrutiny, in light of the discussion in paragraphs 228-238 of the judgment. Accordingly, a direction is issued that the AO shall adjudicate the matter afresh after issuing notice to the concerned assesseees and examining the relevant material indicated in the previous paragraphs of this judgment. Furthermore, if any consequential order needs to be issued, the same shall be done and resulting actions, including assessment orders shall be passed in accordance with the law under relevant provisions of the IT Act.

G. Private Trusts

So far as the appeal by assessee-Tribune Trust is concerned, it has been held that despite advancing general public utility, the Trust cannot benefit from exemption

offered to entities covered by Section 2(15) as the records reveal that income received from advertisements, constituted business or commercial receipts. Consequently, the limit prescribed in the proviso to Section 2(15) has to be adhered to for the Trust's claim of being as a charity eligible for exemption, to succeed. Therefore, despite differing reasoning, this court has held that the impugned judgment of the High Court does not call for interference.

H. Application of interpretation

H. At the cost of repetition, it may be noted that the conclusions arrived at by way of this judgment, neither precludes any of the assesseees (whether statutory, or non-statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. The assessing authorities must on a yearly basis, scrutinize the record to discern whether the nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income (i.e., whether the amounts charged are on costbasis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in proviso to Section 2(15), has been breached, thus disentitling them to exemption.

7.3 We have also examined the report of the sub-committee of the Central Board of Directors, Reserve Bank of India issued in January, 2011 and the extract of the same are reproduced in para 6.26 of the order of the Co-ordinate Bench in the case of Sanghamitra Rural Financial Services, *supra*. The sub-committee of the Central Board of Directors of Reserve Bank of India in its categorical report, when compared with the activities of the assessee, we reached to a conclusion that the assessee is only doing micro finance activities by charging exorbitant interest which does not commensurate with the prevailing rate. It is also noted that the activities is not in lieu of any benefit to low income group or poor people who are vulnerable and not in a position to cope up with financial burdens. In our considered view, the activity of the assessee to be in charitable in

nature, the services rendered must commensurate with the benefit that may arise to such poor people. Hence, we find that this issue is fully covered on facts as well as on principle by the decision of Bangalore Bench in the case of Sanghamitra Rural Financial Services, *supra*, we confirm the order of AO and that of the CIT(A) and dismiss this appeal of assessee.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 10th July, 2024 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 10th July, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.