

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&

SMT. KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2045/Mum/2024

Assessment Year: 2012-13

Credit Guarantee Fund Trust for Micro and Small Enterprises 1 st Floor, MSME Development Centre Plot No. - C-11, Kurla Complex Bandra (East) Maharashtra - 400051 [PAN: AAATC2613D]	Vs	Deputy Commissioner of Income Tax (Exemption)-1(1), Mumbai
--	----	---

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
-------------------------------	---------------------------------

Assessee by :	Shri Shailesh Shah & Shri Jay Dharod, A/R
Revenue by :	Shri H.M. Bhatt, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 16/07/2024
घोषणा की तारीख /Date of Pronouncement: 25/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dt. 13/03/2024 by the National Faceless Appeal Centre, Delhi, pertaining to AY 2012-13.

2. The grievance of the assessee reads as under:-

"The grounds of appeal set out below are independent and are without prejudice to one another:

1(a) On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)] erred in confirming the action of learned Assessing Officer [Ld. AO] of making addition of Rs. 2,22,50,000/- u/s 2(24)(iii) of the Income Tax Act, 1961 being contribution received from Settlers namely, Government of India (GOI) and Small Industries Development Bank of India (SIDBI) towards Corpus Fund in terms of the trust deed and the reasons assigned for doing so are wrong and contrary to facts of the case, provisions of Income Tax Act, 1961 (Act) and Income Tax Rules, 1962 (Rules) made thereunder.

1(b) On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of ld. AO of making addition of Rs. 2,22,50,000/- u/s 2(24)(ia) of the Act being voluntary contribution without appreciating the fact that agreed contribution towards corpus fund received by the appellant trust from GOI and SIDBI (i.e., the Settlers) is an obligation of Settlers as per the trust deed and hence, cannot be treated or added as voluntary contribution u/s 2(24)(ia) to the total income of appellant trust.

1(c) On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of ld. AO of not granting exemption u/s 11(1)(d) of the Act to corpus contribution received from settlers on the reasoning that DIT(E) has withdrawn the registration u/s 12AA(3) without appreciating the fact that order of cancellation of registration u/s 12A has been set aside by the Hon'ble Income Tax Appellate Tribunal (ITAT) and Departmental appeal against the said ITAT order has been dismissed by the Hon'ble Bombay High Court.

1(d) On the facts and circumstances of the case and in law, the Ld. CIT(A) and ld. AO failed to appreciate that

(i) The contribution received from the Settlers in terms of the trust deed are with a specific direction that they shall form part of the Corpus of the Trust and hence, the same cannot be included in the total income in view of the provisions of section 11(1)(d) of the Act;

(ii) receipt of capital nature cannot be deemed to be income covered u/s 2(24) of the Act;

(iii) the corpus contribution received by the appellant trust from settlers in terms of trust deed cannot be said to be voluntary contribution u/s 2(24)(ia) of the Act.

2(a) On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of ld. AO of not granting deduction u/s 11(1)(a) of the Act of Rs. 75,57,20,895/-, being 15% of the income derived by the trust which is wrong and contrary to facts of the case, provisions of the Act and Rules made thereunder.

2(b) On the facts and circumstances of the case and in law, the Ld. CIT(A) and ld. AO has failed to appreciate that -

(i) the objects of the trust are covered within the meaning of charitable purpose and the trust was granted registration u/s 12A of the Act. The order of cancellation of registration u/s 12A has been set aside by the Hon'ble ITAT and Departmental appeal against the said ITAT order has been dismissed by the Hon'ble Bombay High Court.

(ii) the appellant trust has no profit motive and to fall within proviso to section 2(15) of the Act, rendering of service to trade, commerce or business must be such that it is in the course of carrying on of business and /or has a profit motive.

(iii) the services rendered by the appellant trust are purely incidental or subservient to main object of the trust which is "charitable purpose".

(iv) fees received by the appellant trust is only to recover the administrative operational cost and not to carry on any business activity and earn income thereon.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of ld. AO of charging surcharge of Rs. 7,59,05,840/- 4.

being 5% of amount of Tax holding it to be consequential in nature without appreciating the fact that surcharge was not applicable to appellant trust from AY 2010-11 to AY 2013-14 and as such doing so is wrong and contrary to facts of the case, provisions of the Act and Rules made thereunder.

4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of ld. AO of charging interest of Rs. 1,90,19,870/- u/s 234C as against Rs. 42,869/- as computed by the appellant trust as per return of income and holding it to be consequential in nature which is wrong and contrary to facts and circumstances of the case, provisions of the Act and Rules made thereunder.*

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

3. Representatives were heard at length. Case records carefully perused and relevant documentary evidence duly considered in the light of Rule 18(6) of the ITAT Rules, 1963.



4. Briefly stated the facts of the case are that the assessee is a trust registered as a charitable organization with DIT(E), Mumbai u/s 12A of the Act vide order dt. 18/10/2001. The Registration u/s 12A was revoked by DIT(E) vide order dt. 07/12/2011. The ITAT vide order dt. 28/05/2014 in ITA No. 1074/Mum/2012, has restored the registration u/s 12A. the said order of the Tribunal was upheld by the Hon'ble High Court of Bombay vide order dt. 02/08/2017 in Income Tax Appeal No. 511 of 2015.

5. Now, since the registration u/s 12A has been restored by the order of the Hon'ble High Court of Bombay, the assessee is eligible for the benefits of Section 11 of the Act.

6. The bone of contention is the contribution from Government of India and SIDBI amounting to Rs.1.25 Crores received as corpus contributions and Rs.97,50,000/- received from SIDBI received as advance towards corpus fund. The assessee claimed it to be a corpus

contribution by the settlers in terms of the trust deed, hence a capital receipt not allowable to tax.

7. This claim of the assessee is well-founded by the following letter from the Office of the Development Commissioner (Micro, Small & Medium Enterprises), Government of India:-

<p>विकास आयुक्त का कार्यालय (सूक्ष्म, लघु एवं मध्यम उद्यम) सूक्ष्म, लघु एवं मध्यम उद्यम मंत्रालय भारत सरकार</p> <p>निरमाण भवन, रासबेरी मंजिल, मौलाना आज़द रोड, नई दिल्ली-110 108</p>	 सत्यमेव जयते MSME सूक्ष्म, लघु एवं मध्यम उद्यम	<p>OFFICE OF THE DEVELOPMENT COMMISSIONER (MICRO, SMALL & MEDIUM ENTERPRISES) MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES GOVERNMENT OF INDIA</p> <p>Nirman Bhawan, 7th Floor, Maulana Azad Road, New Delhi-110 108</p> <p>Ph. EPABX-23063800, 23063802, 23063803, 23063804, 23063805 & 23063806</p>
<p>No. E-17(8)/2011 Dated : 13th May, 2011</p> <p>To</p> <p style="padding-left: 40px;">The Pay & Accounts Officer, Pay & Accounts Office (SSI), Nirman Bhavan, New Delhi.</p> <p>Subject: Sanction of Rs. 1.00 crore to the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), Mumbai as Government of India's contribution to the corpus of the Trust during 2011-2012 for Implementation of the Credit Guarantee Fund Scheme for Micro and Small Enterprises (NER).</p> <p>Sir,</p> <p>I am directed to convey the sanction of the President to the payment of an amount of Rs. 1.00 crore (Rupees one crore only) to the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), Mumbai as Government of India's contribution to the corpus fund of the Trust during 2011-2012 subject to the following terms and conditions:-</p> <ol style="list-style-type: none"> (i) The scheme is to be implemented as per the provisions contained in this Ministry's sanction letter No. 11(22)/99-SSI(P)-I dated 19.5.2000 and subsequent modifications in the scheme effected from time to time. (ii) The Government of India's contribution will be released after SIDBI deposits its share of contribution of Rs. 25.00 lakh (Rupees twenty five lakh only) to the Corpus Fund of CGTMSE. (iii) The accounts of the Trust would be audited by the C&AG/ Chartered Accountants recommended by C&AG as per the procedure applicable to public funds and its audited annual accounts are to be placed in Parliament together with its Annual Performance Report. (iv) As the Government of India's contribution is towards the Corpus fund of the Trust, the Utilisation Certificates are not applicable. <ol style="list-style-type: none"> 2. The receipt of this letter may kindly be acknowledged and action taken on intimated to this Ministry urgently. 3. The expenditure is on 'Plan' item. <p style="text-align: right; margin-top: 20px;">CERTIFIED TRUE COPY </p>		

4. The expenditure shall be accommodated in Demand No. 65 of Ministry of MSME for the year 2011-12 for operating Credit Guarantee Scheme under Credit Support Programmje as follows:

(i)	Major Head	2851-00.102	Village and Small Industries Small Scale Industries
(ii)	Object Head	78.00.32	Contribution Main Scheme:-Credit Support Programmje This Scheme: Credit Guarantee Scheme

BY RE-APPROPRIATION FROM

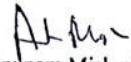
(i)	Major Head	2552.00.236	Village and Small Industries Small Scale Industries North Eastern Areas
(ii)	Object Head	25.00.32	Contribution Main Scheme:-Credit Support Programmje This Scheme: Credit Guarantee Scheme
(iii)	BE (NER)	Rs.1.00 crore	
(iv)	RE	--	
(v)	SDG, if any.	--	
(vi)	Present release	Rs.1.00 crore	
(vii)	Total release including this release	Rs.1.00 crore	
(viii)	Balance available	Nil	

TO

(i)	Major Head	2851-00.102	Village and Small Industries Small Scale Industries
(ii)	Object Head	78.00.32	Contribution Main Scheme:-Credit Support Programmje This Scheme: Credit Guarantee Scheme

5. This issues with the concurrence of I.F. Wing vide their Dy. No.102/ F-1/11 dated 10.5.2011.

Yours faithfully,

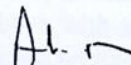

(Anupam Mishra)
Addl. Economic Adviser

Copy to:

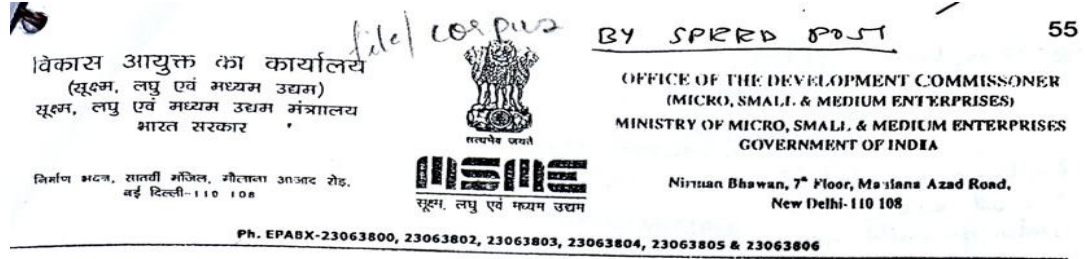
- (1) The CEO, Credit Guarantee Fund Trust for Small Industries, SME Development Centre, C-11, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
- (2) The CMD, SIDBI Tower, 15, Ashok Marg, Lucknow-226001.
- (3) The Comptroller and Auditor General of India, Commercial Audit Wing, I.P. Estate, AGCR Building, New Delhi.
- (4) The Director of Commercial Audit, IP Bhavan, IP Estate, New Delhi.
- (5) The Principal Director of Audit, Economic and Services Ministries, IP Estate, New Delhi.
- (6) Planning Division, O/o DC(MSME), Nirman Bhavan, New Delhi.
- (7) I.F. Wing (F.I Section), Udyog Bhavan, New Delhi.
- (8) PS to AS&DC(MSME).

CERTIFIED TRUE COPY




(Anupam Mishra)
Addl. Economic Adviser

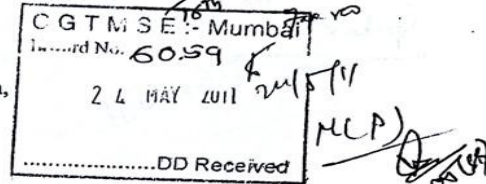
8. Further the share contribution by SIDBI can be found from the following letter:-



No. E.-17 (8)/2011

Dated: the 13th May, 2009

To
The Chairman & Managing Director,
Small Industries Development Bank of India,
SIDBI Tower,
15, Ashok Marg, LUCKNOW - 226001



Subject: SIDBI's share of contribution to the Corpus Fund of the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) during FY2011-12.

Sir,

It is to inform that the Government of India's contribution of Rs. 1.00 Crore (Rupees one crore only) to the Corpus Fund of the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), Mumbai during FY 2011-2012 has been approved for release and the sanction order for the same is enclosed.

2. As per the condition stipulated, the GoI's contribution will be released after SIDBI deposits its share of contribution of Rs. 25.00 lakh (Rupees twenty five lakh only) to the Corpus Fund of CGTMSE.

3. It is, therefore, requested that necessary confirmation regarding SIDBI providing its contribution of Rs. 25.00 lakh to the corpus fund of CGTMSE may kindly be sent to this office at the earliest.

Encl:- as above.

Yours faithfully,

Ahlat
(I.S.Ahlatwat)
Asst. Director (EA)

Copy to:

The Chief Executive Officer, Credit Guarantee Fund Trust for Micro and Small Enterprise (CGTMSE), 1st floor, SME Development Centre, Plot No. C-11, G- Block, Bandra Kurla Complex Bandra (East), Mumbai- 400051. along with enclosure as above with a request to send pre-receipt and undertaking for Rs.1.00 crore (each in triplicate) duly signed on a revenue stamp.

CERTIFIED TRUE COPY

IKO

9. From the above it is crystal clear that the contribution received by the assessee was towards corpus of the trust and as mentioned elsewhere, the assessee trust is eligible for exemption u/s 11 of the Act.

The impugned addition made by the AO does not hold any water. We accordingly direct the AO to delete the addition of Rs.2,22,50,000/-.

10. Since we have held that the assessee is eligible for exemption u/s 11 of the Act, the AO is directed to allow the benefit of deduction u/s 11(1)(a) of the Act as per the relevant provision of law.

11. In the result appeal of the assessee is allowed.

Order pronounced in the Court on 25th July, 2024 at Mumbai.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 25/07/2024

Sd/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. ँ पीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (ं पील) / The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai