IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK 'SMC' BENCH, CUTTACK

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.325/CTK/2015

Assessment Year :2009-2010

ACIT (Exemptions), Aayakar Bhavan, Bhubaneswar.	Vs.	M/s. Peoples Forum, Plot No.HIG 44, Dharma Vihar, Khandagiri, Bhubaneswar
PAN/GIR No. AAATP 2214 R		
(Appellant)	..	(**Respondent**)

C.O.No.45/CTK/2015

(rising out of ITA No.325/CTK/2015)

Assessment Year :2009-2010

M/s. Peoples Forum, Plot No.HIG 44, Dharma Vihar, Khandagiri, Bhubaneswar	Vs.	ACIT (Exemptions), Aayakar Bhavan, Bhubaneswar
PAN/GIR No. AAATP 2214 R		
(Appellant)	..	(**Respondent**)

Assessee by : Shri S.K.Agarwal, AR

Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 18 /01/ 2017

Date of Pronouncement : 18 /01/ 2017

ORDER

This is an appeal filed by the revenue and cross objection filed by the assessee against the order of CIT(A)-2, Bhubaneswar, dated 27th February, 2015, for the assessment year 2009-2010.

2. The grievance of the revenue in Ground Nos.2 & 3 is that the ld CIT(A) erred in allowing exemption under section 11 of the Act in view of amended provisions of section 2(15) of the Act.

3. Brief facts of the case are that the assessee is a society registered under Societies Registration Act, 1860 on 27.12.1990. The assessee society is also registered u/s.12A of the I.T.Act, 1961 w.e.f. 1.4.1995. The assessee filed the return of income for the assessment year 2009-2010 on 2.9.2009 showing total income at Nil after claiming exemption u/s.11 of the Act for Rs.28,99,119/-. The Assessing Officer held that the assesse is not entitled for exemption u/s.11 of the Act in respect of surplus of Rs.28,99,119/- earned from business activities of Micro Financing by observing as under:

> "(i) It was ascertained that the Appellant had availed these loans from banks/financial institutions at interest rates ranging between 9 to 14% per annum supported by its own collateral securities. These loans were subsequently advanced to SHGs/LHGs at interest rates that were higher by 10.5% annum. The Appellant was stated to be not only charging high rates of interest, but also collecting processing fees, cash security, insurance fee and membership fee from the beneficiaries. The differential amount of interest received from the beneficiaries were stated by the AO to be only utilized towards the Appellant's personnel cost and other expenses, which meant that the activity of lending money carried out by the Appellant could not be regarded as a charitable purpose.
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> (ii) The AO held that the borrowing and lending of money and earning interest thereon was nothing but a commercial activity because the assessee had earned interest after meeting its liability towards the borrowal of interest. The AO thereupon stated that the proviso to ^Section 2(15) of the Act clearly held that *charitable purpose* did not

include activities in the nature of trade, commerce or business, or any rendering of 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.***

(iii)The AO stated that even if the Appellant claimed that it had acted for the benefit of the poor or the downtrodden or people below the poverty line, the borrowing and lending of money for *"some extra consideration"* could not be treated as charitable activity u/s 2(15) of the Act. Further, the claim of the Appellant that the surplus money had been utilized for charitable purpose could not be held as a ground to treat its activities as charitable in nature keeping in view the specific intentions of Section 2(15).

(iv)The judicial ratios cited by the Appellant in the case of in the cases *of Spandana (Rural & Urban Development Organization) vs. ACIT* and *ADIT (E) vs. Bharatha Swamukhi Samasth (supra)* was not applicable in the instant case as that referred case did not specifically deal with the applicability or otherwise of the amended provisions of Section 2(15) of the Act.

(v)In view of the *"business activity as discussed above",* the AO held that the Appellant society was not eligible for tax exemption u/s 11 of the Act, following which the assessment in the case of the Appellant was completed by the AO by charging to tax for the impugned A.Y. 2009-10 the total income/profits (surplus of income over expenditure) from micro-finance activities of Rs. 28,99,119 and disallowing a "loan loss provision" debited in its Income and Expenditure statement of Rs. 4,37,714 and further adding to the same the net business profit from income generating programmes of Rs 8,64,926 as reported by the Appellant in its Income and Expenditure Statement, which resulted in a total taxable income of Rs. 42,01,800 (as rounded off u/s 288A of the Act).

3.1. Accordingly, the Assessing Officer assessed Rs.28,99,119/- as business income of the assessee.

4. Being aggrieved, the assessee filed appeal before the ld CIT(A).

5. The arguments of the assessee before the ld CIT(A) was as under:

"The argument of the appellant is that micro financing activities are falling under the 1st limb of the definition of charitable purpose within the meaning of section 2(15) of the Act. That the section 2(15) of the Act defines the "charitable purpose" and as per the provisions the charitable purposes are:

i) Relief of poor
ii) Education
iii) Medical relief and,
iv) The advancement of other objects of general utility.

An entity with a charitable object will be eligible to get the exemption u/s.11 of the Act. But it was seen that many of the orgnisation engaged in commercial activities are also claiming exemption as charitable organization. Therefore, the provision of section 2(15) was amended and the CBDT had issued a circular vide No.11 dt.19.12.2008 in which the charitable purposes was defined and also clarified. As per the circular vide para no.2 the new provisions of section 2(15) will not apply to 1st three limbs and for the fourth limb (i.e. advancement of general public utility) there will be restriction which are as per the amended provisions. For the better appreciation of the provision the para no.2.1 is reproduced as below:

> *2.1 The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e. relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities".*
> From appreciation of the aforesaid provision, it is clear that the objects covered under 1st three limbs will be treated as charitable.

b. That the appellant was carrying on the micro financing activities which were held by the Ld. Assessing Officer as non charitable and further he held that micro financing activities were covered under the fourth limb of the provisions of the Act. In this respect the appellant submits before your honour that, micro financing activities are in the nature of relief of poor and are covered under the first limb of the provisions of section 2(15) of the Act. As per the para no. 2.2 of CBDT circular No. 11 of 2008 dated 19,12.2008 states that," *'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that :*

> *(i) the business should be incidental to the attainment of the objectives of the entity, and*
>
> *(ii) Separate books of account should be maintained in respect of such business.*

Similarly, entities whose object is 'education' or 'medical relief would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

c. That the appellant is working for the welfare of the economically and socially disadvantaged or needy women and started the micro finance program by promoting and nurturing Self help Groups in different villages and started the livelihood promotion program through extending financial products through a special drive named as "Mission Annapurna". Further, it provides adequate training, capacity building, business support, market linkages and financial support in the form of loan & grant. This activity is a self sustained program and loans are mobilized from banks and are further lend to the poor and vulnerable women at an interest rate which cover the cost of the organization like salary, administrative expenses and cost of procuring the loan from the bank. These loans are extended to them without collateral or mortgage, for pursuance of their economic activity as they do not have any property or valuable article to be bankable by the banks. The loans were given to the weaker sections of the society to meet their urgent needs. This is very high risk activity as it does not have collateral, this is only meant to strength the financial and social status of the poor women of the state. Most of the time, these poor and women from the weaker sections of the society failed to repay these loans which ultimately lead to the write-up of the loan. Means, the loans granted to these poor women do not have a guarantee of return for which the organization made provisions to cover these costs. The organization charges minimum interest which is accepted by the poor and weaker section happily as they would have not got a collateral free loan otherwise. This activity is purely a development activity for the purpose of alleviating poverty by supporting them through advancement of loan, training capacity building and market support and setting of their own enterprise. The organization is helping the needy people of the socio-economic weaker section of the society as they are not financially included and no one is going to finance them to meet their requirement otherwise. The alternative available to this weaker section of the society is money lender who charges average interest of 120% per year. The organization charges only a margin of 10.5% p. a. for this activity which is also covered all expenses and less than the Reserve bank of India recommended interest rate. So, this activity of supporting finance of giving loan to the poor and weaker people is a purely development activity and not a business activity of the orgnisation at any means. The additional surplus created out of this activity is activity is again redeployed for the development for the same set of people. So, this activity is squarely covered as per the Para No. 2.2 of the above referred circular and it is charitable in nature.

D. Further, the Hon'ble ITAT Delhi Bench while deciding the issue in the case of Disha India Micro Credit Vs. CIT, Muzaffarnagar, vide ITA No. 1374/Del/2010, it was held that, micro financing activities to the weaker section of the people for their improvement of livelihood is charitable and covered under the 1st limb of the decision of section 2(15) of the Act.

Thereafter, the appellant, in Ground No. 3 claims that it had extended the finance to different SHGs basing on the RBI guidelines and of the sanctioning Banks/FIs and submitted as under:

That, as per the provisions of section 2(15) r/w circular No.11 of 2008 dated 19.12.2008, the micro financing activities are charitable activities. In this respect the detailed submission made in our ground No.2 and, therefore, those are not repeated here. Since the micro financing activities are charitable in are and the surplus arises out of those activities are utlised for the charitable are allowable as exemption u/s 11 of the Act. Therefore we pray your honour to allow the relief of Rs.28,99,119.

b. That, as per the RBI guidelines the Banks/FIs are financing the loan to the SHGs or weaker section of the society for eradication of the poverty. The appellant is working only as a facilitator in between the Banks/FIs and the loanees. The appellant does not enjoy the liberty to finance to anybody in any manner. It only extends the loans as per the guidelines provided by the Banks. Only thing is that the appellant keeps the leverage of 10.5% in between to meet the documentation charges, upfront fee, processing fees and all other service charges charged by the Bank/Financial Institutions from time to time. There is no profit element involved in these transactions. Further if some surplus is generated from these transaction that has been utilized for the objects of the Society, i.e. for charitable purpose. So the contention of the Ld. Assessing Officer that the appellant is doing the business activity is wrong. In a business activity the organization enjoys the autonomy and can finance as per his sweet will which is not present in the present case. Therefore the activities carried out by the appellant are purely in charitable nature and eligible for benefits of section 11 of the Act.

c. Further it is submitted that, the Ld. Assessing Officer has not brought anything on record which that, the interest charged by the appellant on these activities are exhorbitant. As it was held Hon'ble ITAT, Bangalore Bench in the case of **"ADIT (Exemptions) Vs. Bharatua** Swan **Samsthe, (2009) 28 DTR (Bang.)(Trib) 113"** providing of loans to poor women for their p alleviation, by borrowing from bank by the assessee is charitable in nature. The appellants case; squarely covered by this case law and therefore we pray your honour to treat the micro financing. activities of the appellant as charitable and allow the relief of Rs. 28,99,119.

d. Further the Hon'ble ITAT, Visakhapatnam Bench, in the case of **"Spandana Vs. ACIT, (2010) 40** DTR **(Visakha)(Trib) 153"** held that, assessee borrowing money and providing loans to the socio economically weaker sections (micro financing activity) can be said to be carrying on charitable activity and is eligible for exemption u/s 11.

e. Further it is submitted that, the appellant is carrying on the micro financing activities since so many years and the revenue is accepting the returned income of the appellant and also treating the micro financing activities as charitable. There is no change of facts in the present year. Therefore by following the rule of consistency in the present year also the micro financing activities should be treated as charitable activities.

On the above ground it is submitted before your honour that the micro financing activities are squarely covered under the definition of section 2(15) of the Act as charitable activities and eligible for exemption u/s 11 of the Act and also prayed to your honour to allow the relief of 28,99,119.

6. After considering the submissions of the assessee, ld CIT(A) held as under:

"5. I *have considered the content and substance of the Assessment Order and the Grounds of Appeal preferred by the Appellant, following which I arrive at the following findings/decisions. The principal dispute between the AO and the Appellant in this case is whether activities of the nature of micro-finance and micro-credit are charitable in nature and substance, and whether these can be considered as being carried out for "charitable propose" as defined u/s 2(15) of the Act.*

a) It is the argument of the Appellant that the proviso to the said section introduced vide the Finance Act, 2008 w.e.f sought to keep out from the ambit of tax exemption all activities towards colourable objectives under the ***(residual)*** *head "advancement of general public utility" (which being extremely generic in scope was prone to misuse)and not activities towards objectives that fell under the category-head (sic) "relief of The implication of the Appellant was that the micro-finance and micro-credit activities carried out by it fell under the latter category and were therefore eminently eligible for tax exemption u/s 2(15) r.w.s 11 of the Act.*

b) To present and understand this argument from a correct perspective, it is best to go to the Paragraph 180 of the Finance Act, 2008 ***that specifies the following reason for introducing the first proviso (emphases in bold*** *italics supplied by me): '"Charitable purposes" 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, comer or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim their purposes would also fall under "Charitable Purposes'. Obviously, this was not the intention of Parliament and hence I propose to amend the law to exclude the aforesaid cases. However Genuine charitable organizations will not in any way affected.' In the above, the Hon 'ble Union Finance Minister emphasized the position stipulated u/s 2(15) that the legal term "charitable purpose " included 4* separate limbs that included both a)* ***relief of the poor;*** *and* ***b) the advancement of any other object of general public utility.***

[*NB: *From 01.04.2009, the definition of "charitable purpose" added 2 new limbs (Numbers 4 and 5) being a) the preservation of environment (including watersheds, forests and wildlife); and b) preservation of monuments or places, or objects of artistic or historic interest. How these are not relevant in the context of the instant case. This would also mean that "advancement of any other object of general public utility" would represent the* ***residual*** *6th limb of the definition of "charitable activity as per Section 2(15) of the Act].*

c) In order to further clarify the above, the Circular No. 11 of 2008 dated 19.12.2008 [CBDT Circular No. 11/2008, F.No. 134/34/2008-TPL dated 19.12.2008] was issued by the CBDT wherein the implications of the amendment were given. "The newly inserted proviso to Section 2(15) will not apply in respect of the first three limbs of Section 2(15) i.e. ***relief of the poor, education, or medical relief. Any commercial activities in connection with these three activities will come under 'charitable activities*** *"'. This means that even if tax exempt entity such as a charitable trust or a registered society were to carry out incidental commercial activities while carrying out activities falling within these first 3 limbs as above, tax exemption u/s 11* ***or*** *u/s 10(23C) of the Act could still be available and applicable. In corollary, this newly inserted proviso to Section 2(15) will apply only to those entities whose purpose would be that stated in the sixth and last limb of Section 2(15) being* ***"advancement of any other object of general public utility".*** *Such entities will not be eligible for exemption u/s 11 or 10(23C) of the Act if they carry out commercial activities.*

d) We therefore need to know what we understand by the phrase ***"relief of the poor".*** *The Oxford Dictionary defines this to mean "financial assistance given to the poor from state or local community funds". The Merriam-Webster Dictionary defines it to mean "relief or assistance usually administered by local officials with funds from the local treasury for the aid of the needy in a community". In either definition, the common factors are that the assistance or relief provided is cost-free, such as in grants, and the fact that the government or the community is responsible for the same. Going by the same, the actions and activities of a private operator of whatever nature providing funds to the targeted "poor" or the "needy" at a cost being interest may not constitute "relief to the poor". This is despite the fact that the Government or the community has exempted such operator from taxation, thereby cloaking it with an implied sanction that these represented funds of the community held under trust, albeit a private trust. If such private operator needed to claim that its activities constituted "relief to the poor", then the loans/grants/payments/advances made to the target demographic segment(s) need to be at rates that add-on to the cost of obtaining the funds* ***only such premiums as to cover its necessary operating expenses.*** *This would mean that the loans/grants/payments/advances would be made effectively at the internal costs of obtaining, maintaining and disbursing such loans/grants/payments/advances to the beneficiaries. The generation of any surplus* ***over*** *and above such costs (interest amounts paid plus the premium towards operating costs) would constitute a commercial and/or business surplus in the hands of the private operator, as such funds represented the earnings of the private operator that were not available to the Government or the community at large.* ***Going by this yardstick, it does*** *not* ***appear that the Appellant's impugned activities fall within the definitional ambit*** *of "relief* ***to the poor" since the Appellant has been earning*** *systematic surpluses over the* ***years.***

e) To attend to and address any alternative argument by the Appellant that the loans/grants/ payments.' advances made by it fell ***under the ambit*** *of* ***"relief or*** *"assistance" per se. the definitions of these* ***terms from*** *Google's online content-aggregator dictionary is provided as follows: "Relief" is defined as "financial" or practical assistance given to those in special need or difficulty" while "Assistance" is defined as "the provision of money, resources, or information to help someone". The Appellant was provided financial and practical assistance to specified target groups mostly in rural areas and also provided money and resources to such groups, albeit at a cost being interest.* ***Consequently, the Appellant's activities can be considered to fall under the category-ambit of "relief" or "assistance" per se, but certainly not under that of "relief to the poor".***

f) *The phrase "relief to .he poor" in general parlance encompasses a wide range* ***of*** *objects for the welfare of the economically and socially disadvantaged or the needy and will include within its ambit activities such as relief to: a) the destitute, the orphans or the handicapped; b) disadvantaged women or children c) small and marginal farmers d) indigent artisans or e) senior citizens in need of help. Entities who work towards these objects will continue to be eligible for tax exemption even if they incidentally carry on a commercial activity subject to the conditions stipulated u/s 10(23C) or 11(4A) which state that:*

(i) The business should be incidental to the attainment of the objects of the entity;

(ii) *(ii) Separate books of accounts should be maintained in respect of such business.*

g) Since the CBDT's Circular referred above is binding on all officers and proceedings of the Department, what we really need to determine and decide in the context of the instant case of the Appellant are:

(i) Whether the micro-finance and micro-credit activities can be considered to be activities that target the objective "relief ***of the*** *poor"*

ii) Whether the micro-finance and micro-credit activities ***as*** *carried* ***out by the Appellant*** *can be considered and held to be activities that target the objective "relief* ***of the poor"***

(ii) If the answers to the two questions above are both in the affirmative, and if any part of the activities of the Appellant can be considered to be business in nature, whether such business activity was incidental to the attainment of the objects of the Appellant; and b: whether separate books of accounts have been maintained in respect of such business activity.

h) ***Microcredit*** *in modern finance and commerce is defined as the extension of very small loans (microloans) to poor borrowers who typically lack collaterals (to offer* ***in*** *exchange support), steady employment and a verifiable credit history. The microcredit strategy has been designed (in theory at least) not only to: a) support entrepreneur ship and b) alleviate poverty, but also in many cases to: c) empower women and d) uplift entire communities by extension. Microcredit is part of micro finance, which (in theory at least) provides a* ***wider range of financial services, especially*** *savings* ***accounts, to the poor.*** *Microcredit is widely used in developing countries and is presented by its promoters, sympathizers and admirers as having "enormous potential as a tool for poverty alleviation."*

i) Many critics however argue that microcredit and microfinance strategies have: a) not had a positive impact on gender relationships; b) does not alleviate poverty; c) have led many borrowers into a debt trap; and d) constitutes a "privatization of welfare". [NB: The AO, through his comments and opinions in the assessment order about, inter alia, the commercial nature of the lending practices carried out and interest differentials earned by the Appellant, was by implication pointing to the alleged "private" nature and profit earning motive" in the apparent "welfare" intent of the appellant's activities.

j) There are two dimensions to this inquiry: a) whether micro-finance has indeed helped the case for poverty alleviation and the cause of relief to the poor (we call this the ***evidence along results*** *of charitable purpose); and b) whether there has* ***been*** *-and continues to be - colourable, unscrupulous and dishonourable intent on the part of the purveyors of micro-finance in their averred statements that they were working in the area not for profit but with altruistic intent* ***(we*** *call this the* ***evidence along intents*** *of charitable purpose)*

*k) Let us first examine the **evidence along results** first. The first scientific (statistically randomized) evaluation **of** microcredit, conducted by Esther Duflo and others, showed mixed results: there was no effect on household expenditure, gender equity, education or health, but the number of new businesses increased by one third compared to a control group. In a research paper titled "The Miracle of Microfinance? Evidence from a Randomized Evaluation" [Authors: Abhijit Banerjee, Esther Duflo, Rachel Glennerster and Cynthia Kinnan), the field study for which was funded by the ICICI Bank and Spandana (a trust working in the area of microfinance), and the results and findings of which have been published in American Economic Journal: Applied Economics [2015] 7(1): 22-53, the authors have determined as under:*

> *(i) Business activity: Access to credit **increased small business investment, but only increased the profits of the most profitable pre-existing businesses.** After 1.5 years, treatment households were no more likely to own a business or start new businesses, but they did invest more in existing businesses. To the extent that microcredit helped businesses, it may have **helped the most profitable businesses the most.***
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> *(ii) Household finances: Though microcredit access **increased investment, it did not lead to a significant increase in income.** There were no significant differences in total household expenditures (a proxy for material well-being) between treatment and comparison groups after 1.5 or three years.*
>
> *(iii) Education and female empowerment: Researchers found **little evidence to suggest that microcredit empowered women or improved investment in children's education** in this context. Women in treatment areas were more likely to manage more self-employment activities than those in comparison areas, but they were no more likely to make decisions about household spending, investment, savings, or education.*

*l) **It does appear from the above that there is very little empirical evidence along results that micro-finance activities have changed the conditions of the poor.** In an interview to the BBC, Dr. Dean Karlan, Professor of Economics, Yale University, USA held that that whilst microcredit generates benefits it was not the panacea that it has been purported to be. He advocated giving the poor access to savings accounts.*

*m) Along the **evidence along intents** front, microcredit organizations were initially created as alternatives to the "loan-sharks" known to take advantage of clients. Indeed, many micro-lenders began as non-profit organizations and operated with government funds or private subsidies. However, as is the case when dealing with large sums of money, the human mind is programmed towards satisfaction maximization, comfort and profiteering; it is often difficult to keep greed and rent-seeking drives for away. By the 1980's the "financial systems approach" influenced by neo-liberalism had become the dominant ideology among microcredit organizations. For instance, Unit Desa (BRI-UD) within the Bank Rakyat Indonesia, commercialized micro-credit by offering 'kupedes' microloans based on market interest rates. Ironically, many microcredit organizations now function as independent banks. **This has led to their charging higher interest rates on loans and placing more emphasis on savings programs. [NB:** Unit Desa of Indonesia charged in excess of*

20 per cent on small business loans]. The application of neoliberal economics to microcredit has generated much debate among scholars and development practitioners, with some claiming that microcredit bank directors, such as Muhammad Yunus [the pioneer of micro-finance and the Nobel Laureate from Bangladesh], apply the practices of loan sharks for their personal enrichment. There was also a Wall-street style scandal involving the Mexican microcredit organization Compartamos.

n) However, there is something that can be referred to as "ethical micro-lending" that can go hand-in-hand with the motive of investor profits. According to Mohammed Yunus (referred supra) "Microcredit should be seen as an opportunity to help people get out of poverty in a business way, but not as an opportunity to make money out of poor people." The debate over preserving the field's saintly aura centres on how much interest and profits are acceptable and what constitutes exploitation.

o) In the instant case, it has been determined by the AO from the records and the submission of the Appellant that the interest differentials earned by the Appellant through its micro-finance activities ranged around 13% to 14% [24%> to 26% per annum earned on loans advanced to SHGs less 10 to 13% per annum paid for loans supported by its own collateral securities]. The Appellant has stated in its submissions that it had obtained loans from different financial institutions and lent to Self Help Groups (SHGs)JLGs at a higher rate of 10.5% than the rate at which the borrowed which was "less than the Reserve bank of India recommended interest rate". When taken together, these mean an effective interest differential earned ***between 10.5% to 14% per annum.*** *Whether these earnings are extortionist in nature is to be decided in line with what the market yardsticks state about the interest earnings based on the lending rates of similar sums of money by commercial organizations of a similar nature, operating on scales and volumes of similar orders. According to Mohammed Yunus (supra), interest rates should be 10 to 15% above the cost of raising the money, with anything beyond that deemed to constitute a "red zone" of loan sharking. His statement in context was "We need to draw a line between genuine and abuse".* ***[Source:*** *©2010 New York Times News Service as extracted from http://southasia.oneworld.net/peoplespeak/microcredit-has-outgrown-its-charitable-roots#. VP GESfmUcUw].* ***On this (factual) score, it would appear that the Appellant's lending rates and interest earnings are not exorbitant or extortionist.***

p) From a legal standpoint, the definition of "charitable purpose " u/s 2(15) of the Act is inclusive. The Hon'ble Courts through their decisions have held that the expression 'charitable purpose' is sufficiently wide in scope to include a variety of activities. For instance, promotion of sports and games is a charitable purpose [as per the CBDT's Circular No.395 dated 24.09.1984], as is promotion of trade and commerce, even when the beneficiaries are confined only to a particular line of trade or commodity [the decisions of the Hon 'ble Supreme Court in the cases of Bharat ***Diamond*** *Bern '. 3 126 Taxman 365 (SC Sural Art Silk Cloth Manufactures* ***1980] 121*** *ITR I (SC)*

q) At the same time, the mere fact that remote and indirect benefits are derived b_ members of the public will not be sufficient to make the purpose a "charitable purpose " under the Act. some of the judicial precedent decisions of the Hon 'ble Courts which help clarify the meaning of the expression "charitable purpose "for the purposes of Income-tax are cited below (emphases in ***bold italics*** *provided* ***by*** *me):*

*`(i) The word 'Charity' connotes altruism in thought and action. It involves an **idea of**' b**enefiting others rather than oneself** [Andhra Chamber of Commerce [1965] 55 ITR 722 (SC)]*

*(ii) A commercial concern is not an object of relief of the poor on the ground that it provides employment. The object should **provide relief directly and not indirectly** [Yograj Charity Trust [1976] 103 ITR 777(SC)]*

*iii) For a trust to be accepted as a charitable trust for the purposes of exemption, it is necessary that the **objects should be specific]** so as to confirm to the requirement of income tax law in this regard. Where they are **too wide, the trust may not qualify for exemption** [Gangabai Charities [1992] 197 ITR 416 (SC); Assembly Rooms [2000] 241 ITR 76 (Mad)]*

*iv) The \onus\ to prove that objects are of charitable nature is **on the** assessee [Indian Chamber of Commerce v. CIT [1975] 101 ITR 796 (SC)].*

*v) The establishment of an industrial or commercial concern **ordinarily envisages a profit making activity** and cannot be said to be a charitable purpose on the ground that it will **provide employment to some poor persons** [Dharmaposhanam Co. [1978] 114 ITR 463 (SC); Jaipur Charitable Trust [1971] 81 ITR 1 (Del); Yogiraj Charity Trust [1976] 103 ITR 777 (SC)].*

*(vi) To serve a charitable purpose, it is **not necessary that the object should be to benefit the whole of mankind]** or all persons in a particular country or state. It is **sufficient if the intention to benefit a section of the public** as distinguished from a specified individual, is present. However, the section of the **Community sought to be benefited must be sufficiently defined and identifiable by some common quality of a public or impersonal nature** [Ahmedabad Rana Caste Association [1971] 82 ITR 704 (SC)].*

*(vii) An institution set up with the o**bject of promoting trade or commerce]** is a charitable institution as it **promotes common good through enhancement of business**. [Federation of Indian Chambers of Commerce & Industry [1981] 130 ITR 186(SC); Bar Council of Maharashtra [1981] 130 ITR 28 (SC)].*

*(viii) However, an institution which **merely regulates or enhances the business of its members** is not a charitable institution. Thus, where the proprietors of hotels formed an association for obtaining articles on permit for supplying them to members and protecting their business interest, the association was held not to be a charitable one for the purpose of the Act. [Madras Hotels Association [1978] 111 ITR 241 (Mad.)]*

r) A contextual analysis of the legal categorization of the activities in the instant case into "charitable " and "non-charitable " will yield the following results:

*(i) There Appellant's activities **appear to have an idea of benefiting others** (the rural poor and the indigent) but whether the same overrides the converse idea of benefitting oneself (the Appellant itself) is unclear;*

*(ii) The loans/payments are made **directly** to the target population (viz., the rural poor and the indigent) but whether the latter have actually benefited and whether the intention of the Appellant was to only let the latter benefit is unclear;*

*iii)) Clause v) of the object-clauses of the Appellant - which is the final clause -reads thus "to **promote and manage Self Help Groups of poor** women/men through their Solidarity Groups and **raise loans for further lending to them** from various organization like Rashtriya Mahila Kosh SIDIB with a view to providing collateral free credit for suitable livelihood option for them". **These objectives can be called semi-specific, neither too generic nor desirably specific.** Also, in realizing these objectives, the Appellant **has raised loans for further lending to poor women/men,** but importantly, **not**_ from the **organizations as referenced above with a view towards providing collateral free credit.** Most of the Appellant's borrowing and lending transactions are loaded with an interest component. Therefore, to categorize the Appellant's micro-finance activities under the definitional head **"relief to the poor"** - as has been elaborated above - would be less than honest. There is also no other object-clause in the Appellant's list of objects that deals with micro-finance or money lending.*

*iv) The Appellant has **not discharged its onus of proving that its activities are charitable** in nature under the roof **"relief to the poor"** when seen in the light of the first proviso to Section 2(15) of the Act.*

(v) The Appellant cannot be stated to be or considered as an industrial or commercial concern although it has been earning profits consistently through its activities.
*(vi) In the object-clause v) above and through its explanations about the nature and substance of its micro-finance activities, **the community sought to be benefited has been sufficiently defined and identified** by the Appellant **by some common quality of a public or impersonal nature,** by defining and identifying these as the "rural poor, backward, etc. "*

*(vii) The Appellant can be considered to be **"promoting common good"** through the enhancement of its activities in its target area of activities;*

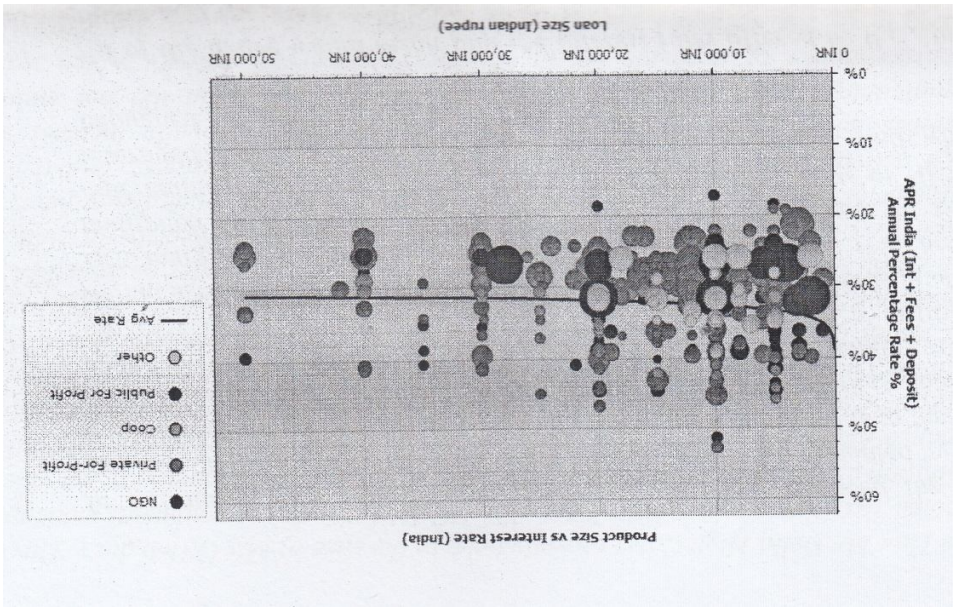
*(viii) The Appellant's activities cannot be held to be **"merely regulating or enhancing the business of its members"***

s) With the changing role of not-for-profit entities from being players of "vanilla philanthropy" to becoming game changers in the country's social and economic growth, many operate in the role of catalysts in various fields like social enterprise, social innovation and institutional philanthropy, and newer forms of corporate engagements through corporate social responsibility and social business are evolving. We therefore, need *to sometimes look beyond the existing framework governing these entities, i.e. beyond the prejudiced opinions of the past based on the essence of traditional forms of charity-functioning. Whether the scope of trade, commerce or business involved in charitable activities is commercial, quasi-commercial or purely charitable in nature, is an extremely debatable topic and needs to be decided with sensitivity and finesse after obtaining a nuanced understanding about the facts and circumstances of each case considered.*

t) From all the above, it cannot be stated that the Appellant's micro-finance activities fall under by the disallowance provisions of the first proviso to Section 2(15) of the Act and the CBDT's Circular No. 11 of 2008 dated 19.11.2008. Since the answers to the two questions respectively stated at Clauses 7(g)(i) and 7(g) ((H) above are not in the affirmative, the attendant questions stated at Clause 7(g) (Hi) as to whether its micro-finance business activity was incidental to the attainment of the objects of the Appellant; and whether separate books of accounts have been maintained in respect of such business activity are not relevant.

u) However, to hold that the micro-finance activities are per se not charitable in nature, we would need to prove that these: a) do not drive the ***advancement of any other object of general public utility;*** *and b) there is* ***no commercial intent, content or substance*** *in its these activities. Although the Appellant has in its submissions stoutly denied that its activities fell within the wide and generic definitional ambit of* ***"advancement of any other object of general public utility",*** *and foreclosed its options by selecting to place itself within the more selective definitional ambit of* ***"relief to the poor"*** *(which is clearly not applicable, as proved above, and is rejected) with the objective of wriggling out of the tricky question of business-commercial purpose and profit intent, it is apparent that we need to consider these seriously if a full and complete resolution of the dispute is to be obtained.*

v) One promising lead we have is the strength of Shri. Mohammed Yunus (referred to supra) that the differential interest earned by the Appellant falling within the range 10-15% is within the pale of acceptability in the world of micro-finance and micro-credit. The said differential margin takes into account the higher logistical, client servicing and repayment monitoring costs that represent actual, the costs involved in the micro-managing of multiple smaller amounts and the need for premiums to absorb the additional risks created by the higher uncertainties involved in the repayment abilities of the target segment (the rural poor, et al). The range of the amounts of loans provided (the loan size), the urban-rural divide, the duration of the loan, the purpose of the loan, etc. are important driver-parameters that help decide the interest rate quoted by the micro-finance provider to the recipient. An overview-chart obtained through a recent comprehensive study made in this regard that computed the of the Annual Percentage Rates (APRs) of the interest charged from the relevant data collected from several Indian microfinance players (which includes data collected from the Appellant being People's Forum), by MFTransparency. a leading data aggregating and monitoring agency, as extracted from its website http://data. mftransparency. org/data/ countries/in/data/ is reproduced below:



(NB: The APR is the annual cost of a loan to a borrower. Like an interest rate, the APR is expressed as a percentage of the loan amount, but unlike an interest rate, unlike an interest rate, the APR includes other charges or fees to reflect the total cost of the loan].

It can be readily seen that the APRs range [depending on the various driver-parameters but principally along the product (loan) size] from about 18.5% to 52%. ***The table containing the comprehensive data on which the chart below has been prepared is provided as an Appendix to this order.*** *The data may not be specific to the F.Y. 2009-10 under reference but can still be considered to be broadly indicative.*

w) The average APR on all of the 483 loan packages considered is computed as ***31.53%*** *while the standard deviation is 0.55175% which provides for a reliably narrow range. The data for the Appellant is extracted from the table in the Appendix and presented below:*

Product Purpose	Loan Amount (min)	Loan Amount (max)	Quoted Min Rate	Quoted Max Rate	Num Clients	% Sample Urban Loan Amount	Sample Term	APR India Details (Int + Fees + Deposit)

PEOPLE'S FORUM	SHG finance	Business. Emergency	8.000	15.000	12.0%	12.0%	46,865	10%	8000 months	16	29.4% Details
PEOPLE'S FORUM	SHG Finance	Business, Emergency	8.000	15,000	12.0%	12.0%	46,865	10%	1000	16 months	29.5% details
PEOPLE'S Business,	SHG Fin	Business Emerg.	8.000	15,000	12.0%	12%	46,865	10%	12000 monhs	16	29.1% details

It is readily seen that the urban component of the Appellant's loan recipient base of Self Help Groups (SHGs) is low at 10%> while the quoted interest rate is uniformly 12%, with the ***APR*** *computed at 29.4% which is* ***lower than the national average of*** *31.53%. Separately, the averages of the quoted minimum and maximum rates of interest of all the micro-finance players are computed at 17.57% and 17.78% per* ***annum*** *respect h too are significantly higher than the average rate of 12%. per* ***annum quoted by the Appellant. Further*** *in-depth analyses can be conducted on the date to allow and adjust for differences along the other driver –parameters such as the target population, purpose of the loan, tc., but the results will be seen to be not significantly different.*

x) In February, 2014, The Reserve Bank of India (RBI) removed the 26% interest rate cap on the loans given by the microfinance companies regulated by it and ***linked the interest rate to the cost of funds,*** *providing a greater leeway to the lenders from April 1.* ***As a result, such lenders will be able to charge more than 26% if their cost of borrowing from banks is higher.*** *On the other hand, the lending rate will fall if the cost of borrowing goes down. RBI said the microfinance institutions (MFIs) should* ***arrive at the lending rate by calculating their cost of funds plus a maximum 10% margin*** *or the average base rate of the five largest commercial banks by assets multiplied by 2.75 times, whichever is lower. This again goes to show that the differential interest rates earned by the Appellant in the range of 10.5% represent leveraged earnings by the Appellant that is not abnormal, and which, for the impugned FY. 2009-10, are lower than the RBI-prescribed rate.*

y) ***All of the above would*** *mean that the interest rates offered by the Appellant to its* ***target*** *segment (the* ***rural*** *poor, et al) that ranges between 10.5% **to** 14% **can** be held as not driven by commercial motivations and calculations.*

z) It *can also be derived that the activity of micro-finance and micro-credit per se, as directly objectified and implemented by the Appellant targeting weaker economic sections of society falls within the definitional ambit of* ***"advancement of any other object of general public utility*** *". The lack of banking facilities in remote rural locales is still a pressing problem in the country and a matter of much debate. To state an example, Rule 6DD(g) of the Income-tax Rules allows for payments in cash in respect of work carried out in such places, providing a valuable exception to the general proscription to the contrary u/s 40A(3) of the Act. The area of Developmental Economics holds that one of the principal factors that drives balanced economic progress in a society is ready access to capital and funds to all segments of society so that the production function in the underprivileged segments can take off after their basic needs are addressed. Recent Governments at the Central level have commenced the disbursement of moneys through direct cash transfers (as also stated as being continued in the Budget Speech dated 28.02.2015 of the Hon'ble Union Finance*

Minister) to the accounts of members of the targeted weaker sections which supports the principle above. "Charitable activity" is known, stated and held under the statute to be inclusive in definitional meaning and substance; likewise, the residual limb-clause u/s 2(15) of the Act being ***"advancement of any other object of general public utility"*** *too has a wide and genetic ambit.* ***The activities of micro-finance and advancing microcredits, which for part of the object-clauses of the Appellant society, would therefore fall within the definition of advancement of general public utility.***

aa) In the distinctive limbs situate within the definition of "charitable activity" u/s 2(15) of the Act, while the dominant category-limbs 1 to 5 represent a much narrower group of charitable entities with distinctive nature of work, the residual category number 6 (viz., advancement of objects of general public utility) is more like an accumulation of various charitable activities with no clear distinction between main and ancillary objectives. However, to fall within the ambit of the residual category, the entity should not have any separate, independent or incidental activity which could be classified as business. ***The business activity should be intrinsically woven into the charitable activity undertaken by such an entity.***

bb) The Hon 'ble Delhi High Court recently held, in the case of M/s GSl India v. Director Income Tax (Exemption), 2013-TIOL-772-HC-DEL-IT, that amendments made to the definition of 'charitable purpose' under Section 2(15)~ of the Income-tax Act vide the Finance Act, 2008 does not disqualify any residual category (general public utility) charitable entity from conducting business activity which is intrinsically connected with the charitable activity, and that the carrying out of such business activity does not result in denial of tax exemption status. The case involved was that of GSl, registered as a charitable entity under the residuary clause of section 2(15) of the IT A being general public utility that was granted exemption under Section 12A and under Section 10(23C) of the Act from the A.Y. 1996-199[7] onwards. In 2008, the Director of Income Tax Exemption/ denied the said registration on the grounds that such activities were in the nature of trade, commerce or business, and that the incomes earned from the use of IPR for consideration ^royalty income/ were significantly higher than the direct costs. Further, GSl India did not maintain separate books of accounts for the business/commercial activity which was in violation of the specified conditions of Section 10(23C)(iv). In this regard, the petitioner approached the Delhi HC to issue mandamus directing the tax authorities to grant registration.

cc) With *regard to the scenario prior to 2008 amendment, the Hon [!]ble Delhi High Court* ***applied the test of predominant*** *object of activity enunciated by the Hon'ble Supreme Court in ACTT v* ***Swat*** *Cloth Association [supra], to determine* ***whether the primary object*** *of the activity involved in carrying out the object of* ***general public*** *utility mis to -serve the charitable purpose or to earn profit. In case* ***where the predominant*** *object of the account charitable purpose and*
not to earn *proof:, U does not lose its character of a charitable purpose merely because some profit arises from such activity. Therefore, according to the Hon'ble Court, any moneys earned from business held under trust or otherwise to feed charity would not disentitle or negate the claim of engagement in charitable purpose defined under Section 2 15 For the application of Section 2(15) to charitable entity engaged in "any other object of general public utility ", various Hon 'ble Courts have earlier held profit motive' and 'an element of reciprocity in business transactions' as important elements that needed to be factored into while understanding the scope of economic*

activity undertaken by such entity. The Hon'ble Delhi High Court, keeping in view the aforesaid determinants, explained that while a business activity has an important pervading element of self-interest, charity or charitable activity is the anti-thesis to activities undertaken with a profiteering motive. To determine whether a residual-category charitable entity is engaged in any business activity, ***the*** *issue of* ***self-enrichment and self-gain should be carefully looked into.*** *A small contribution by way of fee should not emulate the transaction or the given activity to be commercial in nature.*

dd) In its above decision, the Hon'ble Delhi High Court laid down the 'charitable activity test' to determine whether the legal terms "trade, commerce, or business " in Section 2(15) means activity with a view to make or earn profit. The four indicators as laid down by the court are: ***(a) profit motive is a critical factor to discern*** *whether* ***an*** *activity is business,* ***trade or commerce;*** *(b)* ***charitable activity should be*** *devoid of selfishness or illiberal* ***spirit;*** *(c)* ***the underlying propelling motive is not for*** *commercial* ***exploitation but general public good; and*** *(d)* ***fee charged if any*** *should be nominal and based* ***on commercial principles.*** *Applying the above tests, the Hon 'ble Court opined that a mere levy of fee is neither reflective of business aptitude nor indicative of profit oriented intent, and held that when the propelling motive is not to earn profit but "general public good", the charitable entity will fail the business test and meet the touchstone of charity. It was further held that merely charging fee on IPR sans profit motive does not amount to commercial exploitation.* ***Moreover, when the fee charged is commensurate and based on commercial or business principles, the charitable activity test is fulfilled.*** *The Hon 'ble Court ruled that as the primary or pre-dominant activity is charitable in nature, the nominal fee charged is important to cover the operational costs of the petitioner. Thus, keeping in view the 'charitable activity test' it was held that the business activity of the petitioner is integral to its charitable purpose and* ***the question of requirement of separate books of accounts for the business activity was redundant.***

ee) A careful consideration of the facts in the instant case of the Appellant would reveal that the decision of the Hon 'ble Delhi High Court referenced above is applicable on most counts. Importantly, the differential interest rates charged by the Appellant and held by the AO to be commercial would appear to be nominal and governed by commercial principles, and cover principally the higher operating expenses ***owing*** *to the high risk-factors the loans were imbued with owing to* ***the lack of credit****worthiness of the target segment. Further, the Appellant's primary and predominant objectives unambiguously strive to promote the general public good through the advancement of public utilities by disseminating financial power amongst the underprivileged lot of the nation's citizenry. These cannot be stated to be selfish or bathed in or contaminated by an illiberal spirit. The profit that has emerged in consequence can be considered as incidental (to the charitable purpose and activities being carried out) in nature.*

ff) It is also to be noted that in the cases of organizations like Spandana, Disha India Micro Credit, etc. (supra) that professedly carry out micro-finance activities, the Department has granted them the necessary certification under the Act of being charitable in their intents and purposes, and when these were questioned in assessment, such charitable intent and purpose have been upheld by various authorities including various benches of the ITAT. The Commissioner of Income-tax [CITJ, Sambalpur has in a few cases under his jurisdiction granted registration u/s 12AA to organizations that professedly carry out micro-finance activities. The case of

Janlaxmi Social Services vs. DIT (Exemptions), Bangalore cited by the AO is distinguishable on facts in that the Appellant in that case had extended the financial assistances to the traders not to the SHGs or poorer women, as it professed to do. It is therefore important that the Government and the tax authorities speak in one voice on the issue and take a principled stand based on economic principles, the contextual factual matrix and the legal foundation.

gg)In consequence, I hold that the activities of micro-finance and microcredit being carried out by the Appellant are of the nature and definition of "charitable activity" as defined u/s 2(15) of the Income-tax Act being non-commercial in intent, purpose and content (as mandated by the amended first proviso to the said Section) and also since they fall within the definition of advancement of general public utility. The Income-tax exemptions offered u/s 11 and 10(23C) of the Act clearly apply in favour of the Appellant. The enhancement made by the AO to the taxable income of the Appellant of Rs. 56,55,297 being the total income/profits generated from the micro-finance activities is directed to be deleted. Grounds Numbered 2 and 3 preferred by the Appellant are accordingly allowed.

In the year under reference, the appellant's APR is 26.6% which is lower than average APR of India at 27.2%. Since the issue is already covered in appellant's own case, I am inclined to hold that the micr5o financing activities as carried out by the appellant are charitable and eligible for exemption u/s 11. In the result, the ground Nos.2 & 3 of the appellant are accepted."

7. Before me, ld D.R. relied on the order of the Assessing Officer, whereas the ld A.R. of the assessee relied on the order of the ld CIT(A). Ld A.R. of the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of this Bench of the Tribunal in the assessee's own case in ITA No.81/CTK/2016 for the assessment year 2011-12 order dated 30.11.2016.

8. In the rejoinder, ld D.R. agreed to above submission of ld A.R. of the assessee.

9. I find that for assessment year 2011-12, the Tribunal while adjudicating the issue held as under:

".8. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts are that the assessee is a society registered under section 12A of the I.T.Act. During the year under appeal, the assessee was, inter alia, engaged in the activity of "micro finance". In this activity, the assessee secured loan from banks and advanced loan to Self Help Groups as also carried out in earlier years. The assessee generated surplus of Rs.9,28,068/- and also profit from income generation programmes of Rs.24,36,177/- aggregating to Rs.34,95,930/- from these activities during the year under appeal. The Assessing Officer not allowed deduction u/s.11 of the Act on the ground that the activity was carried out in commercial lines.

9. On appeal, ld CIT(A) held that the surplus generated is eligible for deduction u/s.11 of the Act. In holding so, ld CIT(A) followed the orders of his predecessors passed in the case of the assessee itself for the earlier assessment years 2009-10 and 2010-2011.

10. Before me, ld D.R. could not point out that the orders passed in the earlier years by the ld CIT(A) were reversed by any higher authority on an appeal filed there against. I further find that in view of the decisions of the Tribunal in the case of Assistant Director of Income Tax (Exemptions) vs Bharatha Swamukhi Samsthe, (2009) 28 DTR 0113 (Bang) and Spandana (Rural & Urban Development Organisation) vs Assistant Commissioner of Income Tax (2010) 48 DTR 0153 (Vis. Trib), the activity under consideration falls under the expression "relief to poor" as envisaged under section 2(15) of the Act. Therefore, in my considered view simply because an activity undertaken in commercial line in pursuance to furtherance of the object of society to poor does not make the activity non-charitable within the meaning of section 2(15) of the Act. In the circumstances, I do not find any good reason to interfere with the conclusion of the ld CIT(A). Hence, this ground of the revenue is dismissed."

10. The facts being identical, respectfully following the precedent, I do not find any infirmity in the conclusion of ld CIT(A) to interfere. Hence, the grounds taken by the revenue are dismissed.

11. In Ground No.4 of the appeal, the grievance of the revenue is that the ld CIT(A) erred in deleting the disallowance of provision of loan loss amounting to Rs.4,37,714/- as the same has neither been expended nor any amount loan has become bad during the previous year.

12. Brief facts are that the Assessing Officer observed that the provision of loan of Rs.4,37,714/- cannot be allowed as expenditure because the same has neither been expended nor any amount of loan has become bad during the previous year. It is merely a provision for future contingencies. The provision has been made in anticipation of loan loss in future, therefore, same is not an allowable expenditure.

13. On appeal, ld CIT(A) held as under:

> "Ground Number 4 preferred by the Appellant relates to the issue of a *"loan loss provision"* of Rs. 4,37,714 which was allowed by the AO on account of the same being a mere provision (with a corresponding credit entry in the Balance Sheet) and not an expense met and paid out in cash that had transited the financial system of the Appellant.
>
> a) The Appellant has argued that as per the provisioning norms of the Reserve Bank of India (RBI), 0.5% of the good loans outstanding were to be provided for while calculating the loan outstanding amount. The loans given by the Appellant were obtained as loans from the banks/financial institutions that were covered under the RBI's norms. The implication is that if the said provision was not made, the Appellant would not obtain the loans to carry out its charitable micro-finance activities. Therefore the Appellant provided the 0.5% of the loans [Outstanding as provisions and claimed the said amount of Rs. 4,37,714 as expenditure.
>
> b) It was also submitted that the loan facilities extended by the Appellant represented very high risk payouts, since the loans did not cover any security/collateral and were provided to the weaker sections of the people of the society. The chances of recovery were significantly low and close to remote in many cases. Therefore the provision for loan loss was allowable as per the prudent norms of the banks/financial institutions.
>
> c) On the above issue, the Appellant's submissions are accepted. The provision is made as it is incidental to its charitable activities, and not doing so would have choked and/or cut off the life-line flow of loan funds to the Appellant from the banks and financial institutions. Besides, since the incomes generated and earned by the Appellant are held in this order to be tax-exempt u/s 11 of the Act, any tax that may result out of the disallowance of the impugned amount would be notional in nature and not collectible by Revenue. The AO is directed

> to permit the Appellant to carry out its accounting in accordance with the norms fixed by the RBI and made operational on account of the transactions required to be had by the Appellant with the banks/financial institutions, which would mean that the impugned amount of Rs. 4,37,714 is directed to be retained as an expense deduction in the appellant's Income and Expenditure statement. The Ground of Appeal number No.4 preferred by the Appellant is allowed."

14. Ld D.R. relied on the order of the Assessing Officer.

15. I find that the issue is no longer res-integra. The Hon'ble Delhi High Court in the case of Director of Income Tax (Exemption) vs. National Association of Software and Services Companies, (2012) 345 ITR 362 (Del) held as under:

> "That the income of the trust available for application of charitable purposes in India should be computed in accordance with the strict provisions of the Act but should be computed in accordance with commercial principles. Under commercial principles it has always been recognized that a provision, reasonably made for a loss or an outgoing, can be deducted from the income if there is apprehension that the debt might become bad. There was nothing brought on record to show that the provision was not made bonafide. While computing the income available to the trust for application to charitable purposes in India in accordance with section 11(1)(a) the provision for doubtful debts must be deducted."

16. In the instant case also, the Revenue has brought no material on record to show that the provision of bad debt of Rs.4,37,714/- was not bonafide. Therefore, respectfully following the above quoted decision of Hon'ble Delhi High Court, I find no good and justifiable reason to interfere with the order of the CIT(A), which is hereby confirmed. Hence, this ground of appeal of the revenue dismissed.

17. The cross objection filed by the assessee is in support of the order of the CIT(A).

18. Since, I have upheld the order of the CIT(A), the cross objection filed by the assessee has become infructuous and hence, dismissed.

19. In the result, the appeal filed by the revenue and cross objections filed by the assessee, both are dismissed.

Order pronounced in the open court on 18 /01/2017 in the presence of parties.

Sd/-

(N.S Saini)
A**CCOUNTANT MEMBER**

Cuttack; Dated 18 /01 /2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant :ACIT (Exemptions), Aayakar Bhavan, Bhubaneswar.
2. The Respondent. M/s. Peoples Forum, Plot No.HIG 44, Dharma Vihar, Khandagiri, Bhubaneswar
3. The CIT(A)-3, Bhubaneswar.
4. CIT, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.

//True Copy//

BY ORDER,

ASST.REGISTRAR,
ITAT, Cuttack