

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.763/Bang/2016
Assessment Year: 2009-10

M/s. Janodaya Trust No.3, 9 th Cross, 5 th Main Jayamahall Extension Bangalore-560 046 PAN NO : AAATJ0800F	Vs.	ACIT (Exemptions) Circle-17(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal Borkar, A.R.
Respondent by	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	13.01.2021
Date of Pronouncement	:	16.02.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against the order dated 2.2.2016 passed by Ld. CIT(A)-14, Bengaluru and it relates to the assessment year 2009-10.

2. The assessee is aggrieved by the decision of Ld. CIT(A) in confirming the rejection of exemption u/s 11 claimed by the assessee. The effective grounds of appeal of the assessee read as under:

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1. *The CIT(A) grossly erred in ignoring the facts that the appellant was granted registration under section 12A of the Act and the same was intact even as on date and therefore he ought to have appreciated that the additions as made denying the benefit of Section 11 was bad in law.*
 2. *The CIT(A) further grossly erred in ignoring the binding decision of this Hon'ble Tribunal in the case of Asst. Director of Income-tax (Exemptions) vs. Bharatha Swamukhi Samsthe dt. 24.12.2008 in ITA No.1121/Bng/2008 (A.Y. 2005-06) with regard to micro finance activities of the appellant trust.*
 3. *The CIT(A) further grossly erred in seriously ignoring the binding circular relied on by the appellant viz., circular no.11/2008 F.No.134/34/2008-TPL dated 19.12.2008 wherein it has been categorically clarified that even if a trust carries on commercial activity incidentally, the same is not violative of section 11(4A) of the Act.*
 4. *Without prejudice, the CIT(A) ought to have appreciated that the case of the appellant was mainly providing relief of the poor since the appellant trust mainly works for upliftment of under privileged women/destitute/women prisoners released from jail etc and therefore the case of the appellant is covered under section 2(15) clause (i) itself and accordingly he ought to have reversed the disallowance made by the assessing officer.*
3. The facts relating to the case are stated in brief. The assessee is a charitable Trust and it was granted registration u/s 12A of the Income-tax Act,1961 ['the Act' for short] on 27-07-1987. The assessee filed its return of income for the year under consideration declaring nil income, after claiming exemption u/s 11 of the Act. During the course of scrutiny proceedings, the A.O. noticed that the Trust assessee has amended its Trust deed by expanding its objects. The new object enabled the assessee Trust to undertake microfinance activities. The A.O. noticed that the assessee has borrowed funds from banks and financial institutions @ 9.5% to 11.5%. It has charged interest @ 14% on the loans given by it to self-help group, women etc. Further, it has collected charges of Rs.200 to Rs.300/-. Accordingly, the A.O. took the view that the effective rate of interest charged by the assessee would work out to 17% to 18%. The A.O. also noticed that the income from micro

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finance activity has increased from year to year since financial year 2003-04. Accordingly, the A.O. took the view that the activities of the Trust have shifted majorly to micro finance activities. He also observed that no prior permission of DIT exemption appears to have been taken in respect of the amendment made to the objects of the Trust.

4. The assessee is running a women hostel as per the original objects. The A.O. deputed an inspector to the hostel, who reported that the hostel is being run on commercial lines and the trust is charging rent at prevailing market rate. He also reported that the hostel was started to accommodate poor or destitute or homeless women, but such kind of women are staying there. Inspector also reported that the Trust is charging Rs.10,000/- as advance and Rs.5,300/- p.m. for twin sharing room and Rs.4,000/- p.m. for rooms occupied by 4 persons. Accordingly, the A.O. took the view that the assessee is running the women hostel on commercial lines even though the premises were allotted by BDA for running the hostel for poor and destitute women. The AO also observed that the assessee has not obtained permission of RBI for conducting micro finance activities and it also did not get permission of BDA for using its premises for micro finance activities.

5. The A.O. also took the view that the micro finance activities carried on by the Trust are hit by the amendment made to section 2(15) of the Act, since gross receipts has exceeded the prescribed limit. Accordingly, he took the view that the activities of the assessee cannot be treated as charitable in nature. He also expressed the view that the assessee is generating surplus year after year, which is not possible if the assessee is involved in relief of poor. Accordingly, the A.O. rejected the claim of exemption u/s

11 of the Act. The A.O. also observed that he has made a proposal for cancellation of registration u/s 12A of the Act to Director of Income Tax (Exemption). Accordingly, he denied exemption u/s 11 of the Act and computed total income of the assessee by Rs.81.69 lakhs.

6. The Ld CIT(A) confirmed the assessment order passed by the AO and hence the assessee has filed this appeal before us.

7. The Ld. A.R. submitted that the assessee is engaged in the activity of providing relief to poor, particularly for poor and destitute women. Its charitable activities, inter alia, include running a women's hostel at concessional rates. As per the report of the Inspector of Income tax, the rent charged by the assessee was in the range of Rs.5300/- & Rs.4000/- per month depending upon number of beds in a room. The AO has held that the rates charged by the assessee are at par with commercial rates, even though the report of inspector was not confronted with the assessee. The Ld A.R, however, submitted that the above said rate includes room rent, 3 times meals, water and electricity. The Ld A.R submitted that the AO did not consider the break-up details of the rent. Accordingly, the Ld. AR. submitted that the rent charged by the assessee cannot be considered to be at commercial rates.

8. The Ld A.R submitted that the poor and destitute women would not be able to avail loan from banks and financial institutions at lower rate of interest, as it would be difficult for them to comply with the banking norms. Hence, in order to enable them to avail loans at lower rates of interest, the assessee has acted as a nodal agency in obtaining loans for them. The assessee has availed loans from banks and financial institutions for interest at the rates

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ranging from 9.5% to 12.5%. In turn, it has given loan to the members @ 14%. The Ld. A.R. submitted that extra interest charged by the assessee is only to safe guard its interests, i.e., for meeting the administrative expenses, possible defaults/bad debts and other allied expenses. There is no profit objective involved in giving loans to the beneficiaries. She submitted that the rate of interest of 14% charged by the assessee cannot be considered as exorbitant interest as observed by the AO, as the same is equal to the normal rate of interest charged by commercial banks. The Ld. A.R. submitted that the A.O., without giving any basis has observed that the effective rate of interest would work out to 17%/18%, which is against the facts. Accordingly, she submitted that the case law relied upon by the AO is distinguishable. The Ld. AR. relied on following case laws to contend that micro finance activities would also fall under the category of relief to poor:-

- a) ITA No.1121/Bang/2008 dated 24.12.2008 in the case of ADIT Vs. Bharathaswamukhi Samsthe
- b) ITA No.265/CTK/2017 dated 24.9.2018 in the case of ITO Vs. Adhikar

9. The Ld. A.R. further submitted that the AO has taken the view that the micro finance activities fall under the category of carrying of trade, commerce or business and hence the proviso to section 2(15) of the Act would apply to the assessee, since the gross receipts from the above said activity has exceeded the limit prescribed in the proviso. The Ld A.R submitted that there is no profit motive involved in carrying on micro finance activities and hence it would not fall under the category of trade, commerce or business mentioned in the proviso to sec. 2(15) of the Act. Further, the assessee is a Charitable Trust providing relief to the poor. The proviso to sec. 2(15) shall apply only to those trusts which carry on

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objects of general public utility. Hence the proviso to sec. 2(15) would not apply to it. Further, the Ld. A.R submitted that the AO has also observed that the assessee is making surplus year after year. She submitted that surplus generated by the assessee year after year would not dis-entitle it from claiming exemption u/s 11 of the Act, when the surpluses are used for the objects of the trust. In support of above said propositions, the Ld. AR. placed reliance on the following case laws:-

- a) CIT Vs. Lucknow Development Authority (2014) 98 DTR 0183 (Allahabad)
- b) Ahmedabad Urban Development Authority Vs. ACIT (2017) 396 ITR 323 (Gujarat)

10. The Ld. A.R. submitted that the AO has also expressed the view that the amendment made by the assessee to the object clause of the Trust deed was not intimated to DIT (E) and his approval was not obtained. However, the said amendment is only a supplement to the main objective of providing relief to poor women. Hence, non-intimation of the same to DIT(Exemption) would not result in denial of exemption u/s 11 of the Act. In support of this proposition, the Ld. A.R. placed her reliance on the following two case laws:

- a) ITA No.86/BNG/2012 dated 14.9.2012 in the case of Krupanidhi Educational Trust Vs. DIT(E),
- b) ITA No.5948/Mum/2012 in the case of ITO(E)1(1), Mumbai Vs. Bhansali Trust, Mumbai dated 31.8.2015.

11. Accordingly, the Ld. A.R. submitted that none of the reasons given by the AO to deny exemption u/s 11 was justified. Accordingly she contended that the the Ld. CIT(A) was not justified

in confirming the rejection of exemption claimed by the assessee u/s 11 of the Act.

12. The Ld. D.R., on the contrary, placed heavy reliance on the order passed by the A.O. The Ld D.R submitted that the assessee was charging rent in its women's hostel at commercial rates. He further submitted that the A.O. has observed that the effective rate of interest charged by the assessee under micro finance activities carried on by the assessee would work out to 17% to 18% and hence, the same would not fall under the category of relief to poor. Accordingly, the Ld. D.R. submitted that the assessee would be covered by the proviso to section 2(15) of the Act as the micro finance activity would fall under the category of trade, commerce or business. The Ld. D.R. submitted that the Chennai bench of Tribunal in the case of ITO Vs. Kalanjain Development Financial Services (ITA No.625/CHE/15 dated 2.12.2014) has held that the activity of providing finance at commercial rates cannot be considered as charitable activity. He submitted that the Bengaluru bench of Tribunal has also expressed an identical view in the case of Janalakshmi Social Services Vs. DIT (2009) 33 SOT 197 (Bang). The Ld. D.R. further submitted that the assessee is earning surplus year after year and it would show that the main objective of the assessee is not charitable in nature.

13. In the rejoinder, the Ld. A.R. submitted that the assessee has been carrying the very same activities in the past and also in the subsequent years. The A.O. has accepted the activities of the assessee as charitable in nature in those years. Only during the year under consideration, the AO has taken different view and denied exemption u/s 11 of the Act. She submitted that the activities carried on by the assessee fall under the category of relief

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to poor and the same has been accepted by the AO in the past and in the subsequent years. Hence the AO should not have taken a different view during the year under consideration alone.

14. We have heard rival contentions and perused the record. We notice that the Ld CIT has granted registration u./s 12A of the Act to the assessee accepting that the assessee is a public charitable trust. The original objects of the assessee trust as per Trust deed dated 02-04-1987 read as under:-

“The objects for which the Trust has been created is for Charitable purposes and object of promotion “integral development of people – physical, educational, mental, psychological, economic, social and character development – of deserving and needy people in India”. The activities of the Trust shall be aimed at improving and developing the living conditions and general welfare of the people in India and their environment, including farmers and other indigent people, irrespective of language, race, community, caste, religion or creed.”

Subsequently, it has amended the Trust deed by registering a “Addendum to Trust Deed”, through which following clauses were inserted as paragraph nos. 4.3a and 4.5a:-

“4.3a To facilitate women into mainstream empowerment activities. The Board of Trustees are empowered to promote hostels, production centres, small scale industries, income generation activities, training institutions or centres and entrepreneurship initiatives for economic self-reliance of women.

4.5a The Board of Trustees are further empowered at their discretion to lend the finances raised through loans, for micro

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finance activities of self help groups, women entrepreneurs, associations, societies, registered sanghas and individuals who are the beneficiaries of Janodaya under EDP activities”.

It is pertinent to note that both the above clauses were inserted under the heading “Powers, functions and duties of the Board of Trustees”. Thus the main objects of the trust remain intact and the above said clauses give power to the trustees to achieve main objectives through the above said activities also.

15. 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

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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.

16. The next reason given by the AO is that the assessee is running a women's hostel charging rent of Rs.5,300/- per month for twin sharing room and Rs.4000/- per month for four sharing room. According to the AO, which is based on report given by an Inspector, the above rates are commercial rates. We notice that the AO does not appear to have confronted the inspector's report with the assessee. No comparable cases to prove the above said submission has also been brought on record. In any case, the Ld A.R submitted that the above said rate includes three times meals, electricity charges, water charges etc. Under these set of facts, in the absence of any other comparable case, we are of the view that there is merit in the submissions made by Ld A.R on this issue. Hence do not find any merit in the above said observation of the AO.

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

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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.

19. The next reasoning given by the AO is that the assessee has not got approval from DIT (E) for the amendment made to the trust deed. The AO has also observed that he has forwarded a proposal to the DIT(E) for cancellation of registration granted to the assessee u/s 12A of the Act. The Ld A.R submitted that the AO himself has granted exemption in all the years except the year under

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consideration and further the registration granted u/s 12A also remain intact till date. In any case, there is no dispute with regard to the fact that the assessee was having registration u/s 12A of the Act during the year under consideration. In that case, the proposal of the AO, if accepted, would apply to the future years only. Hence the exemption u/s 11 should not have been denied by the AO for the year under consideration on this reasoning.

20. In view of the above said discussions, we are of the view that none of the reasons given by the AO would enable him to reject the exemption u/s 11 of the Act. Accordingly, we are of the view that the Ld CIT(A) was not justified in confirming the assessment order passed by the AO for the year under consideration. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to grant exemption u/s 11 of the Act to the assessee for the year under consideration.

21. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 16th Feb, 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 16th Feb, 2021.

VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.