

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी', अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, AHMEDABAD**

श्री अनिल चतुर्वेदी, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष ।  
**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER And**  
**SHRI KUL BHARAT, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.2076/Ahd/2014  
(निर्धारण वर्ष / Assessment Year : 2009-10)

Friends of WWB India G-7, Sakar Building Opp.Gandhigram Railway Station Ahmedabad-380 006	बनाम/ Vs.	The Director of Income Tax (Exemption) Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATF 0274 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri J.P.Shah with Shri Sanjay R.Shah, ARs
प्रत्यर्थी की ओर से/Respondent by :	Shri O.P. Vaishnav, CIT-DR

सुनवाई की तारीख / Date of Hearing	05/08/2015
घोषणा की तारीख /Date of Pronouncement	14/08/2015

आदेश / O R D E R

**PER SHRI KUL BHARAT, JUDICIAL MEMBER :**

This appeal by the Assessee is directed against the order of the Director of Income-tax (Exemptions), Ahmedabad [‘DIT(E)’ in short] dated 20/05/2014 passed u/s.12AA(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”). The Assessee has raised the following grounds of appeal:-

- 2 -

*The Appellant being dissatisfied with the order passed by the Director of Income Tax (Exemption), Ahmedabad (learned DIT(E)) u/s 12AA(3) cancelling the registration of the appellant, prefers an appeal against the same on the following amongst other grounds, which are without prejudice to each other.*

1. *The order passed by the learned DIT(E) cancelling the registration u/s 12AA(3) of the Act is bad in law and is liable to be quashed. It is submitted that it be so done now.*

2. *The learned DIT(E) erred in holding that the appellant has violated the twin conditions essential for withdrawing the registration u/s 12AA(3) of the Act i.e. the activities of the trust are not genuine and not carried out as per the objects of the trust. It is submitted that it be so held now.*

*Your appellant submits that it has not violated any of these conditions and hence registration is not, liable to be cancelled.*

3. *Learned DIT(E) erred in disregarding the fact that India Foundation for Inclusive Growth (IFIG) has complete control over Ananya Finance for Inclusive Growth Pvt. Ltd. (Ananya) which had carried out the same microfinance activity in the same way which the Appellant trust would have carried out if such activity would not have been transferred by the Appellant trust. Accordingly, the end use of the corpus donation made to IFIG of Rs.45 crores was made only towards the objects of the trust i.e. for the purpose of microfinance activity.*

4. *The learned DIT(E) erred in not appreciating the fact that apart from microfinance activities, the appellant is also engaged in doing charitable activities in the field of solar energy, water and sanitation and education for female children and hence is essentially engaged in activities relating to poor people. It is submitted that it be so held now and order cancelling registration u/s 12AA(3) be quashed on this ground also.*

5. *Learned DIT(E) has **erred** in law and on facts **in observing and** holding that:*

i. *The assessee has transferred assets worth Rs.45 crores to a group finance company Ananya and the entire money receivable has also been bypassed to the same group finance company Ananya through book entries. The assessee has entered in to an activity whereby the sum of Rs.45 crores has been siphoned off from the trust and this amount of public money is no more available for the activities of the assessee trust.*

- 3 -

ii. *The assessee had never been doing activities of relief to poor women directly but through other organizations and therefore the assessee would be termed only as an organization which is engaged in general public utility and not in relief of poor women.*

iii. *The assessee has obtained loans at an interest from various organizations and has given the same to other organizations at a higher rate of interest for these trusts to carry out relief of poor women. In this regard, it can be clearly stated that the assessee was in fact engaged in the activity of general public utility as it was not directly doing relief of poor women.*

iv. *The argument of the assessee that Ananya's majority shares are with IFIG is not relevant. The company Ananya is not a property held under trust of the assessee trust. The assessee trust has lost assets to Ananya. IFIG is a trust where deed consists of clauses whereby it can buy shares of companies and so it can do speculation and hence it cannot qualify for charitable trust. IFIG is created in this entire scheme to siphon off money.*

v. *In this case the entire money which is supposed to have been given to a group charitable trust has been misused.*

***Your appellant submits that the above findings are contrary to the facts & legal position and hence learned DIT(E) has erred in law and in facts in taking recourse to these findings for the purpose of withdrawing registration u/s 12AA(3) of the Act.***

6. *The learned DIT(E) failed to appreciate that there were legally enforceable rights created by the transfer of undertaking to Ananya, the same was at Arm's length and there was constructive receipt from Ananya and the same was donated constructively to IFIG another charitable trust with the similar object of the appellant trust and hence it could not be said that there was siphoning off of funds.*

7. *The learned DIT(E) erred in giving finding in Para 5.2 and 5.3 of his order that appellant is only an organization which is engaged in the general public utility and not in relief of poor women though in the same para he himself holds that this is not an issue here. Your appellant submits that these findings being not germane to the issue be expunged from the order.*

- 4 -

8. **Without prejudice to above grounds**, Learned DIT(E) has erred in law in withdrawing the registration from AY 2009-10 onwards. It is submitted that if at all order of withdrawal of registration is held to be valid the same should apply from the date of order of such withdrawal of registration.

**Prayer:**

In the facts and circumstances of the case, the appellant prays for the following reliefs:

- i. The order passed by learned DIT(E) cancelling the registration u/s 12AA(3) be quashed or alternatively if it is held to be a valid order the same be made effective from the date of such order only and not for the period prior to such date.
- ii. The observation/findings in para 5.2 and 5.3 of the order as mentioned in ground 7 earlier be expunged and
- iii. Pending the adjudication of this appeal, stay be granted against the operation of the impugned order passed by DIT(E)

Your appellant prays for leave to add, alter and/or amend all or any of the grounds before the final hearing of appeal.

2. At the outset, ld.counsel for the assessee submitted that he does not wish to press ground Nos.2 to 7. The ld.CIT-DR has no objection. In view of the statement made by the ld.counsel for the assessee, ground Nos.2 to 7 are dismissed as not pressed. In view of the statement of ld.counsel for the assessee, ground numbers 1 and 8 requires adjudication.

3. Briefly stated facts are that the assessee-trust is a Society. It was registered u/s.12A/12AA of the Act. The DIT(E) issued a notice dated 31/03/2014 calling upon the assessee-trust as to why the registration be

- 5 -

not cancelled. In view of the fact that during the assessment proceedings for A.Y. 2011-12, it was noticed that the trust had transferred assets worth Rs.45 crore to a group finance company and the amount so receivable was again given back to the same group finance company through book entries. It was therefore seen that the assessee had siphoned off assets worth Rs.45 crore to a group finance company which actually belonged to the public as the same were created through donations and income-tax exemptions in the hands of the assessee-trust.

4. The ld.counsel for the assessee submitted that DIT(E) was not justified in cancelling the registration. The ld.counsel for the assessee has also filed gist of arguments in the form of written submissions. The written submission so filed were taken on record. The ld.counsel for the assessee reiterated the submissions and placed reliance on various case-laws. The written submissions filed by the ld.counsel for the assessee are as under:-

*"1. The Assessee Trust came into existence on 03.02.1981 and has been given a Certificate of Registration U/S.12A dated 02.07.1982. The assessment order of the Asst. Year 2008-09 (which was given during the course of hearing) in col.9 records the nature of business of the Trust as "advancement and promotion of poor women" and records in para 3 thereof "The Assessee Trust is an organization established to advance and promote direct participation of poor women in the economy through access to national and international institutions -working for the development of - women in India. The Trust is registered u/s.12A(a) of the I.T. Act vide order No.HQ-III/32(F-7)/81-82/IV/ dated 2-7-1982. The Trust is approved u/s.80G(5) vide letter No.DIT(E)/80G(5)/I 156/03-04 dated 12-11-2003". The Trust came to be assessed*

ITA No. 2076/Ahd/2014  
Friends of WWB India vs. Director of Income Tax (Exemption)  
Asst. Year 2009-10

- 6 -

*u/s. 11. This was a pattern of assessment of the Assessee Trust. The Director of Income Tax (Exemptions) gave a notice to the Assessee Trust dated 31.03.2014 U/S.12AA asking it to show cause why the above registration of the assessee as a Charitable Trust should not be cancelled. The assessee gave a reply dated 21.04.2014. The reply also annexed a message of appreciation of activities of the Trust from Deputy Governor of Reserve Bank of India. Entire message is at page 36 of the paper book of the assessee. Some portion of this message of the Governor is as follows:*

*"In this backdrop, I am delighted to note that Friends of Women's World Banking (FWWB) has done commendable work in addressing the hitherto unmet credit needs of economically active but poor women by providing bulk loans to its partner non-government organizations (NGOs) and Microfinance Institutions (MFIs) in the state of Manipur. This would surely enable women to initiate income-generation and entrepreneurial activities. Indeed, it is heartening to learn that this initiative is changing the lives of families and communities in three districts in Manipur viz., Ukhrul, Senapati and the urban areas of Imphal. The various success stories of women in Manipur engaged in different economic activities, clearly show how the FWWB, working through six partner organizations in the State, has successfully reached out to local communities in supporting women to form self-help groups (SHGs)."*

2. *The Director passed an exhaustive order incorporating the above notice, the summary of the assessee's reply thereto and the arguments of the assessee and his own decision on the matter, which starts from para 5.1 of his order.*

(i) *It is worth noting that the notice of the Director of Income Tax (Exemptions) does not state the assessment year from which he proposed to cancel the registration and he cancels the registration not from the date of the order which is 21.04.2014 but he cancels the registration from the Asst. Year 2009-10.*

(ii) *As recorded in the order u/s. 12AA(3) itself, the objects of the Society are as under:*

(a) *To advance and promote the direct participation of women and their families in the full use of the economy, particularly those women who have not generally had access to services of established financial institution.*

- 7 -

- (b) *To provide loan, guarantees or other securities to banks and other financial institutions to advance loan to women for their business or occupations or other related activities.*
- (c) *To provide technical or other advice and assistance to direct or indirect participant of programmes of the Society.*
- (d) *To serve as a link for women with banking institutions, agencies providing managerial and technical support and agencies related to business activities in general.*
- (e) *To expand and strengthen the network of women who participate in financing and decision making in their economies.*
- (f) *To establish contacts with national and international institution working for the development of women and to build programmes in collaboration with them for the development of women in India.*
- (g) *To act as the Indian Affiliate of Stitching to promote Women's World Banking, New York and to promote its programmes in India.*
- (h) *To provide a forum and platform to take up issues relating to financing and money.*
- (i) *To link to women's groups with existing programmes and schemes of the Government, especially anti-poverty programmes for the benefits of poorest of the poor.*
- (j) *In the broad sense, everything connected with and conducive to the above mentioned purposes shall be part of the objects of the Society.*

3. *The order also records that the Assessee Trust has been carrying on the following activities:*

- (i) *The assessee trust has, in 2007, started the livelihood and enterprise development programme and has supported more than 16 organization working in the under-served areas of the countries. The services provided included financial support in the forms of loans and*

- 8 -

grants for working capital, market linkage and social security awareness.

- (ii) Solar energy programme was stated as a pilot project in the State of Manipur at December, 2009 which was implemented with funding support from SIDBI and partnership with give mutual funds institutions of Manipur.
- (iii) Water and Sanitation programme was started in the year 2000 to support women beneficiaries for renovation of construction of new sanitation facilities and the financial support was taken from National Housing Bank and Michel and Susan Dell Foundation.
- (iv) Micro financing activities was started to meet the basic object of development and uplifting of poor women. These activities were formerly carried out by SIDBI and NABARD under social programmes entrusted to them.
- (v) The assessee trust was therefore doing micro finance activities for alleviation of poverty and helping poorest of poor. Private money lenders were providing finance to poor and were charging heavy interest from there. The assessee **obtained loans from NABARD and SIDBI and other banks on interest. The interest varied from 7.5% to 11.5%. The assessee in turn lent the funds to partner organization between 10.5% and 13.5% per annum.** It has been stated that the gap between borrowing and lending in money on account of meeting administrative expenses, meeting contingencies. The loans given to the needy poor women through micro finance institutions are unsecured loans and for specific programme.

4. As recorded in the order of the Director of Income Tax (Exemptions), it was in the air that the Reserve Bank wanted some supervision on this activity of micro-financing, and therefore, was wanting the corporatization thereof because the Trusts like that of the assessee which were carrying on this activity were not coming within the purview of the Reserve Bank. Keeping this in mind, the assessee sold this activity of micro-financing to an associate company by the name Ananya Finance for Inclusive Growth Pvt. Ltd. (hereinafter 'Ananya') for an amount of Rs.45 crores, earned Rs.26 crores by way of capital gain, donated the actionable claim of said Rs.45 crores to another associate trust viz India Foundation for Inclusive Growth



- 9 -

(hereinafter 'IFIG') and said Ananya paid said Rs.45 crores by allotting its shares to said IFIG Trust. The Director of Income Tax (Exemptions) was of the view that (as recorded in para 2.3 of his notice): "The trustees have robbed your trust/institution off assets worth Rs.45 Crores. " and finding is repeated in the order as well; in fact that is the only basis of the order. It must be immediately pointed out that there is no robbing because it is not the case of the Director of the Income Tax (Exemptions) that the assessee is not entitled to transfer its micro finance activities or that the assessee is not entitled to donate Rs.45 crores to another Charitable Trust. If the Trust has done what it is entitled to do, there is no robbing. Further, even if the Director of Income Tax (Exemptions) is right in alleging and concluding that "The trustees have robbed your trust/institution off assets worth Rs.45 Crores. ", there is direct authority of the Karnataka High Court that in such a fact situation, registration cannot be cancelled but the matter can be looked at during the course of assessment of the Trust u/s.11. This decision is at Page 204 to 207 of the paper book and is reported as Islamic Academy of Education - (2015) 229 Taxman 274 (annexed herewith for ready reference), wherein the Hon'ble Court stated: "If the misappropriating the funds, ..... it is open to the authorities to deny the benefit under section 11." It is worth noting that even after the transfer of micro finance activity, the assessee has been continuing to carry on other charitable activities from the activities reproduced above from the order u/s.!2AA(3) of the Director of Income Tax (Exemptions).

5(i). The relevant part of Section 12AA(3) is as follows:

"[(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the [Principal Commissioner or] Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]"

5(ii). What is required for cancellation of registration is the satisfaction by the Director of Income Tax (Exemptions) that the activities (i) are not genuine or; (ii) are not being carried out in accordance with the objects of the Trust.

- 10 -

6. Now, the submission is that robbing is an activity of the trustees and it is not the activity of the Trust and further the section requires that the activities of the Trust are not genuine or are not being carried out in accordance with the objects of the Trust. In fact and the case, such finding is impossible and totally wrongly arrived at because the transfer is genuine, donation is genuine and the Trust was continuing with all activities other than micro finance after the transfer and inclusive of micro finance before transfer thereof and there is no allegation that anything is ingenuine or not in accordance with the objects of the Trust. The assessee in all humility is posing the question how can the registration be refused if the Trust is carrying on all other charitable activities after transfer of micro finance activity and all activities including micro finance activity before its transfer towards emancipation of poor women. The Gujarat High Court in CIT vs. Sarladevi Sarabhai Trust reported at (1988) 172 ITR 698 (at page 163 of the paper book and annexed herewith for ready reference) held that one Charitable Trust can give donation to another Charitable Trust and that is application of income u/s.11 of the Income Tax Act. The Court also quoted Instruction No. 1132 of CBDT dated 05.01.1978 as follows:

"A question has been raised regarding the availability of exemption in the hands of charitable trusts of amounts paid as donation to other charitable trusts.

The issue has been considered by the Board and it has been decided that as the law stands at present, the payment of a sum by one charitable trust to another for utilization by the donee trust towards its charitable objects is proper application of income for charitable purpose in the hands of the donee trust; and the donor trust will not lose exemption under section 11 of the Income-tax Act, 1961, merely because the donee trust did not spend the donation during the year of receipt itself.

The above position may kindly be brought to the notice of all officers working in your charge."

7. The consideration of Rs.45 crores received from Ananya was donated as corpus donation to a trust registered under Documents & registration Act, 1908 namely Indian Foundation for Inclusive Growth [IFIG], which had the objects more or less in consonance with the objects of the appellant trust. A copy of the trust deed of IFIG is attached at page Nos.178 to 191 to corroborate the same. This trust had applied for the registration u/s 12AA of the Act. However, due to some reasons, the concerned professional, who was looking after this work could not remain present on

- 11 -

*the dates of hearing and as a result registration was denied to this trust on that ground alone and not on the fact that it was not doing charitable activity.*

8. *It may also incidentally be noted from the trust deed of IFIG clause No. 16 on page No. 190 of the paper book that IFIG is a trust, which is irrevocable and in any case whether on merger or dissolution **no** part of the funds, properties of the trust shall be distributed among the trustees or to the settler. Therefore, on no account it could be said that such donation of Rs.45 crores given to the IFIG trust is meant for private benefit of the trustees.*

9. *The paid up capital of the Ananya is held by IFIG to the extent of the 99.98% which was acquired out of the funds donated by the appellant in order to ensure that such trust retains control over the activities of Ananya for which regular utilization certificates from their Chartered Accountants are obtained to see that the micro-finance activities are carried out in the same spirit and in the same manner as they were carried on when it was in the fold of the appellant.*

10. *The twin conditions on the basis of which the registration once granted u/s 12AA could be revoked are only when the activities of the trust are not genuine or where the same are not carried on as per the objects of the trust. In the background of facts narrated earlier, coupled with the fact that all along in the past both micro-finance and development activities carried on by appellant are considered to be genuine and charitable and as per the objects of the trust and development activities are still continued even after the hiving off of the micro-finance activities it cannot be said that activities carried on by appellant that are none genuine or not as per the objects of the trust. Hence the power exercised by the learned DIT (Exemption) are without the authority of law, bad in law and hence the order passed by him cancelling registration is required to be quashed.*

11. *It was also submitted that the micro finance activities were transferred to Ananya and loanees continued with Ananya and thus there is no siphoning of funds as alleged.*

12. *The assessee submits that the provision of section 12AA(3) is a very serious provision giving extra ordinary powers to cancel the registration of the Trust. Here the Trust is stood registered and the registration has not been disturbed for more than 30 years. Cancellation of registration has very serious consequences on the Trust and the objects and the weaker members of the society are itself and has been serving all these years. Assuming while denying that the Director of Income tax (Exemptions) is right in his view that "The trustees have robbed - trust - all assets*

ITA No. 2076/Ahd/2014  
Friends of WWB India vs. Director of Income Tax (Exemption)  
Asst.Year 2009-10

- 12 -

worth 45 crores. " even then it does not support in any manner or by any stretch of imagination that "the activities of- trust - are not genuine or are not being carried out in accordance with the objects of the Trust" as required by specific language of section 12AA(3). In fact, the trustees have done what they are entitled to do in accordance with the above Gujarat High Court decision and the above circular of the Central Board of Direct Taxes, and therefore, even the finding of robbing is also not in order.

13. In view of the above, the assessee submits that the order of the Director of Income Tax (Exemptions) is bad in law as also on facts and prays of the Hon'ble Tribunal to quash the same and allow the appeal of the assessee.

14. **Alternative Ground**

In case the Hon'ble bench is inclined to uphold the order of DIT (Exemption) cancelling the registration, it is submitted that the learned DIT (Exemption) does not have power to revoke the same prior to A.Y. 2011-12 as held by the Hon'ble Agra Bench of ITAT in the case of Agra Development Authority v/s CIT 141 ITD 336, a copy of which is attached at page Nos. 70 to 88 of the paper book No. I. Since the learned DIT (Exemption) has cancelled the registration for the Assessment Years earlier to A.Y. 2011-12, if at all his order is held to be valid the same cannot apply for the Assessment Years 2009-10 & 2010-11.

15. **Other Grounds :**

In view of the fact that ground Nos. 2 to 7 contained the arguments in support of Ground No.1 and in view of the fact Ground No.1 broadly covers those aspects narrated in ground Nos. 2 to 7, ground Nos. 2 to 7 may be treated as not pressed.

For Friends of WWB of India  
Sd/-  
Authorized Representative”

4.1. The ld.CIT-DR opposed the submissions and supported the orders of the authorities below. He submitted that what kind of activities have been carried out is to provide finance to the women after charging a higher rate of interest, so it cannot be said that the activities as carried out

- 13 -

by the assessee is essentially a charitable activity. He submitted that under the facts of the present case, the DIT(E) was justified in cancelling the registration of the assessee-trust.

5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. It is not disputed that the assessee-trust has been registered u/s.12AA of the Act, the Revenue has not doubted about the genuineness of the activities carried out by the trust. In the year under appeal, the sole basis for cancellation of registration is that the assessee-trust donated a sum of Rs.45 crores to another trust that is also engaged in the similar activity. In the opinion of Id.DIT(E), this Act of trust tantamount to siphoning of the public money. The finding of Id.DIT(E) is reproduced hereinbelow for the sake of clarity:-

*“5.1. I have considered the submissions made by the assessee. With respect to point no.(i) of para 4.1 made by the assessee, it is stated that there is no dispute that the provisions of section 12AA(3) can only be invoked when either the activities of the trust are found to be not genuine or the activities are not carried out in accordance with the objects of the trust. In the present case, as is, clear from the show-cause notice which is reproduced in para 3 above, the assessee has transferred assets worth Rs.45 crore to a group finance company Ananya and the entire money receivable has also been bypassed to the same group finance company Ananya through book entries. This is nothing but siphoning off of assets worth Rs.45 crores. If the assessee had transferred these assets and utilized the sum of Rs.45 crores for its own objects, there would not have been any issue. However, in this case, the assessee has entered into an activity whereby the sum of Rs.45 crores has been siphoned off from the trust and this amount of public money is no more available for the activities of the assessee trust.*

- 14 -

5.2 Points no.(ii), (iii), (iv) and (v) of para 4.1 show that the assessee had never been doing activities of relief to poor women directly but through other organization and therefore even though this is not an issue here, the assessee would be termed only as an organization which is engaged in the general public utility and not in relief of poor women.

5.3 With respect to point no.(vi), it is stated that the above point is even reinforced whereby it is clear that the assessee has obtained loans at an interest from various organizations and has given the same to other organizations at a higher rate of interest for these trusts to carry out relief of poor women. In this regard, it can be clearly stated that the assessee was in fact engaged only in the activity of general public utility as it was not directly doing relief of poor women etc.

5.4 With respect to point no.(vii), the argument of the assessee is not correct. As stated above, the activity of siphoning off of funds of Rs.45 crores cannot be stated to be genuine activity or activity as per the objects of the trust. No charitable trust would permit siphoning off of money from its own corpus and accumulated funds and even current income. While a charitable trust would permit donation out of current income to other trusts carrying on similar activity, but in this case the entire money which is supposed to have been given to a group charitable trust has been misused. As per object No.3(g) of IFIG, it can buy share capital of any company etc. This is expressly prohibited by section 11(5) of the Income-tax Act which means right from the beginning the trust had different motive of making the arrangement under discussion. The IFIG trust and Ananya's date of creation shows that motive was to make this arrangement. The said group charitable trust was refused registration u/s 12AA(l) by the Commissioner of Income-tax at Faridabad and hence the said donation cannot be stated to be for the objects of the assessee trust. Further, even this amount did not remain with this said charitable group trust but the trust invested in the group finance company the entire amount and purchases its shares. No charitable trust under any Indian laws is allowed to purchase shares of a group finance company instead of doing charitable activity. It is not understood as to which objects of the trust would be fulfilled when the other group charitable trust has bought shares of a group finance company.

5.5. With respect to point no.(viii), it is stated that in the assessment years mentioned at that time there was no such siphoning off of funds from the trust noticed and hence this argument is not at all applicable.

5.6 With respect to point no.(ix) of para 4.1, it is stated that the assessee has been engaged in the activity of only "advancement of any other object of general public

- 15 -

utility" and not in the activity of "relief of poor". Further it is reiterated that this issue has not been invoked for the purpose of cancellation of registration because as stated by the assessee himself the Board circular is clear that whenever an assessee is hit by the provisions of proviso to section 2(15) and falls within the ambit of section 13(8) a trust has to be denied exemption on year to year basis whenever these provisions are applicable and therefore reliance by the assessee on various decisions mentioned in clause (a) and (b) of point no.(ix) of para 4.1 are not at all applicable.

5.7 With--respect-to argument of the assessee in point no. (x) and xi) of para 4.1, it is clear that the assessee himself has admitted that it had transferred the "micro finance business." of the assessee to another trust namely IFIG which was stated to be charitable trust but whose registration has been refused by the Income-tax department in view of the its objects. In any case, the so-called charitable trust IFIG has admittedly purchased the shares of a group finance company "Ananya" which is again, by no stretch of imagination stated to be charitable activity or tar the purpose of charitable activity whatsoever. The argument of the assessee that Ananvia's majority shares are with IFIG is not relevant. The Company Ananya is not a property held under trust of the assessee trust. This is most important issue. The assessee trust has lost assets to Auanya, IPIG is a trust where deed consists of clauses whereby it can buy shares of companies and so It can do speculation and hence it cannot qualify for charitable trust. IFIG is created in this entire scheme to siphon off money.

5.8 The decisions relied upon by the assessee and mentioned in point no.(xi) of para 4.1 to say that inter-charitable trust donations are allowed are correct and there is no dispute. So these decisions are not relevant, It is stated that the issue is not whether donations to other charitable trust carrying on similar activity is allowed or not. There is no dispute that in the Income-tax Act, donation out of current income only and not out of accumulated funds or corpus is allowed to charitable trusts carrying on similar activities but in the present case, as stated above, the issue is very clear that the assessee has instead of utilizing the sale proceeds of Rs.45 crores from the transfer of micro finance business to the group company Ananya, has given the same amount to another group trust who in turn has purchased the shares of Ananya, a group finance company, of the exact amount. The "assessee charitable trust" has therefore entered into an activity whereby funds to the extent of Rs.45 crores have been siphoned off. This activity, by no stretch of imagination can be stated to be genuine activity or cannot be stated to be an activity for the objects of the trust. The dates mentioned in point no.(xi) of para 4.1 Show that the trust IFIG and the group finance company Ananya were floated on dates which make it clear that the intention of the assessee trust was to siphon off the money through a scheme which could be given a cover of donation to charitable trust. Interestingly IFIG was formed on

- 16 -

*13/03/2009. Rs.5 crore was given as advance by the assessee to IFIG on 25/03/2009. Ananya Group Finance Company (AFIG) was formed on 22/04/2009 and Rs.5 crore advance was converted to corpus on 30/06/2009. MOU between assessee and AFIG was done on 06/02/2010 and Business transfer agreement was done between assessee and AFIG on 26/04/2010. All these clearly show that this activity was deliberately done to siphon off Rs.45 crores. The assessee for the first time gave an amount of Rs.5crore for such activity on 25/03/2009 (i.e. during A.Y.2009-10) to IFIG as advance which later on was called corpus donation. Therefore, the entire process was done from March 2009 onwards especially when Rs.5 crores was advanced on 25/03/2009 and later converted to donation. These transactions pertain to A.Y.2009-10 onwards. This is not a simple case of violation of section 13(l)(c) but taking away huge income earning assets of Rs.45 crores.”*

5.1. Under these facts, we need to examine whether the Act of Id.DIT(E) (cancellation of registration granted under section 12AA of the Act) is in conformity with the relevant provisions of the Act. Section 12AA of the Act reads as under:-

**“Procedure for registration.**

*(1) The [Principal Commissioner or Commissioner], on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) of sub-section (1)] of section 12A, shall—*

*(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and*

*(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—*

*(i) shall pass an order in writing registering the trust or institution;*

*(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,*



- 17 -

*and a copy of such order shall be sent to the applicant :*

*Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.”*

5.2. A bare reading of the above provision, it makes amply clear, before granting registration the DIT(E) has to satisfy itself in respect of genuineness of the activities of the assessee-trust or institution seeking registration under clause (a) [or clause (assessee) of sub-section i) of Section 12A of the Act. In the case in hand, that exercise presumably had already been carried out since the assessee trust was granted registration. However, section 12A(3) empowers the DIT(E) in following terms:-

*“(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A {as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 2009)}] and subsequently the [Principal Commissioner or Commissioner] is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:*

*Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.”*

5.3. From the aforesaid, it is evident that Id.DIT(E) has doubted about the genuineness of the activities carried out by the assessee-trust on the basis that the way assessee-trust has donated Rs.45 crores to another entity, as per assessee a charitable trust, admittedly which is not granted

- 18 -

registration under section 12AA of the Act. There is no dispute with regard to the contention of the assessee that there is no prohibition under the law for giving of donation by one charitable society to another. The Id.DIT(E) is of the view that activity of the assessee-trust in view of the fact that it has given money to another entity under the garb of donation, such activity cannot be termed as charitable activity. He opined that corpus donation by the trust cannot be treated as eligible donation u/s.11 of the Act. We appreciate the concern of Id.DIT(E) in respect of the capital of the assessee-trust, same should be considered while examining the issue of application of fund by the charitable trust.

6. In our considered view, action of Id.DIT(E) would be well within the ambit of section 12AA(3), if he is able to demonstrate that the activities of the trust are not genuine and as such activities are not being carried out in accordance with the objects of the trust. The Id.DIT(E) has elaborately examined the issue in the impugned order. The contention of the assessee is that the Id.DIT(E) misdirected itself and exceeded jurisdiction by cancelling registration. It is contended that assuming that the trustees have siphoned off money, in that eventuality cancellation of registration would not be permissible. In support of the contention, reliance was placed on the judgement of Hon'ble High Court of Karnataka rendered in the case of CIT vs. Islamic Academy of Education reported at (2015) 54 taxmann.com 255 (Karnataka). It was

- 19 -

also contended that there was no prohibition under the law for making donation to Charitable Society and in support of this contention, reliance was placed on the judgement of Hon'ble High Court of Gujarat rendered in the case of CIT vs. Sarladevi Sarabhai Trust reported at (1988) 172 ITR 698(Guj.). Further, reliance was placed on the judgment of Hon'ble High Court of Allahabad rendered in the case of CIT and Another vs. Sisters of Our Lady of Providence Education Society reported at (2014) 368 ITR 662) (All). In this case, the Hon'ble High Court held as under:-

*“12. From the perusal of the order of the Commissioner, we find that no finding has been recorded with regard to the satisfaction that the activities of the present respondent are not genuine or are not being carried out in accordance with the objects of the trust or the institution. The criteria to grant exemption under Section 10 (23C)(vi) and grant of registration under Section 12A is different and merely because the exemption under Section 10 (23C)(vi) is declined, it does not amount the refusal of registration under Section 12AA or in case if the registration has been granted, it may be cancelled on that ground. For the cancellation of registration, the requirements, as provided under sub-section (3) of Section 12AA, are to be fulfilled. It is true that the refusal of the exemption under Section 10 (23C)(vi) may be relevant for the purposes of cancellation of registration, but to arrive to the conclusion that the activities of the trust or the institution are not genuine or are not being carried out in accordance with the objects of the trust or the institution, finding in this regard is necessary, based on the relevant material.”*

6.1. In the case in hand, it is not in dispute in the form of donation to another charitable entity, the assessee trust has transferred its entire micro-finance business to a private finance company. Moot question is whether such activity is authorized by the objects of trust. The ld.DIT(E) has given a finding that it is not in accordance with the objects of trust. Section 12 of the ct speaks about activities but not activity. The

- 20 -

assessee-trust has been carrying out multiple activities, there is no adverse finding in respect of other activities. The contention of ld.counsel for the assessee is that assuming the activity of donation to another charitable entity is not as per the objects of the trust, the single activity would not make the trust liable for cancellation of registration. So far as the issue whether the word “activities” to be construed only in plural form or in a singular form is concerned, in our considered view, in case, a particular activity is substantially carried out by a trust would partake character of activities, hence subjected to the jurisdiction u/s.12AA(3) of the Act.

7. So far as the argument of ld.counsel for the assessee that there is no prohibition under law qua the donation being made by one charitable trust to another is concerned, the ld.DIT(E) has not disputed this proposition of law. The objection of ld.DIT(E) is that the entire sale of micro-finance unit has been arranged in such a fashion that the micro-finance business of the trust is transferred to a private finance company without any consideration. Such activity is not in accordance with the objects of trust, i.e. the trust cannot transfer its business to a private finance company albeit may be routed through another trust. The contention of the assessee is that even if the entire activity is transferred such act *per se* would not attract the provisions of section 12AA(3) but same can be examined at the time of making assessment. In support of

- 21 -

this argument, reliance is placed on the judgement of Hon'ble High Court of Karnataka rendered in the case of CI-Karnataka (Central) vs. Islamic Academy of Education reported at (2015) 54 taxmann.com 255(Karnataka).

7.1. The Hon'ble High Court of Karnataka admitted the appeal for considering the following substantial question of law:-

Whether the Tribunal was correct in holding that the registration granted u/s.12A of the Act had been incorrectly cancelled u/s.12AA(3) of the Act by the Commissioner despite being satisfied based on material detected in the course of search that the activity of the trust was not genuine and was not being carried out in accordance with the objects of the trust?

7.2. The Hon'ble High Court after taking note of law in para-7 of the judgement held as under:

*“8. In the instant case, the material on record shows that the Trust has established educational institution and imparting medical education. Every year, students are admitted. Huge investment is made for construction of buildings for housing the college, hostel and to provide other facilities to lift students who are studying in the College. The College is recognized by the Medical Council of India, State of Karnataka and all other statutory authorities. Therefore, it cannot be said that the Trust is not genuine. Admittedly, the students are being admitted every year. Students are studying in all courses. Thus the object of the constitution of the Trust namely imparting of education is going on uninterruptedly. Therefore, it cannot be said that the activities of the Trust are not being carried out in accordance with the objects of the Trust. When the aforesaid two conditions are fully satisfied, on the ground that the trustees are misappropriating the funds of the Trust the registration of the Trust cannot*

- 22 -

*be cancelled. If the trustees are misappropriating the funds, if they are maintaining false accounts, it is open to the authorities to deny the benefit under section 11 of the Income Tax Act, but that is not a ground for cancelation of registration itself. That is precisely what the Tribunal has held. Therefore, the substantial question of law is answered in favour of the assessee and against the revenue. There is no merit in this appeal.”*

7.3. In the case in hand, the assessee-trust has demonstrated that the activities are being carried out as per objects of the trust and being assessed under the relevant provisions of Act. It is not in dispute that the registration u/s.12AA of the Act was granted vide letter dated 2<sup>nd</sup> July-1982. No doubt is casted upon the genuineness of the activities, throughout this period. Moreover, the reliance was placed on the decision of Coordinate Bench rendered in the case of Asst.DIT(Exemption) vs. Bhartha Swamukti Samsthe reported at (2009) 319 ITR 422 (AT), wherein it is held that giving of loan to poor women is charitable activity.

7.4. In the light of above discussion and respectfully following the judgment of Hon'ble High Court of Karnataka in the case of CIT-Karnataka (Central) vs. Islamic Academy of Education(supra), we do not agree with the reasoning of Id.DIT(E) for cancellation of registration. Therefore, the order under appeal is hereby set aside. Before parting with the matter, we make it clear that Revenue would be at liberty to decide the issue of donation to another trust at the time of making assessment in accordance with law. Thus, ground No.1 of assessee's

ITA No. 2076/Ahd/2014  
Friends of WWB India vs. Director of Income Tax (Exemption)  
Asst.Year 2009-10

- 23 -

appeal is allowed. Since we have allowed ground No.1, ground No.8 has become infructuous, same is dismissed being infructuous.

**8. In the result, the appeal of the Assessee is partly allowed.**

**Order pronounced in the Court on Friday, the 14<sup>th</sup> day of August, 2015 at Ahmedabad.**

Sd/-  
(अनिल चतुर्वेदी)  
लेखा सदस्य  
( ANIL CHATURVEDI )  
ACCOUNTANT MEMBER

Sd/-  
(कुल भारत)  
न्यायिक सदस्य  
( KUL BHARAT )  
JUDICIAL MEMBER

Ahmedabad; Dated 14/ 08 /2015

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-concerned/ DIT (Exemptions), Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

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