

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 172/Bang/2022
Assessment Year : 2017-18

M/s. Navodaya Grama Vikas Charitable Trust, #14-7-1005, SCDCC Bank Ltd., Head Office Building, Kodialbail, Mangaluru – 575 003. PAN: AAATN7594E	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 1, Mangaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, Advocate & Ms. Sunaina Bhatia, CA
Revenue by	:	Shri D.K. Mishra, CIT DR

Date of Hearing	:	07-07-2023
Date of Pronouncement	:	31-08-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against the order dated 07.03.2022 passed by Ld.CIT(A)-2, Panaji for A.Y. 2017-18 on following grounds of appeal:

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law. equity, weight of evidence. probabilities, facts and circumstances of the case.

2. The learned CIT [A] is not justified in upholding the disallowance of the exemption claimed u/s.11 of the Act,

on the ground that the activities of the appellant are hit by the provisions of section 13[8] rws the proviso to section 2[15] of the Act, under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] has erred in holding that the microfinance activity carried on by the appellant would be in the nature of business and therefore, hit by the proviso to section 2[15] of the Act under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] erred in holding that the activities of the appellant are carried on for "commercial gins with predominant objective to make profit" on the insignificant consideration that the appellant is charging 50% higher rate of interest for the loans provided to SHG when compared to the borrowing cost, without appreciating that the higher rate of interest charged was only to cover the administrative costs and possibility of default in recovery from the beneficiaries especially since these loans were advanced without any security other than the personal guarantee of the poor people and therefore, the finding that the microfinance activity of the appellant was in the nature of business is opposed to law and facts of the appellant's case.

5. The learned CIT[A] is further not justified in holding that the activities carried on by the appellant would fall within the limb "advancement of any other object of general public utility" and cannot be classified as "relief to the poor" as claimed by the appellant and therefore, the proviso to section 2[15] of the Act would be squarely attracted to the case of the appellant and hence, the appellant was not entitled to exemption u/s. 11 of the Act.

6. The learned CIT[A] is also not justified in holding that alternatively the provisions of section 11[4A] of the Act were attracted to the case of the appellant and hence, the appellant was not entitled to exemption u/s. 11 of the Act for violation of the provisions of section 11[4A] of the Act, without appreciating that the main objects of the appellant related to providing relief to the poor by means of lending to Self Help Groups [SHG] and thus these activities carried on by the appellant cannot be termed to be business activities "incidental to the attainment of the objectives" to invoke provisions of Section 11[4A] of the Act under the facts and in the circumstances of the appellant's case.

7. The learned CIT[A] ought not to have rejected the plea of the appellant that the activities of the appellant were examined in course of the earlier assessments framed and hence, a different view ought not to have been taken in violation of the principles of consistency on the ground that

the registration u/s 12A of the Act was obtained prior to the insertion of the proviso to section 2[15] of the Act, vide which the benefit of exemption to trusts carrying on activities for the "advancement of any other object of general public utility" was taken away, without appreciating that the benefit of exemption u/s 11 of the Act was made available to the appellant even after the insertion of the proviso to Section 2[15] of the Act, and thus the stand adopted by the learned A.O. and sustained by the learned CIT[A] goes against the principles of consistency under the facts and in the circumstances of the appellant's case.

8. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG. the appellant denies itself liable to be charged to interest u/s.234-B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

9. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

2. The assessee, a charitable trust enjoys registration u/s. 12AA vide order in F.No. N-24/12A/CIT/MNG/2004-2005 dated 10.01.2005 of the CIT, Mangalore.

3. The assessee trust was formed in terms of the Deed of Trust dated 08.07.2004 and Amendment Deed dated 29.11.2004 and is engaged in the charitable activity of providing relief to the poor especially in rural areas. The objects of the assessee as per the trust deed, is as under:

Main objects of the Trust:

1. To bring out people's awareness regarding financial, Social and Cultural Developments in rural areas and assist them to become good citizens.

2. To foster among rural women an awareness of their situation and promote their organization for their own betterment to promote self employment activities through trained people, to educate them in children care responsible parenthood, home science and happy family life.

3. To conduct and run nursery and kindergarten or Primary, Higher Primary, Secondary Schools and Colleges for facilitate children's full growth and to work for their healthy care and to assist poor school going children to have better education and health.

4. To provide guidance regarding wild life, perform inter notion wild life programme with principal ideas and make awareness of the same with the people of rural areas and also to conduct run and assist veterinary hospitals etc.

5. To provide proper knowledge about agriculture, run farm, animal centers etc. and provide profitable employment to the people of rural areas.

6. To make awareness of human rights and other new things in rural areas by providing good leadership, make arrangements for implementation of good ideas for them and to make awareness of strong will power, love, service and patriotism etc.

7. Offering the opportunity to develop personality and avenues for their intelligent participation in Nation building.

8. To guide them to equip themselves for the struggle for life in changing Society.

9. To open Schools, College and Technical Institutions in District, State and inter State level for providing proper training for rural people regarding cooperative Associates, Co-operative Bank etc. and regarding self-employment, self-unity and help etc.

10. To provide library, T.V., Data etc. to unemployed educated people in rural areas with a view to assist them to take self-employment.

11. To strengthen rural youth clubs by giving proper guidance. In this connection, to work hand in hand with State and Central Government Departments.

12. To provide information about the plans of State and Central Government to the concerned persons of the Public.

13. To create training facilities in rural areas for development of Industry and self-employment.

14. To enable the awakened and affected youth to come together to bring about development and new environments.

15. To provide security to the assets of Association, Co-operative concerns of rural and urban areas and to open training centers to such security. This family will be provided to urban and rural areas if necessary.

16. To guide self-helping clubs in developing financial, social and cultural activities in rural areas. To provide trained persons in that regard.

17. To assist for development and research of forest protection and herbal cultivation.

18. To gather information regarding public health and to assist in providing herbal and Ayurvedic treatments.

19. To assist for providing sports, games, yoga etc. and to arrange all round development.

20. To provide help to self-helping institution by providing insurance or otherwise.”

4. It is submitted that in accordance with the aforesaid object Clause No. 20 of the trust, the assessee helps Self-Help Groups [SHG's] comprising of rural poor people to avail benefits of insurance and microfinance. It is submitted that, the assessee gives loans without any security to these SHG's and also provides benefit of insurance for the members of these SHG's, and that such activity is being carried on by the assessee for the past several years. It is submitted that the 12AA certificate dated 10.01.2005 is valid for the year under consideration w.e.f. 08.07.2004. It is also submitted that the registration is granted to the assessee as a Public Charitable Trust.

5. For the year under appeal, the assessee filed its return of income on 30.10.2017 reporting Nil income after claiming exemption u/s. 11 of the act. The assessee computed its income based on the receipts and payments account and arrived at Nil income.

6. The case was selected for scrutiny and notice u/s. 143(2) of the act along with notice u/s. 142(1) was issued to the assessee calling for various details and particulars. In response, the AR of the assessee appeared and filed the details as called for.

7. The Ld.AO issued a show cause notice to the assessee calling upon the assessee to state as to why provisions of section 13(8) read with 1st proviso to clause 15 of section 2 of the Act should not

be applied. According to the Ld.AO, the activities of the assessee in providing microfinance and insurance was in the nature of trade, commerce or business and hence, the same was hit by the 1st proviso to section 2(15) of the Act and therefore, the assessee was not entitled to benefit of section 11 of the Act.

8. In response, the assessee filed reply dated 07.12.2019, wherein it was submitted that the microfinance and insurance provided by the assessee to SHG's falls within the limb "Relief of Poor" u/s. 2(15) of the Act and hence, the 1st proviso to section 2(15) of the act was not applicable as the same related only to activities that comes within the limb "Any other object of general public utility". Secondly, the assessee also submitted that, the aforesaid activities were carried on even in the earlier years and the same was never regarded as trade, commerce or business and hence, according to the principles of consistency, would apply to the present facts. Finally, it was also contended that, the activity cannot be considered as trade, commerce or business having regard to the dominant purpose test and therefore, it cannot be held as trade, commerce or business.

The Ld.AO rejected the contentions of the assessee and has invoked the provisions of section 13(8) r.w.s 2(15) of the act to reject the claim of exemption u/s. 11 of the act.

9. The Ld.AO concluded the assessment by the impugned order passed u/s. 143(3) of the act dated 21.12.2019 determining the total income of the assessee trust at Rs.6,21,47,053/- as against the Nil income returned reported by the assessee in the original return. Aggrieved by the order of the Ld.AO, the assessee filed appeal before the Ld.CIT(A).

10. The Ld.CIT(A) observed and held as under:

“4.4 The appellant contends that it is a non-profit entity and it receives funds to meet its operative cost without motive to earn profit. A perusal of the income and expenditure account for the year ended 31.03.2017 reveals Rs.6,69,8,915/- as interest received on loans and Rs.4,08,04,902/- as Insurance collection out of total receipt (Rs.13,14,55,733/- for the year. Thus, 82% of the total receipts for the year were received from the appellant from the activities of micro financing and insurance. In this regard it is mentioned that during the year appellant has generated a surplus of Rs. 5.74 crores. Here it would be relevant to mention that if a charitable organization carrying out objects of 'advancement of general public utility' is involved in carrying on any activity in the nature of trade, commerce, business or is charging fees for services in relation to any trade, commerce, business, then it is excluded from being 'charitable.' The profit motive behind such business, commerce or trade activity is not required to be separately examined and proved for applicability of proviso to section 2(15) of the Act. The specific amendment, by way of proviso to section 2(15) w.e.f. A.Y. 2009-10 does not provide for carrying out business trade or commerce per se for applicability of proviso, rather the stipulation in the proviso is 'in relation to' which is to be interpreted and applied in that context in a wider term and not to be confined to carrying out trade, business and profession, It was held in the case of Subhram Trust v. DIT (E) (2009) 317 ITR (AT)(Bang.) that 'the term in relation to should be broadly interpreted i.e., to say if any activity which directly or indirectly facilitates the rendering of any service in relation to any trade, commerce or business, is carried on by trust, then it will be covered under proviso to section 2(15)'. The proviso to section 2(15) of the Act is attracted even in a case where the assessee is not carrying out business, trade, commerce by itself. The charging of fees and consideration 'in relation to' services for any trade, business and commerce or 'involvement' in trade, commerce and business is sufficient to attract the proviso to section 2(15).

4.5 The appellant has contended that none of its activities are carried out with an object or any motive to earn profit or surplus. That the earning of revenue is only incidental to the predominant object of providing help to the poor. However, this submission is quite in contradiction to the fact that the appellant is charging 50 `A

higher rate of interest for the loans it provides to the self-help groups. The appellant receives grants and these grants should, in the normal course, have been used for meeting the administrative expenses with the loans to the SHGs being provided at a lower rate approximating the rates at which the appellant itself got it. Charging a 50% higher rate of interest shows that type of services being provided by the appellant are certainly for commercial gains with predominant objective to make profit.

4.6 In the case of Institute of Chartered Accountants of India v. Director General of Income tax (Exemptions) 120121 347 ITR 99,"the Honible Delhi High Court discussed the definitions trade, commerce and business reproduced below -

'Trade, as per the Webster's New Twentieth Century Dictionary (2nd edition), means, amongst others, "a means of earning one's living, occupation or work. In Black's Law Dictionary, "trade" means a business which a person has learnt or he carries on, for procuring subsistence or profit; occupation or employment, etc.

The meaning of "commerce" as given by the Concise Oxford Dictionary is "exchange of merchandise, specially on large scale". In ordinary parlance, trade, and commerce early with them the idea of purchase and sale with a view to make profit. If a person buys goods with a view to sell them for profit, it is 1111 ordinary case of trade. If the transactions are on a large scale it is called commerce. Nobody can define the volume, which would convert a trade into commerce. For the purpose of the first proviso to section 2(15), trade is sufficient, therefore, this aspect is not required to be examined in detail.

The word "business" is the broadest term and it encompasses trade, commerce and other activities. Section 2(13) of the Income-tax Act defines the term "business" as under:

Definitions.____(13) 'business' includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture."

The word "business" is a word of large and indefinite import. Section 2(13) defines business to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The intention of the Legislature is to make the definition extensive as the term "inclusive" has been used. The Legislature has deliberately departed from giving a definite import to the term "business" but made reference to several other general terms like "trade", "commerce", "manufacture" and "adventure or concern in the nature of trade, commerce and manufacture".

4.7 According to Sampath lyengar's Law of Income Tax (9th edition), a business activity has four essential characteristics. Firstly, a business must be a continuous and systematic exercise of activity. Business is defined as an active occupation continuously earned on. Business vocation connotes some real, substantive and systematic course of activity or conduct with a set purpose. The second essential characteristic is profit motive or capable of producing profit. To regard an activity as business, there must be a course of dealings continued, or contemplated to be continued, normally with an object of making profit and not for sport or pleasure (Bharat Development P. Ltd. v. CIT [1982] 133 ITR 470 (Delhi)). The third essential characteristic is that a business transaction must be between two persons. Business is not a unilateral act. It is brought about by a transaction between two or more persons. And, lastly, the business activity usually involves a twin activity. There is usually an element of reciprocity involved in a business transaction.

4.8 The Delhi High Court in the case of GS1 India v. DGIT(E) [2013] 38 taxmann.com 364 held that legal terms "trade, commerce, or business" in Section 2(15), means an activity undertaken with a view to make or earn profit. Profit motive is determinative and a critical factor to discern whether an activity is business, trade or commerce.

4.9 The activity of the appellant predominantly is to take loans from banks at a lower rate and thereafter extend it to SHGs at a

50% higher rate. The appellant has an established set up for this activity and propagates this activity through use of Animators, on whom an expenditure of approximately Rs.2.08 crores were incurred during the course of the year. The activity is therefore between persons where transactions are conducted by the appellant with a profit motive and the appellant has a systematic approach to conduct and further the activity over a period of time. In the case of the appellant the borrowing is not made directly to the beneficiaries. In fact, financing is done to various SHGs. No assistance or grant has been received for micro financing. The loans have been raised on commercial lines. Profit is generated by financing the SHG's at a higher rate. The micro financing business is run on commercial lines. Further, the appellant raised loans @ 10% to advance to the customers at a higher rate of 15%. The appellant is not having own corpus in a formal capital so as to advance the loan. The appellant is providing loans by association with various commercial banks by raising loans from them. Such kind of micro finance activity cannot be termed as charitable activity rather it is a business activity. In order to become a charitable activity, the institution must have advance loans at a subsidized rate of interest. The assessee is availing loans from banks and advances the same to the customers at 15%. It is a commercial rate prevailing in the market. By advancing loans at that rate of interest cannot be considered as an activity carried on by the assessee as charitable and for the benefit of the public. It is also to be noted that after the amendment wherein proviso to section 2(15) was incorporated, advancement of "any other object of general public utility" can no longer remain as charitable purpose, if it involves carrying on of:

(a) any activity in the nature of trade, commerce or business.

(b) any activity of rendering any service in relation to any trade, commerce or business for a cess or a fee or any other consideration, irrespective of the nature of use or application or retention of the income from such activity.

Exclusion from charitable purpose under cl. (a) will be attracted, if the activity pursued by the institution involves any trade, commerce or business. The situation contemplated under the

clause (b) with regard to the service in relation to the trade, commerce or business mentioned therein means that when the M:zitter comes to the service in relation to the trade, commerce or business, it has to be examined whether the words "any trade, commerce or business" as they appear in clause (b) are in connection with the service referred to the trade, commerce or business pursued by the institutions to which the service is given by the appellant. If the said words are actually in respect of the trade, commerce or business of the assessee itself, clause (b) will be otiose since the activity of the assessee involving any trade, commerce or business, is already excluded from the charitable purpose by virtue of clause (a) itself and hence there was no necessity to stipulate further, by way of clause (b), adding the words "or any activity of rendering any service in relation to any trade, commerce or business.

....." To render a purposive interpretation to the statute, it needs to be read and understood that as per the provisions of clause (b) in relation to the service rendered by the assessee, the terms "any trade, commerce or business" refers to the trade, commerce or business pursued by the recipient to whom the service is rendered and, in such circumstances, the activities carried on by the assessee cannot be considered as charitable activities.

4.10 When the assessee carried on micro finance activity in a commercial line, then it is not a charitable activity but an activity to expand the finance business by contracting weaker section of 'the public and it does not involve any charitable activity. Hence, as per any of the definitions discussed above, the activity of the appellant is in the nature of business.

4.11 While the activities carried on by the appellant fake care of the poor people also, but those activities cannot be classified under any of the specific activities of relief of the poor; education or medical relief. The correct way to express the nature of the activities carried on by the appellant is to say that the appellant is carrying on 'advancement of any other object of general public, utility'. When that is the case, the appellant is hit by the proviso given under section 2(15). The proviso reads that 'advancement of any other object of general public utility' shall not be a charitable purpose, if it involves carrying on any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business for consideration, irrespective of the application of the money. Therefore, the case of the appellant is hit by proviso to section 2(15)

and the appellant is not entitled for the benefit of section 11 for that part of income generated in the hands of the appellant from running its micro finance business.

4.12 Alternatively, one has to look into section 11(4A) of the Act. Sub-section (4A) provides that exemption shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business incidental to the attainment of the objectives of the assessee and separate books of account are maintained by such trust or institution in respect of such business. In the present case, there is no dispute on the fact that the appellant is carrying on the business of micro finance. Leaving the issue of maintaining separate books aside, the crucial question initially is whether running of micro finance is a business incidental to the attainment or the objectives of the trust or not. As rightly held by the AO, by any stretch of imagination, it is not possible to hold that the business of micro finance is incidental to the above stated objectives of the assessee-trust. "Incidental" means offshoot of the main activities; inherent by-product of principal activities. Activities to compliment and support the main objectives are not in the nature of incidental to the business. They are supporting activities, at the maximum. The genesis of incidental activities must be from the principal activities themselves. There cannot be one source for the principal activities and another source for incidental activities. In the present case, even if activities of the assessee were stated to be relief of poor, it was not possible to conclude that running of business in the form of micro finance is incidental to carrying on of main objective of the assessee-trust and it is the main business of the assessee. Therefore, the assessee is not protected by the provision stated in section 11 (4A), either.

4.13 The ld.AR, during the course of hearing on 04.03.2022, argued that in earlier years also the Trust was carrying similar activities and the same were held as not commercial even in orders passed under section 143(3) of the Act for A.Y 2016,17, 2013-14, and 2012-13 and therefore the rule of consistency should be followed. He placed reliance on the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT, which held that the AO should not interfere with the fundamental aspect permitting through the difference assessment years. To prove that providing micro finance cannot be held as a commercial activity, the Id. AR referred to the judgments of Hon'ble ITAT Bangalore in M/s Janodaya Trust v ACIT (Exemptions); ITA No. 763/Bang. /2016 which held charging to commercial rate of interest (14%) cannot make the

activity commercial and of Hon'ble ITAT, Cuttack Bench in the case of ITO (Exemptions), Bhubaneshwar v Adhikar, Bhubaneshwar; ITA No. 265/CTK/2017 which held that act of micro financing by an institution to self-help poor people amounts to providing relief to the poor. He also referred to the judgment of Delhi High Court in the ITPO case 371 1TR 333 (Del.) wherein it was held that dominant purpose has to be seen i.e., whether it is business activity dominantly or otherwise and merely profiteering by it will not make every activity commercial. As regards insurance activity, ld. AR averred that the mere fact that premium collected is more than the relief given during the specific year cannot make the activity commercial.

4.14 As regards the rule of consistency, the argument will have to be seen in light of the fact that prior to adding proviso to section 2(15), the entities which got registration u/s. 12AA engaged in commercial activity claimed exemption on the ground that such activities were for advancement of objects of general public utility in terms of 4th limb of definition to section 2(15) of the Act. The said benefit was taken away by adding proviso to section 2(15) of the Act, wherein it is clarified that the advancement of any other object, general public utility shall not be charitable purpose. Once it was clear that the appellant conducted its activities on commercial line in the nature of trade, commerce or business, ate AO rightly denied the exemption by following statutory provisions. No infirmity can be stated to exist in the order of the AO and the ratio laid down by the decision of the relied upon by the ld. AR of the Hon'ble Supreme Court in the case of Radhasoami Satsang is not applicable to the facts of this case.

4.15 As regards other cases quoted by the Id. AR, it needs to be pointed out that every case has its own specifics and there are many judgments holding that the act of providing micro finance and earning interest income thereon is a business activity and not for a charitable purpose. In the case of Sreema Mahila Samity v. Deputy Commissioner of Income-tax, Circle-Nadia (20171 86 taxmann.com 216 (Kolkata - Trib.), it was held that where assessee, charitable institution, carried micro financing business and provided loan to general public and Self-Help Group (SHG) and earned interest income, then this activity would not be a charitable purpose. In the case of Income-tax Officer (Exemptions), Madurai v. Kalanjiam

Development Financial Services [2015] 64 taxmann.com 255 (Chennai - Trib.), it was held that where Assessee was a micro finance company operating as a financial intermediary between banks and SHGs where its main objective was bridging gap in micro finance to SHGs and for that purpose, it availed credit facilities from different banks/financial institutions over few years on interest and these were advanced to SHGs at interest rates with some mark-up, then assessee was carrying on micro finance business in a commercial line and it was not a charitable activity but an activity to expand finance business by contracting weaker section of public and was therefore hit by proviso to section 2(15). It was also held that even if activities of assessee were stated to be relief to poor, since running of business in form of micro finance was not incidental to carrying on of main objective of assessee-trust but it was main business of assessee, then it was not protected by provision stated in section 11(4A). In the case of Assistant Commissioner: of Income-tax v. Grama Vidiyal Trust [2016] 71 taxmann.com 88 (Chennai - Trib.), it was held that where assessee was running its micro finance business and lending money at commercial rate prevailing in market then such activities carried on by assessee trust could not be considered as activities of medical relief or education or relief of poor and hence, case of assessee was hit by proviso to section 2(15) and assessee would not be entitled for benefit of section 11. It was also held that even if activities of assessee were stated to be relief of the poor, it was not possible to conclude that running of business in form of micro finance was incidental to carrying on of main objective of assessee-trust and that assessee was not protected by provision stated in section 11(4A) and the Assessing Officer had rightly withdrawn exemption granted to assessee under section 11. In the case of Janalakshmi Social Services v. Director of Income-tax (Exemptions), Bangalore, [2009] 33 SOT 197 (Bangalore) it was held that where Assessee was availing of loan facility from banks/financial institutions at interest rates ranging from 8.5 per cent to 9 per cent and such loan facility was extended to so called poor people in urban areas at rates ranging between 18 per cent to 24 per cent per annum and where assessee-company was not reaching to individual beneficiaries directly but was doing so through NGOs and SHGs from whom it charged high interest rate, then Director (Exemptions) was right in holding that assessee was undertaking only business of

micro-financing and had not done any charitable act and, therefore registration could not be granted to the assessee.

4.16 The specifics of every case being distinct, no solace can be afforded to the appellant on the basis of the judgments quoted by the Id. AR. It is also noted that Hon'ble Supreme Court has admitted SLP against the order of the Hon'ble Delhi High Court in ITPO case (2017) 84 [Taxmatin.Com](#) 283 (SC) refers.

*4.17 The argument of the Id. AR that the mere fact that premium collected towards instance is more than the relief given during the specific year cannot make the activity commercial, is well received but the **same** may not have any material impact on the contours of the case as the case mainly, hinges on the nature of micro financing activity of the appellant. Insurance activity being a corollary of the micro finance activity, whatever holds true for the latter is equally germane for the former.*

4.18 This ground of appeal is accordingly dismissed

Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

11. The Ld.AR submitted that all the issues raised are in respect of disallowance of exemption claimed by the assessee u/s. 11 of the Act. The Ld.AR submitted that the assessee is engaged in the charitable activity of relief to the poor by forming Self Help Groups (SHG) of the rural poor and encouraging them to become financially self-sufficient. He submitted that the modus operandi followed by the assessee is to advance loans to SHGs and encourage them to in turn provide the funds to the members to be utilized for purposes of any activity carried on by them. He submitted that the object of such activity is to empower the rural poor and give them access to easy finance.

12. He submitted that, these loans do not carry any security other than the personal guarantee of the group members who are

all poor people. The Ld.AR submitted that the assessee charges interest at the rate of 15% on the loans advanced to the SHG and in turn has to pay interest at the rate of 10% on the loan availed from SCDCC Bank.

13. He further submitted that these activities are consistently carried on by the assessee through SHG and the same has been accepted as “charitable purposes” for all prior assessment years. Copies of the assessment orders passed for the assessment years 2012-13, 2014-15 and 2016-17 placed at pages 54-69. The Ld.AR has placed before us the expenses incurred by the assessee under various heads of services rendered by it through SHG as under:

Table marked as Annexure 1 from the Note on application of Income

Expense Head	AY 2014-15	AY 2015-16	AY 2016-17	AY 2017-18	AY 2018-19	AY 2019-20	AY 2020-21
Animator Exp	1,59,93,702	1,63,56,357	1,76,04,447	2,07,54,018	2,18,61,707	2,79,03,532	2,55,36,437
Donations	39,00,000	19,55,000	14,00,000	10,00,000	56,70,000	13,50,000	3,50,000
New India Assurance Health Scheme Premium	-	-	-	41,26,200	45,69,226	-	-
Santhwana	1,42,000	1,08,000	3,81,000	1,65,000	1,15,000	1,76,000	3,66,000
Training Exp	67,04,000	1,58,40,000	1,09,63,097	79,31,225	57,70,025	2,50,000	-
Uniform	36,16,940	1,69,000	98,33,750	3,46,187	3,65,35,762	13,24,990	1,21,506
SHG Formation Exp	-	-	-	5,407	8,93,210	11,69,547	21,77,941
Sabayadhana	-	-	-	-	1,35,000	1,71,800	66,000
Insurance Premium	-	55,28,112	-	-	-	32,06,297	26,74,788
Scholarship for students	1,92,750	-	-	-	-	2,62,000	-
Total	3,05,49,392	3,99,56,469	4,01,82,294	3,43,28,037	7,55,49,930	3,58,14,166	3,12,92,672

14. The Ld.AR submitted that assessee borrows money at 10% interest and lends the same at 15% interest per annum to SHG for the above services, which the Ld.AO has held to be commercial in nature which defies the requirement of section 2(15) of the act of “advancement of an object of general public utility”. It is the submission of the Ld.AR that this additional 5% interest is charged in order to cover the administrative cost and allied expenses and that there is no proper motive in it. He

placed reliance on the decision of *Coordinate Bench of this Tribunal* in case of *M/s. Janodaya Trust* in ITA No. 763/Bang/2016 by order dated 13.01.2021 wherein in a similar circumstances, the *Coordinate Bench of this Tribunal* held such observations to be based on surmises alone. It was submitted that this *Tribunal* found merit in the contention of the assessee that charging of interest with the mark-up was to cover administrative and allied expenses and also possible defaults by the borrowers which is an inherent risk in the financing activity. He also relied on the decision of *Hon'ble Cuttack Bench* in case of *Adhikar* in ITA No. 265/CTK/2017 by order dated 24.09.2018 wherein it is held the activity of microfinance to be a charitable in nature. He also relied on the following observation of *Hon'ble Cuttack Bench* in case of *Adhikar (supra)*.

“15. The assessee explained before us that in the activity of micro financing, the assessee obtained loan from banks and or financial institutions and advanced the same to self help group and poor persons. Above submissions of the assessee could not be controverted by the department. No material could be brought on record to show that the loan was advanced of any big amount or loan was advanced to any economically affluent persons. Thus, we find merit in the contention of the assessee that the activity was carried out with the object of providing relief to the poor, In the circumstances, we find no error in the order of the CIT(A), which was passed following the decisions of Visakhapatnam Bench of the Tribunal in the case of Spandana (Rural & Urban Development Organisation) (supra), Bangalore Bench of the Tribunal in the case of ADIT (E) vs Bharatha Swamukhi Samsthe (supra), Delhi Bench of the Tribunal in the case of Disha India Page 19 I 20 ITA No. 265/CTK/2017 Assesment Year : 2009-10 Micro Credit (supra), Cuttack Bench of the Tribunal in the case of Bharat Integrated Social (supra), Hon'ble High Court of Bombay in the case of CIT vs. Agricultural Produce and Market Committee (supra), Hon'ble Supreme Court in the case of CIT vs. Sales Tax vs Sai Publication

Fund (supra). Therefore, we confirm the findings of the CIT(A)".

15. On the other hand the Ld.DR vehemently supported the order of the Ld.CIT(E) in rejecting the claim of deduction under section 11 of the Act. The Ld.DR relied on the decision of *Hon'ble Chennai Bench of the Tribunal* in the case of *ITO(E) Vs. Kalanjiam Development Financial Services* reported in 156 ITD 213 wherein it is held that, the micro financing activity is commercial activity and upheld the action of the Ld.AO in denying the exemption u/s. 11 and 12 of the Act, to the assessee therein. The Ld.DR submitted that, the Ld.CIT(E) rightly applied the decision of coordinate bench of this *Tribunal* in the case of *Janalakshmi Social Services vs. DIT(E)* reported in 33 SOT 197 to reject the exemption claimed by the assessee. He also placed reliance in support of his contentions:

- *Decision of the Hon'ble ITAT of Hyderabad in the case of Fernandez Foundation v Commissioner of Income Tax reported in TS 7315-ITAT-2022 (Hyderabad)*
- *Decision of the Hon'ble ITAT, Cochin in the case of M/s. Shalom Charitable Ministries of India Vs. ACIT in ITA Nos.79 & 80/Coch/2017 and S P Nos. 17 & 18/Coch/2017*
- *Decision of Hon'ble ITAT, Chennai in the case of ACIT V Grama Vidiyal Trust reported in 71 taxmann.com 88 (Chennai) 180 TTJ 579 (Chennai)*
- *Decision of Hon'ble ITAT, Chennai in the case of ITO(Exemptions) Madurai V Kalanjiam Development Financial Services reported in 64 taxmann.com 255 (Chennai) 156 ITD 213(Chennai)*
- *Decision of Hon'ble ITAT, Kolkata in the case of Sreema Mahila Samity V DCIT reported in 86 taxmann.com 216(Kolkata — Trib) 167 ITD 420 (Kolkata — Trib) 190 TTJ 857 (Kolkata — Trib)*
- *Decision of Hon'ble Supreme Court of India in the case of ACIT(Exemptions) Vs. Ahmedabad Urban Development Authority reported in 143 taxmann.com 278(SC)*

16. The Ld.AR rebutting the submissions of the Ld.DR contended, that that the facts in the case of *Janalakshmi Social Services vs. DIT(E)* (*supra*) are distinguishable, and therefore, the

ratio laid down in the said case would not apply in the case of assessee. He submitted that, in case of *Janalakshmi Social Services vs. DIT(E) (supra)* the assessee therein was providing finance to a particular section of society, i.e., traders dealing in vegetables and fruits, whereas, in the present case the assessee is providing micro financing assistance to needy, deserving individuals or group of individuals and not to a particular section of society. He also submitted that in case of *Janalakshmi Social Services vs. DIT(E) (supra)* the assessee was availing loan facility from banks/financial institutions at interest rates ranging from 8.5% to 9% and was extending the finance to the particular section of the society at rates between 18% to 24% per annum in addition to charging of processing and service fee between 1 to 2 percent.

17. Whereas, the assessee in the present facts availed loan from SCDC bank @ 10% and was charging interest in accordance with RBI guidelines @ 15% on the loans advanced to SHG, without there being any security and processing or service charges on the beneficiaries.

18. The Ld.AR further submitted that in case of *Janalakshmi Social Services vs. DIT(E) (supra)* the assessee therein was not reaching to individual beneficiaries directly but was having intermediaries such as NGO and SHG's from whom it charged high rate of interest.

19. Whereas, in the present case the assessee would be providing loan to individual beneficiaries without there being any intermediary. The Ld.AR contended that registration u/s.12AA granted to the assessee has not been rejected for the year under

consideration. The ld.AR also argued that rule of consistency should be followed by placing his reliance on the decision of the *Hon'ble SC* in the case of *Radhasoami Satsang* reported in (1992) 60 *Taxman* 248, which held that the AO should not interfere with the fundamental aspect permitting through the difference assessment years.

We have perused the submissions advanced by both sides in light of records placed before us.

20. Admittedly there are conflicting judgments of various benches of this *Tribunal* on this issue. Some of the decisions relied by both sides in favour of the assessee as well as the revenue has been listed herein above.

It also noted that, the registration u/s. 12AA as a Public Charitable Trust has not been cancelled by the authorities below. The objects of the trusts has been listed herein above in the preceding paragraphs.

21. The issue before us is:

Whether microfinance operations carried on by the assessee in the present facts of the case can be said to be in the nature "relief of poor" or merely "the advancement of any other object of general public utility"; and Consequently, whether the provisos to section 2(15) can apply in relation to the said activities.

22. It is noted that the assessee has advances loans of the SHG- and encourage them to provide funds to its members to be utilised for the purposes of activities carried on by them which is in consonance with the objects of the trust. The brief description of the services provided by the SHG's with the finance provided by the assessee has been listed as under:

“The following are the broad heads of application of income of the Trust. A chart showing the extent of such application from AY 2014-15 to AY 202021 is enclosed herewith as Annexure-1. The explanation with regard to the nature of application is given as under:

1. Animator expenses: *Self Help Groups [SHG's for short] Animators are social workers, working at the Taluk level, who are engaged in providing financial literacy to rural poor. Animators (social workers) are working in the community by interacting with the rural poor and educating them about avenues for marketing of their products including raising of capital and loans for their vocation and activities. They help the rural poor by forming SHG's, attending SHG meetings, regularly conducting Training programs etc. The Trust provides these animators with a monthly honorarium/ remuneration to enable them to meet their expenditure in this regard and carry on the activity of alleviating poverty. The activities of the Self Help Groups are managed & coordinated by these animators, who act as a bridge between the trust and self help group members and general public of various places. The activities of the animators aid in bringing awareness to the rural poor in opportunities available to them. The rural poor are mostly artisans, craftsmen and other semi-skilled persons who are engaged in making products and providing services. These people require loans for their activities and they do not have access to banks and other formal financial institutions. They are at the mercy of local money lenders, who charge exorbitant interest. Hence, the animators are tasked to spread awareness not only about the availability of finance through self help groups without security but also to help market their products and services and ensure timely payment realization for them. For the year under appeal, the trust has spent Rs.2,07,54,018/- towards their remuneration for their services rendered to the trust.*

2. Donations: *The Trust encourages & gives financial support to Athletics, Kambala, Yakshagana, Temple Renovations etc. These donations are given for worthy causes in the district where many of the members of the SHG are situated. These donations are given for development of good relations and fostering a sense of community well-being amongst the members of SHG's since they participate in these activities in large number. The donations given for the purpose of these activities also aid the SHG's in the marketing of their products by*

expanding their network and allowing them an opportunity to interact with villagers participating in such causes. During the year under appeal, the Trust has donated a sum of Rs.10,00,000/- towards various institutions as per ledger enclosed herewith as Annexure-2.

3. New India Assurance Health Scheme Premium: *The premium is paid by the Trust towards protection & security of the health of SHG members, medical & group personal accident benefit provided to SHG members. It is often the case that the rural poor does not have access to proper health care facilities and insurance. Hence, the Trust aids in proving the same to SHG members, which further protects them from the burden of paying for health care. During the year under appeal, the premium paid by the Trust was Rs.41,26,200/-*

4. Santhwana: *During the year under appeal, the Trust has paid a sum of Rs.1,65,000/- towards 'Navodaya Santhwana' Scheme implemented by the Trust. Under this scheme upon the death of SHG Members, the Trust provides financial assistance to the dependent of deceased members.*

5. Training Expenses: *Navodaya Trust conducts Training programs & Samavesha for the SHG Members. Training programs are for SHG members as well as animators working in the rural areas. In course of training, the participants are taught about SHG concept, Micro Entrepreneurship Development Programs, Income generating programs & also social awareness. Similarly, 'Samavesha' is conducted to provide awareness about the various programs including governmental schemes meant for the development of rural poor. In this manner, the Trust aids in spreading awareness amongst the rural poor and by educating the SHG members and animators about the various schemes/ benefits available to them, the Trust helps them in making the best use of the opportunities provided. During the year under appeal, the Trust had incurred training expenses of Rs.79,31,225/-.*

6. Uniform: *Uniforms are provided to the SHG members as well as Animators free of cost to inculcate a sense of equality and unity among the men & women members of Self Help Groups as well as Field workers. The Trust believes in providing fair and equal opportunity to the rural poor and the practice of providing uniforms instills a sense of camaraderie amongst the SHG members and ensures*

that there is no discrimination. The total amount spent during the year under appeal was Rs. 3,46,187/-

7. SHG formation expenses *Formation of Self Help Groups for the socio, economic and holistic development of rural poor is also done by the Trust in cases where the members of the SHG are unable to perform these activities by themselves due to lack of resources. In such cases, the Trust aids them in the formation of SHG's. The SHG formation expenses incurred during year under appeal was Rs.5,407/-*

8. Sahayadhana: *This amount represents expenditure incurred towards assistance given to rural poor in time of their need. It is akin to donations. This also encourages the rural poor to approach the Trust for any aid/assistance required.*

9. Insurance Premium: *The premium is paid by the Trust towards protection & security of the health of SHG members, medical & group personal accident benefit provided to SHG members. The premium paid by the Trust aids the rural poor in accessing affordable health care.*

10. Scholarship for Students: *Meritorious students in the rural areas are provided scholarship in the form of financial aid to meet the cost of education and fees to be paid.”*

23. As we studied through the concept of microfinancing, we note that *Microfinance* is lending carried out with small borrowers. The targets of microfinance are low-income individuals/families who require small quantities of short term finance for purposes such as agriculture, marriage, debt redemption, medical emergencies, etc. These loans are extended without collateral security. The definition of the term "qualifying asset" (being a loan extended by a microfinance entity) in the Non Banking Financial Company-Micro Finance Institutions (Reserve Bank) Directions, 2011, clarifies the relevance of the "micro" in "microfinance". Thus 'Microfinancing' penetrates into the rural sectors to serve the poor. We also note that the strict lending criteria, terms, and

conditions that banks insist, cannot always be met by borrowers belonging to the weaker economic sector. And therefore microfinancing activity is considered to be a practical and workable source of funds.

24. We note that there is a broad line of distinction between the micro financing activities being carried out on commercial basis and for charitable purpose. If the micro financing facility is extended by charging exorbitant rate of interest and for a particular group of society which may be affluent and is using micro financing mode to fund their working capital, undoubtedly, the micro financing activity would be commercial in nature. On the contrary if the micro financing assistance is provided to the weaker section of society to meet their vocational needs and for their upliftment, by charging rate of interest in accordance with the RBI guidelines issued from time to time and the funds are provided to the needy without putting extra burden of processing or service charges, the activity would certainly fall within the ambit of charitable activity.

Based on the above background regarding the activity of Microfinancing, let us analyse the arguments of both sides in light of applicable provisions.

25. Section 11 of the Act, stipulates that income derived from property held under trust either wholly or in part for charitable or religious purposes shall not be included in the total income computed under the Act. Therefore, for an assessee other than religious trusts, the activities must necessarily be for a "charitable purpose" within the meaning of section 2(15) for availing the exemption under section 11.

26. The Sub section (15) of section 2 lists six limbs, five of which are specific and the last one is the residuary limb, being "*the advancement of any other object of general public utility*". For the sake of convenience the relevant portion of Section 2(15) is reproduced herewith as under:

.....
2. In this Act, unless the context otherwise requires,—

.....
(15) "*charitable purpose*" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year;

Following proviso shall be substituted for the existing first and second provisos to clause (15) of section 2 by the Finance Act, 2015, w.e.f. 1-4-2016:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or

institution undertaking such activity or activities, of that previous year;

27. This definition of "*charitable purpose*" is inclusive in nature and includes relief of the poor, education, medical relief and the advancement of any other object of general public utility as per proviso inserted by Finance Act, 2015. This newly inserted proviso provide that, the "*advancement of any other object of general public utility*" shall not be for charitable purposes, if it involves carrying of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration, irrespective of the nature of use or application or retention of the income from such activity.

28. A plain reading of the above sub-section also shows that, the two old provisos and the new proviso brought in vide Finance Act, 2009 & 2015, will only apply if the charitable purposes are in the nature of the advancement of any other object of general public utility. These provisos, are not relevant to activities covered by any of the five specific limbs of section 2(15).

29. In the present facts of the case, it seen that the assessee procures loans from SCDCC Bank and lend it to needy members of the SHG's. These loans are being procured on interest by the assessee and, the assessee was charging interest on these amounts lent to the beneficiaries. The assessee claimed that this activity of lending money through micro financing is incidental to its main activity of "relief of poor" and is therefore covered u/s 11(4A) of the I.T. Act, 1961. Though the assessee claims that it's activity is covered u/s.11(4A) of the Act, as incidental to its main object of "relief of poor". But the fact remains that the assessee

trust has been borrowing money from SCDCC Bank on interest and thereafter lends the same to various SHG's by charging interest on the amounts lent. These SHG'S further utilises the money advanced by the assessee for its members or to any others who are in need of such funds. Hence, in our view, this activity of the assessee clearly gets covered under "Advancement of General Public Utility" and not under "relief of poor" as defined in Sec.2(15) of the Act.

30. The Ld.AR submitted that the financing activity carried by the assessee is not in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. The Ld.AR also submitted that the extra 5% interest charged by the assessee from the lonee as against 10 % paid by the assessee is appropriated towards administrative charges, and are further used in financing activities. It is also submitted that as assessee do not charge any processing fees or do not ask for any collateral securities, the extra charge of interest covers up any kind of contingencies in respect of failure in repayment by such lonee's.

31. The Ld.DR argued that the assessee was receiving funds from financial institutions and advancing loans to women and in the process is making profit. According to the Ld.AO, the activity of the assessee is not towards the 'relief of the poor' but 'advancement of general public utility'. According to him, in terms of the amended Section2(15) of the Act, the activity of the assessee cannot be treated as "charitable purpose".

32. *Hon'ble Visakhapatnam Bench of this Tribunal in the case of SPANDANA (Rural & Urban Development Organisation) Vs. ACIT*

reported in (2010) 40 DTR 153 has dealt with this issue. Hon'ble *Visakhapatnam Bench* while addressing identical issue held as under:

“Assessee borrowing money from banks and providing loans to poor women for their poverty alleviation can be said to be encouraged in Charitable activities entitled for exemption u/s 11 of the Act.”

While holding so, it has placed reliance on the order of the Coordinate bench in case of *ACIT(E) vs. Bharatha Swamukhi Samsthe* reported in 28 DTR 113 (Bangalore). The relevant extract of the findings in the case of *SPANDANA (Rural & Urban Development Organisation) vs. ACIT (supra)* are as under :

"18.Now the issue before us is; whether the micro financing activity is a charitable activity and whether this was an object of the assessee at the time of its formation. From a careful perusal of record, we find that this object of micro finance was inserted under the headings 'aims & objects' in the memorandum vide resolution of the general body dated 29th November, 2001. Now the question comes whether activities of micro financing to the poor people is a charitable activity or it can only be termed to be commercial activity of the assessee. In this regard, Bangalore Bench of the Tribunal has examined this issue in detail in the light of nature of activities and they have categorically held that micro finance activity is a charitable activity and assessee is entitled for exemption u/s 11 and is also eligible for renewals and recognition of section 80G(5) of the Act. While holding so, the Tribunal has observed that loan was given to project members out of the funds borrowed from the banks. The beneficiaries are poor families. If the women in the assessee's project have to borrow money from the money lenders, they have to pay many times higher interest than what the assessee has charged. The Tribunal further observed that in these type of activities, assessee has to incur financial cost for obtaining loans from banks and for regularizing the rest of the activities and to meet the expenses in that activities and other administrative activities of the trust the assessee has to charge the higher rate of interest from the poor members. The Tribunal further observed that object of the assessee was for alleviation of poverty by extending micro credits to poor rural women and it was not charging exorbitant interest and they are being nothing to suggest that the funds are

ever used or misused for the personal benefits of the trustees. The relevant observation of the Tribunal are extracted hereunder for the sake of reference:

"After going through the rival submissions and material on record, we find that the assessee trust was registered as a public charitable trust in September, 1997 for specific purpose of poverty alleviation and general for other related charitable activities under the name and style of M/s. Bharatha Swamukhi Samsthe (BSS). The poverty alleviation of poor women and through them, of their families as well was the object of the trust. For the sake of convenience, objects are extracted from the trust deed of the assessee:

"(i) The main objective of the trust is to alleviate poverty in a sustainable and sustained manner, if even larger numbers of poor people, particularly poor women.

(ii) The trust aims to facilitate entrepreneurial activities by provision of micro credit to poor rural women. It will also work to encourage savings habit amongst such poor people. It will work to help create financial resources to serve the poor women and their families to tide over the many emergencies they face regularly, such as ill health etc. The trust will work to facilitate over all social development of poor women, their families and their communities to the degree possible, with minimal possible additional financial input. The input will work to help establish institutions to do all of the above in a sustained and sustainable manner for the long run.

(iii) The trust may also engage in education, research, health promotion and any other objects of general public utility.

(iv) The other aims and objects of the trust shall be:

(a) To promote the principles of self-help and self-reliance amongst the poor sections of the population.

(b) To promote and administer schemes for self-employment of the persons belonging to poorer and disadvantaged sections of the population.

(c) To promote and administer self-financing scheme for improving health, nutrition, sanitation, literacy and housing amongst the poor and disadvantaged sections of the population.

(d) To provide support services and encouragement to poverty alleviation programmes.

(e) To provide finance for poverty alleviation programmes, social welfare programmes, community development projects, projects for providing housing to the poorer sections of the community.

(f) To organize training programmes and to provide educational facilities to the poorer sections of the community.

(g) To establish administer, maintain, manage or to finance the establishment and maintenance of vocational training centres and institutions for providing formal and informal education

benefit of the poorer and disadvantaged sections of the community.

(h) To organize lectures / seminars / demonstrations / exhibitions / symposia etc., to disseminate useful information to the public.

(i) To establish, maintain, manage or finance the establishment and maintenance of libraries for the use of the public.

(j) To establish, maintain, manage or finance separate funds like emergency fund, calamity fund etc., to help poor families at the time of distress.

(k) To publish or to finance the publication of books, pamphlets, tracts, magazines, etc., for dissemination of useful knowledge amongst the public.

(l) To undertake and carry out research in social sciences or statistical research.

(m) To undertake and carry out programmes of conservation of natural resources or of afforestation.

(n) To conduct, perform or carry on any of the above activities or any activity in pursuance of the above object either jointly or in collaboration with any other trust or institution.

(o) To design, formulate, execute or carry out any scheme for the furtherance or attainment of any of the above objects.

(p) To do all such acts, deeds and things as are necessary or incidental to the furtherance or attainment of the above objects."

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

34. From the table reproduced at page 18 of this order, it is clear that the application of income by the trust are towards animator expenses, donations, New India Assurance Health Scheme Premium, Santhwana, Training expenses, uniform, SHG formation expenses, Sahayadhana, Insurance Premium and

Scholarship for students. All these activities are carried on by assessee for the members of Self Help Group (SHG) was through self help group for people who approach for financial assistances. On analysis of the balance sheet and accounts of the assessee for the year under consideration, it is found that the corpus fund for the year under consideration carry forwarded is Rs.50,000/- at page 37 in the balance sheet. General fund that has been carried forwarded from the preceding assessment year is approximately Rs.23.02 crores and the current year balance after adding the excess income over expenditure amounting to Rs.5.74 crores approximately totals to Rs.28.76 crores approximately. The assessee has been accumulating the income year by year by providing financial assistance to the beneficiaries of the self help group. Further from the balance sheet it is noted that assessee has obtained loans and advances from SDCC bank amounting to Rs.15.51 crores approximately and the loans advanced to SHG is Rs.38.60 crores approximately. This itself reveals that the entire money is sourced from corpus fund, general fund and loans and advances received by assessee during the year.

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

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

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

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

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

38. To sum up, in our opinion, it is undisputed that the assessee was granted registration under s. 12A w.e.f. 8th July, 2004. The Department also accepted the returns for the last many years allowing exemption under s. 11. It is only for the asst. yr. 2017-18, the Department is taking a different view. It is not in dispute that the assessee's work is lending money to the poor women for income generating activities. The financial assistance given to Self Help Group (SHG) members are borrowed from bank to certain extent. The beneficiaries are poor families. If the SHG members have to borrow money from the moneylenders, they would have to pay many times higher interest along with security than what the assessee has charged. It is also not in dispute that the assessee incurs financial costs for obtaining loans from banks. The assessee

also have to make payment towards salaries and other administrative activities of the trust. There is nothing on record to suggest that the assets and income of the trust were available for the personal benefit of the trustee and the board members. These are only used towards advancing credit to poor women for their poverty alleviation and for the benefit of the socio-economically weaker sections of the society. The Ld.AO has not substantiated his findings, that the work of the trust is not charitable and the interest charged by the assessee does not commensurate with the cost incurred by it. The Ld.AO placed nothing on record to show that the assessee is charging exorbitant interest. The action of the Ld.AO might have justified, in case the poor ladies of SHG have option to avail credit at lower interest from other sources. In present case, the credits are available at interest rate without any security. There was no compulsion over parties to avail financing at the rate of interest offered by the assessee. The assessee can carry out its activity only after charging marginal higher rate of interest to run its activities. This perse cannot be the basis to come to the conclusion that the assessee is in money lending activity. The assessee is running various activities like Animator activities, Donations, Health Insurance premiums, Santhwana, Training, Uniform, SHG Formation, Sahayadhana, Insurance Premium & Scholarship for students in rural area to make the poor ladies aware of the scheme and to encourage their participation as the principle objects of the trust. All these things need some expenditure. The facts and circumstances

show that the assessee is carrying out its charitable activities and the surplus funds are used for charitable purposes.

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

to the present facts of the case. So, the lower authorities are not justified in holding that the assessee is not engaged in charitable activities and denying exemption under section 11 of the Act. Thus, we allow the grounds raised by the assessee.

Accordingly, the grounds raised by assessee stands allowed.

In the result, the appeal filed by assessee stands allowed.

Order pronounced in open court on 31st August, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 31st August, 2023.
/MS /VGP

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore