

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री संजय सरमा, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM AND
HON'BLE SHRI SONJOY SARMA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.2428/Chny/2018

Dhan Housing and Habitat Development of Poor for Empowerment Confederation No.1-A, Vaidyanathapuram East, Kennet Cross Road, Madurai – 625 016.	बनाम/ Vs.	CIT (Exemptions) Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAGCD-1358-R		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T. Banusekar (CA) & Shri Yeshwanth (CA) – Ld. ARs
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri ARV. Sreenivasan (Addl.CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	16-08-2022
घोषणा की तारीख / Date of Pronouncement	:	18-08-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee contests the rejection of registration application u/s 12AA. The registration has been denied by learned Commissioner of Income Tax (Exemption), Chennai [CIT(E)] vide order dated 28.06.2018. The grounds taken by the assessee read as under:

1. For that the Commissioner of Income Tax (Exemptions) erred in rejecting the application filed by the appellant u/s.12AA of the Income Tax Act.

2. For that the Commissioner of Income Tax (Exemptions) failed to appreciate that the activities of the appellant trust constitute "relief of the poor" in accordance with the provisions of section 2(15).

3. For that the Commissioner of Income Tax (Exemptions) erred in concluding that the appellant trust is not carrying on any activity for charitable purpose as per the provisions of section 2(15).

4. For that the Commissioner of Income Tax erred in concluding that the main object of the trust is not charitable without appreciating the facts and circumstances involved in the appellant's case.

PRAYER

For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that the Hon'ble Tribunal may be pleased to

(a) Direct the Commissioner of Income Tax (Exemptions) to grant approval u/s.12AA and /or

(b) Pass such other orders as the Hon'ble Tribunal may deem fit.

2. The Ld. AR advanced arguments and submitted that the assessee was promoted to grant financial help to lower strata of society and its activities were charitable in nature. The Ld. AR also submitted that the assessee was registered under The Companies Act as 'not for profit' entity. The Ld. AR further submitted that the assessee was keeping miniscule margin of 1.5% and therefore, the activities could not be said to be for profit motive. For the same, Ld. AR took us through the constitution of the assessee and relied on various judicial decisions to support the submissions. The Ld. AR also filed a brief note to support the case of the assessee. The Ld. Sr. DR, on the other hand, submitted that the assessee was merely into money lending business.

3. We find that the assessee was constituted by Memorandum of Association dated 09.03.2017 and it filed an application in Form No.10A for registration u/s 12AA on 04.12.2017. The assessee submitted that its main object was to provide financial support to the

poor for proper shelter at an affordable cost. The reply of the assessee on 26.06.2018 to Ld CIT(E) was under: -

"Poor do not have access to housing credit even for repairs, renovations, sanitation, electricity connection etc., besides new house from formal financial institutions like commercial banks, Regional Rural Banks and Housing finance companies as they are not able to meet the mortgage requirements due to their not having proper title for land/ plot. They are forced to borrow from informal sources such as money lenders at usurious interest rate as high as 40 to 50% which land them in a vicious debt trap. As an alternative to respond to the dismal situation, DHAN HOPE has been incorporated to offer Housing credit at an affordable cost (Not exceeding 15 percent). In other words, DHAN HOPE addresses the twin challenges of providing hassle-free access and affordability as well.

As far as the interest rate is concerned, it is dynamic in relation to the borrowing cost from commercial banks. What is more appropriate is the margin gap between borrowing cost of DHAN HOPE and the interest charged by DHAN HOPE, The company has borrowed, as of now, three crores from NABKJSAN (a subsidiary of NABARD) at a cost of 11.5% and DHAN HOPE charges 13%, the margin being 1.5% only which is actually below cost operation considering the overheads. Considering the main purpose of the company being to help the poor to access the affordable housing credit, we would keep the margin gap not exceeding 2% at all time mobilizing grants, donations and soft funds. "

4. The Ld. CIT(E) proceeded to examine the claim of the assessee on the threshold that whether the said activity could fall within the ambit of "relief of the poor" or alternatively, under the category of "advancement of any other-object of general public utility". It was opined that charging of interest rate at 13% for construction of housing could not be said to be relief of the poor since the bank offer housing loans at much lesser rate which are in the range of 8 to 9%. The activities would also not fall under the object of general public utility because the proviso there-under prohibits if such activity involves carrying on trade, commerce or business unless such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and the aggregate receipts from such activity during the previous year do not exceed 20% of the

total receipts. In assessee's case, the main activity itself is stated to be affording housing facility to the poor. The main activity itself cannot be in the nature of trade, commerce or business. Borrowing loans on interest and lending the same at higher interest amounts to money lending business. Such money lending business is not a charitable purpose falling under the category of object of general public utility within the meaning of provisions of section 2(15) of the Act. Accordingly, the registration was denied against which the assessee is in further appeal before us.

5. Upon perusal of Memorandum of Association as placed on record, we find that the assessee is registered u/s 7(2) of the Companies Act. The main object of the assessee is to carry on the development activities for the relief of the poor and empowering them through the provision of credit facilities for construction of dwelling units and to carry out related activities. The credit-limit being restricted to Rs.1.50 Lacs per applicant as permitted by regulatory authorities. The assessee also seeks to carry on research on capacity building in housing segment and also seek to impart training to the poor individuals in housing construction activities. For the same, the assessee could accept funds in the form of grants, corpus donations, gifts etc. from various segments including financial institutions and banks.

6. After going through assessee's submission, it could be seen that it is facilitating the poor people to access to housing credit, which otherwise would not be available to them due to mortgage requirements etc. In the process, the assessee is obtaining loans from financial institutions @11.5% which is thereafter advanced at 13%,

leaving margin of 1.5% in the hands of the assessee. It is admitted position that the donations received by the assessee are almost negligible and the main source of funding is loan obtained from financial institutions. In our opinion, this activity is nothing but money lending activity as rightly held by Ld. CIT(E). The objective may be noble but as per extant law, the assessee could not be said to be a Charitable Trust being eligible for registration u/s 12AA. The Ld. AR has submitted that the assessee has not receive any donation because the registration was not granted to the assessee and the assessee had to provide 80G benefit to the payers which could not be granted unless the assessee had registration u/s 12A(a). However, this assertion presume that only s.12A(a) registered entities would get donations otherwise not. Further, the donation so made to assessee would be forthcoming only and only if the same enable deduction u/s 80G to the payer. This assumption, in our considered opinion, is fallacious one. As per assessee's submissions, its only source of funding is loans from financial institutions. The donations are almost negligible. In such a case, the activity is nothing but a mere-lending activity.

7. The Ld. AR has quoted the decision of Hon'ble Madras High Court in **CIT V/s Kurinji Social Welfare Society (TCA No.280 of 2011 dated 18.08.2021)**. In this case, the reason to deny the registration was the fact that the assessee was charging interest and service charges on amount lent to the self help group. In para-7, it was a finding of Tribunal that both the State and Central Government have been granting funds to the assessee. The assessee carried out other activities in rural areas. The same is not the case here.

The decision of Hon'ble Andhra Pradesh High Court in **CIT V/s Spandana Rural and Urban development Orgn. (ITTA No.304 of 2013)** has merely held that micro-financing to poor people is charitable activity. This case law is concerned with assessment proceedings denying exemption to the assessee u/s 11 & 12. Similar is the case law of Chennai Tribunal in **M/s Mahasemam Trust V/s ITO (ITA Nos.2919 & 2020/Mds/2016)**.

The case law before us concerns question of registration wherein the only activity carried out by the assessee is obtaining loans and extending the same to certain strata of people. The only source of funding for the assessee is borrowings and the donations are almost negligible. The other case laws as cited by Ld. AR are similarly distinguishable and not applicable to the present case before us.

8. Considering the facts and circumstances of the case, we see no reason to interfere in the impugned order.

9. The appeal stand dismissed.

Order pronounced on 18th August, 2022.

Sd/-
(SONJOY SARMA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 18-08-2022
EDN/-

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

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF