In the High Court of Judicature at Madras

Dated : 18.8.2021

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The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

Tax Case Appeal No.280 of 2011

Commissioner of Income Tax-I,
Tiruchirapalli ...Appellant

Vs

M/s.Kurinji Social Welfare Society
No.30, Pandamangalam Road,
Woraiyur, Trichy – 620 003. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 03.12.2010 passed in ITA.No.1594/Mds/2009 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench.

TCA.No.280 of 2011:-
This Appeal filed against the Commissioner of Income Tax-1, Trichirappalli in C.No.6162E(A2)/CIT-1/TRY/2008-09 dated 10/08/2009.

For Appellant : Mr.J.Narayanasamy, SSC
For Respondent : Mr.Shanmugarajan

Judgment was delivered by T.S.SIVAGNANAM,J

We have elaborately heard Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the appellant - Revenue and Mr.Shanmugarajan, learned counsel appearing for the respondent – assessee.

2. This appeal is directed against the order dated 03.12.2010 passed in ITA.No.1594/Mds/2009 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench (for short the Tribunal).

3. The appeal was admitted on 08.1.2011 to decide the following substantial questions of law :

"i. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the applicant society is entitled to registration under Section 12AA and approval under Section 80G of the Income Tax Act?

ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the applicant society was engaged in the business of micro finance by borrowing funds at the rate of 13.5% interest from the banks and lending them to the self help groups at 35%, showing 15% as interest and 20% as service charges, which was nothing but additional interest in the garb of service charges ? And

iii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in ignoring the amendment to Section 2(15) of the Income Tax Act, 1961 brought about by the Finance Act, 2008 wherein it was made clear that the 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 rendering any service relating to trade, etc., by way of cess or fee or any other consideration?"

4. The respondent – assessee is a society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 and they are engaged in the activity of micro finance for upliftment and development of rural women, who are below the poverty line. The assessee, which was established during the year 1991, was registered in the year 2005 and they submitted an application on 24.2.2009 seeking registration under Section 12AA of the Act. The Commissioner of Income Tax-I, Tiruchirapalli (for short, the CIT), by order dated 10.8.2009, rejected the application on the ground that the assessee is not engaged in charitable activity, rather the assessee is charging interest on the amount lent to the self help group and service charges for doing documentation, account writing, etc., on behalf of the self help group and it tantamounts to charging fee/consideration for the services to the self help group.

5. Aggrieved by the order of rejection of the application for registration under Section 12AA of the Act, the assessee

preferred an appeal to the Tribunal, which, by the impugned order, allowed the appeal. Challenging the correctness of the same, the Revenue is before us by way of this appeal.

6. The undisputed facts are that the respondent - assessee is a society registered under the provisions of the Tamil Nadu Societies Registration Act. The CIT did not dispute the fact that the assessee has been engaged in the business of micro finance for women self help group by obtaining funds from nationalized banks. The reason for rejecting the application for grant of registration under Section 12AA of the Act is solely on the ground that the assessee borrows funds from the nationalized banks, which have lent funds at 13.5% interest on diminishing basis. The funds obtained from the nationalized banks are lent or advanced as loan to the women self help group and interest at the rate of 15% is being charged. Added to that, the CIT pointed out that 20% is being charged as service charges and there are other charges also collected for the purpose of documentation, writing accounts, etc., and taking note of the amounts, which have been collected by the assessee over and above interest at the rate of 15%, it would show that the assessee is not engaged in a charitable activity and that the activity done by them would tantamount to charging fee or consideration for the services rendered.

7. The Tribunal has done a thorough factual exercise and has found that the genuinity of the society is not in doubt since both the State and the Central Governments have been granting funds to the assessee. Furthermore, the Tribunal, on facts, has found that the beneficiaries are 2700 in number and apart from extending loan to the women of the self help group, other activities like construction of 110 latrines are also carried on by the assessee in rural areas. The Tribunal has also noted that apart from interest on loan, the assessee has income under the head charges on documentation, entrance fee and inspection charges.

8. When the activity of the assessee, which grants relief to the poor is not in dispute, the genuinity of the claim made by the assessee for registration ought not to have been rejected solely on the ground that certain service charges are being collected. Admittedly, women of the self help groups are people, who come from the marginalized society and they are poor rural women, who do not have the wherewithal to approach the nationalized banks for availing loan. If the assessee does not carry on such activity by rendering financial assistance to the women of self help groups, they will have to be under the mercy of the private financiers, who are charging exorbitant rate of interest. Considering all these aspects, the Tribunal granted relief to the respondent assessee. In our considered view, there

is no question of law much less substantial question of law arising for consideration in this appeal, as the entire matter is factual and much of the factual position with regard to the genuinity of the assessee have not been disputed either by the Tribunal or the CIT.

9. The learned Senior Standing Counsel appearing for the appellant – Revenue submits that the CIT recorded a finding that the interest charged would be 35%.

10. However, we find that there is nothing on record to show that the assessee has charged 35% interest. The interest charged is at 15% per annum and 20% is charged as service charges and obviously, the service charges cannot be on recurring basis. Therefore, the said conclusion arrived at by the CIT is not based on any material.

11. We find no good grounds to interfere with the order passed by the Tribunal.

12. Accordingly, the above tax case appeal is dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS
To
1. The Income Tax Appellate Tribunal,
   Chennai 'D' Bench.

2. The Assistant Commissioner of Income Tax,
   Company Circle, Trichy.

3. The Commissioner of Income Tax-1,
   No.4, Williams Road,
   Cantonment,
   Trichirappalli.

+1cc to Mr.J.Narayanasamy , Advocate, S.R.No.41263
+2ccs to M/s.Saran Raj, Advocate, S.R.No.41608

TCA.No.280 of 2011

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