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T.C.A.No.966 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12.11.2024
Pronounced on	09.05.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.No.966 of 2015
and
M.P.No.1 of 2015

Kalanjiam Development Financial Services,
2nd Floor, 1-A, Vaidyanathapuram East,
Near Seventh Day Adventists School,
Kennet Road Cross,
Madurai – 625 016.

... Appellant / Respondent

Vs.

The Income Tax Officer (Exemptions),
Madurai.

... Respondent / Appellant

Prayer: Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, “C” Bench, Chennai dated 7th August 2015 in I.T.A.No.625/Mds/2015.



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For Appellant : Mr.R.V.Easwar
Senior Counsel
Assisted by Mrs.G.Vardini Karthik
and Mr.Bhardwaj Seshadri
for M/s.J.Sree Vidya

For Respondent : Mrs.V.Pushpa
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This Tax Case Appeal is directed against the Impugned Order dated 07.08.2015 passed by the Income Tax Appellate Tribunal (hereinafter referred to as “Appellate Tribunal”) in I.T.A.No.625/Mds/2015.

2. By the Impugned Order, the Appellate Tribunal has allowed the appeal filed by the Respondent Income Tax Officer against the order dated 02.12.2014 passed by the Appellate Commissioner in I.T.A.No.0097/2011-2012.

3. The Appellate Commissioner had earlier reversed the decision of the Assessing Officer in Assessment Order dated 30.12.2011 for the



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Assessment Year 2009-2010 and had thereby allowed
I.T.A.No.0097/2011-2012 of the Appellant vide order dated 02.12.2014.

4. The Assessing Officer had earlier passed an adverse Assessment Order dated 30.12.2011 for the Assessment Year 2009-2010 wherein the benefit of exemption under Section 11(4A) of the Income Tax Act, 1961 (hereinafter referred to as “IT Act”) was denied to the Appellant which decision now stands affirmed by the Appellate Tribunal vide the impugned Order dated 07.08.2015.

5. At the time of admission on 30.09.2015, following substantial questions of law were framed for being answered in this appeal:-

- i. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that microfinance would fall under “any other object of general public utility” and not “relief of the poor”, even after giving a factual finding that the activities of the assessee take care of the poor?
- ii. Whether on the facts and circumstances of the case, the Tribunal was right in holding that since interest was not subsidies, microfinance would amount to a business transaction? and
- iii. Whether on the facts and circumstances of the case, the Tribunal was right in not following the decision of the co-ordinate benches in the cases of *Kurinji Social*



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Welfare Society Vs. ACIT and Socio Economic Development Association Vs. ITO, contrary to the ruling of the Supreme Court in the case of ***Honda Siel Power Products Ltd. Vs. CIT*** [(2007) 295 ITR 0466 (SC)]

6. The brief facts of the case are that the Appellant is a “Charitable Trust” engaged in lending money to self-help groups, claimed exemption under Section 11(4A) of the IT Act. The said activity of lending money carried out by the Appellant is recognized as a microfinance by the Finance Ministry.

7. The business model of the Appellant indicates that it borrows money from various Banks and in turn lends money to small borrowers through self-help groups.

8. The Appellant charged processing fees ranging between 2% to 2.5% on the amount lent to such borrowers who approached the Appellant through self-help groups. On the aforesaid income from processing fees collected, the Appellant claimed exemption under Section 11(4A) of the IT Act, which has been denied.



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9. The Appellant was also issued with a registration under Section 12AA of the IT Act as a Trust under Section 12A of the IT Act by the Commissioner of Income Tax – I, Madurai vide proceedings dated 30.07.2003 bearing reference C.No.464/164/2002-03/CIT-I.

10. In this appeal, we are not concerned with the situation contemplated in Section 12 of the IT Act. The scope of enquiry is confined to Section 11(4A) of the IT Act.

11. The point for consideration in this appeal is whether in the facts of the present case, the Appellant was entitled to the benefit of exemption under Section 11(4A) of the IT Act or not?

12. To understand the *lis*, it will be very useful to refer to sub-section (4A) to Section 11 of the IT Act. Sub-section (4A) to Section 11 of the IT Act is reproduced hereunder:-

“(4A). Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and



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gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.”

13. Sub-section (4A) to Section 11 of the IT Act as extracted above was inserted into the IT Act vide Section 6 of the Finance (No.2) Act, 1991 (49 of 1991) with effect from 01.04.1992. Prior to the above amendment, sub-section (4A) to Section 11 of the IT Act read as under:-

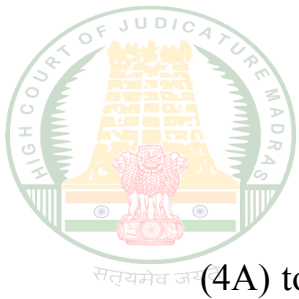
“(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income, being profits and gains of business, unless-

(a) The business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette; or

(b) The business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution,

and separate books of account are maintained by the trust or institution in respect of such business.”

14. We are not concerned with the sub-section (4A) to Section 11 of the IT Act as it stood prior to the amendment. The language in sub-section



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(4A) to Section 11 of the IT Act as it read as above in Paragraph 12 makes it clear that it is an exception to the sub-sections (1), (2), (3) and (3A) to Section 11 of the IT Act. It gives another avenue for exemption over and above exemption in sub-section (1) to Section 11 of the IT Act.

15. Sub-section (4A) to Section 11 of the IT Act states that provisions of sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to “any income of a trust or institution, being profits and gains of business, unless the business of such trust or institution is incidental to attainment of the objectives of the trust or institution as the case may be, institution and separate books of account are maintained by such trust or institution in respect of such business”.

16. Therefore, to understand the scope of sub-section (4A) to Section 11 of the IT Act, one has to read sub-section (1), sub-section (2), sub-section (3) and sub-section (3A) to Section 11 of the IT Act. They are to be read in conjunction with each other.



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17. Sub-section 1 to Section 11 of the IT Act exempts the following categories of income from payment of tax. They are as follows:-

Income derived from property held under trust			Income in the form of voluntary contributions
(a)	(b)	(c)	(d)
wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property.	In part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property.	i. Created on or after the 1 st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and ii. For charitable or religious purposes, created before the 1 st day of April, 1952, to the extent to which such income is	income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution, subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus.



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Income derived from property held under trust			Income in the form of voluntary contributions
		applied to such purposes outside India. Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income.	

18. For the sake of clarity, sub-section (1) to Section 11 of the IT

Act is reproduced below:-

“11. Income from property held for charitable or religious purposes.- (1) Subject to the provisions of [sections 60 to 63](#), the following income shall not be included in the total income of the previous year of the person in receipt of the income—

- (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;
- (b) income derived from property held under trust in part only for such purposes, the trust having been created before the



commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;

(c) income derived from property held under trust—

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution, subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus.”

19. As per Explanations 1, 2, 3, 4 & 5 of sub-section (1) to Section 11 of the IT Act, if the income from the property is not applied or is not deemed to have been applied for charitable or religious purposes in India during the previous year and is accumulated or set apart, either in whole or in part, for application for such purposes in India, such income so



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accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income.

20. Explanations 1, 2, 3, 4 & 5 of sub-section (1) to Section 11 of the IT Act are reproduced below:-

Section 11(1)				
Explanation 1 of sub-section 1 to Section 11	Explanation 2 of sub-section 1 to Section 11	Explanation 3 of sub-section 1 to Section 11	Explanation 4 of sub-section 1 to Section 11	Explanation 5 of sub-section 1 to Section 11
Explanation 1.— For the purposes of clauses (a) and (b),— (1) in computing the fifteen per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income; (2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any	Explanation 2.— Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or other trust or institution registered under section 12AA or section 12AB, as the case may be, being contribution with a specific	Explanation 3.— For the purposes of determining the amount of application under clause (a) or clause (b), the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession". Explanation 3A.— For the purposes of this sub-section, where the property held under a trust or institution	Explanation 4.— For the purposes of determining the amount of application under clause (a) or clause (b),— (i) application for charitable or religious purposes from the corpus as referred to in clause (d) of this sub-section, shall not be treated as application of income for charitable or religious purposes; (ii) application for charitable or religious purposes, from any loan or borrowing, shall not be treated as application of income for charitable or religious	Explanation 5.— For the purposes of this sub-section, it is hereby clarified that the calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding the previous year.



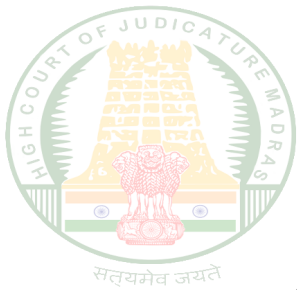
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Section 11(1)				
amount— (i) for the reason that the whole or any part of the income has not been received during that year, or (ii) for any other reason, then— (a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and (b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount, may, at the option of the person in receipt of the income (such option to be	direction that it shall form part of the corpus, shall not be treated as application of income for charitable or religious purposes.	includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G , any sum received by such trust or institution as voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated by such trust or institution as forming part of the corpus of the trust or the institution, subject to the condition that the trust or the institution,— (a) applies such corpus only for the purpose for which the voluntary contribution was made; (b) does not apply such corpus for making contribution or donation to any person; (c) maintains such corpus as separately identifiable; and (d) invests or	purposes:	



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Section 11(1)				
exercised at least two months prior to the due date specified] under sub-section (1) of section 139 for furnishing the return of income, in such form and manner as may be prescribed) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.		deposits such corpus in the forms and modes specified under sub-section (5) of section 11 . Explanation 3B. —For the purposes of Explanation 3A, where any trust or institution has treated any sum received by it as forming part of the corpus, and subsequently any of the conditions specified in clause (a) or clause (b) or clause (c) or clause (d) of the said Explanation is violated, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.		



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21. As per Sub-section (4) to Section 11 of the IT Act, the expression “**Income derived from property held under Trust**” includes “**Income from business undertaking**” held by Trust.

22. For the sake of clarity, Sub-section (4) to Section 11 of the IT Act is reproduced below:-

*“(4) For the purposes of this section “**property held under trust**” includes a **business undertaking** so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.”*

23. Therefore, income from “**business undertaking**” or Trust so held by a Charitable or Religious Trust can also be exempted from payment of tax under Section 11 of the IT Act, provided, such business is incidental to the attainment of the objectives of the Trust or Institution, as the case may be and separate books of account are maintained by such trust or institution in respect of such business.



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24. As per sub-section (4) to Section 11 of the IT Act, where a claim is made by Trust or Institution that the income of such undertaking shall not be included in the total income of such Trust or Institution in receipt of such income, the Assessing Officer has the power to determine income of such undertaking in accordance with the provisions of the Act relating to Assessment.

25. Where any income so determined is found to be in excess of the income as shown in the accounts of the said undertaking, such excess income shall be deemed to be the income applied for the purposes other than for “charitable purposes” or “religious purposes”.

26. Similarly under Section 12 of the IT Act, “**voluntary contributions**” received by a Trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes is deemed to be income derived from property held under trust wholly for charitable or religious purposes for the purpose of Section 11 of the IT Act.



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27. Therefore, to claim the benefit of sub-section (4A) to Section 11 or 12 of the IT Act, the endeavor of the Appellant should be show that the income from its lending business or income from contribution was **“Income derived from property held under Trust”** within the meaning of sub-section (4) to Section 11 of the IT Act.

28. For the aforesaid purpose, the provisions of that Sections and Section 13 shall apply accordingly. For clarity, Section 12 of the IT Act is reproduced below:-

“Section 12.- Income of Trust or Institution from Contributions.

- (1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of Section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that Section and Section 13 shall apply accordingly.
- (2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or



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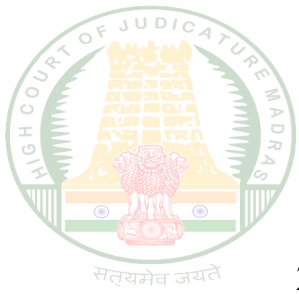


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medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of Section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of Section 11.

Explanation.- For the purposes of this sub-section, the expression “value” shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of Section 13.

- (3) Notwithstanding anything contained in Section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of Section 80G [in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that Section, in the manner specified in that clause, or] which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of Section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax.”



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29. Merely because the Appellant had obtained registration under Section 12AA of the IT Act *ipso facto* does not mean that the Appellant is automatically entitled to the benefit of exemption either under Section 11 or under Section 12 of the IT Act.

30. Similarly, merely because a Certificate under Section 80G(5)(vi) of the IT Act was given to the Appellant on 07.04.2015 *ipso facto* would also not mean that the Appellant was exempt from payment of tax either under Section 11 or Section 12 of the IT Act. Approval under Section 80G(5)(vi) of the IT Act, merely entails a donee a deduction on the donations made to a “**Charitable Institution**”.

31. To avail the benefit under Section 11 and Section 12 of the IT Act, the Appellant/Assessee shall comply with the requirements of Section 12A of the IT Act by following the procedure under Section 12AA of the IT Act.

32. To claim the benefit of exemption under Section 11 of the IT Act, an Assessee shall satisfy that income was:

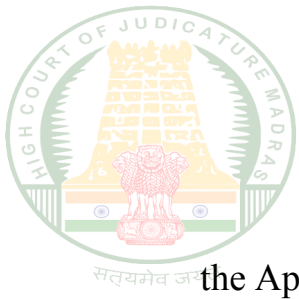


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from property held by it as a “Charitable Trust”; or	under Section 11(1)(a) to (c) of the IT Act
from voluntary contributions made with a specific direction that they shall form part of the corpus of the Trust or Institution, subject to the condition that such “voluntary contributions” are invested or deposited in one more of the forms or modes specified in sub-section (5) of Section 12 of the IT Act maintained specifically for such corpus; or	under Section 11(1)(d) of the IT Act
from business of the Trust which was incidental to the attainment of the objectives of the Trust or Institution, provided separate books of account were maintained by such Trust or Institution in respect of such business; or	under Section 11(4A) of the IT Act
from voluntary contributions received by a Trust created wholly for “Charitable Purposes” or “Religious Purposes” or by an Institution established wholly for such purposes.	under Section 12 of the IT Act

33. Apart from the above, the Appellant/Assessee has to comply with the procedural requirements stipulated in these provisions.

34. In the present case, the attempt of the Appellant/Assessee is to claim exemption on income derived from the processing fees collected by



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the Appellant/Assessee from the small borrowers through self-help groups under Section 11 of the IT Act by applying the exception provided in sub-section (4A) to Section 11 of the IT Act to the facts of the case.

35. While dealing with the scope of sub-section (4A) to Section 11 of the IT Act, the Hon'ble Supreme Court in “**New Noble Educational Society Vs. Commissioner of Income Tax**”, (2023) 6 SCC 649, observed as under:-

“76. In view of the above discussion, it is held that charitable institutions and societies, which may be regulated by other State laws, have to comply with them just as in the case of laws regulating education (at all levels). Compliance with or registration under those laws, are also a relevant consideration which can legitimately weigh with the Commissioner or other authority concerned, while deciding applications for approval under Section 10(23-C).

77. This reasoning equally applies especially in Section 11(4-A) which speaks of profits incidental which specifies that exemption in relation to income or trust of an institution which are profits or means of business cannot be exempted “unless the business is incidental, trust or as the case may be institution and separate books of accounts are maintained by such trusts or institution in respect of such business”. Thus, the underlying objective of the seventh proviso to Section 10(23-C) and of Section 11(4-A) are identical. These have to be read in the



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light of the main provision which spells out the conditions for exemption under Section 10(23-C) — the same conditions would apply equally to the other sub-clauses of Section 10(23-C) that deal with education, medical institution, hospitals, etc.”

36. The Impugned Order of the Tribunal has referred to the Definition of “**Charitable Purpose**”. The dispute in the present case pertains to the **Assessment Year 2009-2010** for the relevant **Previous Assessment Year 2008-2009**. In other words, it pertains to the income of the Appellant/Assessee between **01.04.2008** and **31.03.2009** which was assessable during the **Assessment Year 2009-2010** between **01.04.2009** and **31.03.2010** as per the limitation prescribed under Section 153 of the IT Act as it prevailed then.

37. The definition of “**Charitable Purpose**” as in Section 2(15) of the IT Act is relevant for the grant of Certificate under Section 12A of the IT Act following the procedure under Section 12AA of the IT Act. During the period in dispute, the expression, “**Charitable Purpose**” was defined in Section 2(15) of the IT Act as follows:-



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“2(15). “charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.”

38. However, by an amendment to the above definition vide **clause (15) of Section 2** by the **Finance Act, 2008** with effect from **01.04.2009**, the above definition was altered to read as under:-

“2(15). “charitable purpose” includes relief of the poor, education, medical relief 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.”

39. Therefore, the *Proviso* to definition in Section 2(15) of the IT Act inserted with effect from 01.04.2009 which makes it clear that the advancement of any other object of general public utility shall not be considered as a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of



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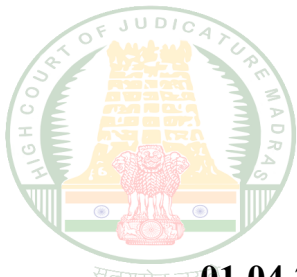
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rendering any service in relation to any trade, commerce or business, for a
cess or fee or any other consideration, irrespective of the nature of use or
application, or retention, of the income from such activity is not relevant.

40. The Tribunal has also referred to the above amendment brought
to the definition of “**Charitable Purpose**” in Section 2(15) of the IT Act.
The Tribunal has also referred to Paragraph 180 of the Finance Minister’s
Budget Speech in Paragraph 8.2 of the Impugned Order wherein it has
been stated as follows:-

“180. “**Charitable Purpose**” includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under “Charitable Purpose”. Obviously, this was not the intention of Parliament and hence I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.”
(Emphasis supplied).”

41. As mentioned above, the **Assessment Year** in question is **2009-2010**. It would relate income earned by the Appellant/Assessee between



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01.04.2008 and 31.03.2009. Such income is assessable during the
Assessment Year 2009-2010 starting from **01.04.2009** and **31.03.2010**.

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42. Therefore, the amendment to the definition of “**Charitable Purpose**” which appears to have influenced the Tribunal while coming to a conclusion that the Appellant/Assessee was not entitled to exemption under Section 11(4A) of the IT Act is misplaced. The cardinal principle of law is that any amendment to any Act or provision is prospective unless it is made applicable retrospectively.

43. The above amendment which came into force with effect from **01.04.2009** vide **clause (15) of Section 2** by the **Finance Act, 2008** is relevant only for the income earned during the **Previous Assessment Year 2009-2010** assessable during the **Assessment Year 2010-2011**. Therefore, reference to the above amendment vide **Finance Act, 2008** with effect from **01.04.2009** is misplaced and is of no relevance to the facts of the case.



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44. The question to be answered is whether the exceptions provided in sub-section (4A) to Section 11 of the IT Act is attracted or not?. As mentioned above, to claim exemption under sub-section (1) only if income is derived from the property held in Trust or income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the Trust or institution, subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus or the business is incidental to the object of the Trust or institution.

45. Sub-section (2), sub-section (3) and sub-section (3A) are to be read along with sub-section (1) to Section 11 of the IT Act.

46. A reading of sub-section (1), (2), (3), (3A) and the Explanation to sub-section (1) and sub-section (4A) indicates that although such Section (4A) to Section 11 of the IT Act is uninfluenced by sub-section (1), (2), (3) and (3A) of the IT Act, income of the Trust or an institution



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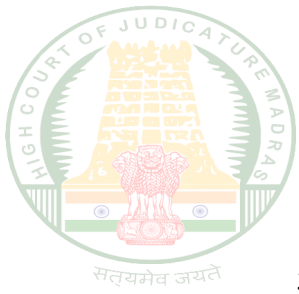
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can be exempted even if such income is from business incidental to the attainment of the objective of the Trust.

47. In this case, the main objective of the Appellant/Assessee itself is microfinance i.e., to do lending operation in the microfinance sector to earn commission ranging from 2% to 2.5%. It is not charitable in nature.

48. The business carried on by the Appellant/Assessee by lending operation is not incidental to the attainment of the objectives of the Appellant/Assessee as a “**Charitable Institution**”. Rather, it is main business object. Therefore, the Appellant/Assessee cannot claim the benefit of exemption either under Section 11(1) or under Section 11(4A) of the IT Act as held by the Hon’ble Supreme Court in “**New Noble Educational Society Vs. Commissioner of Income Tax**, (2023) 6 SCC 649.

49. In the present case, the income that is the subject matter of assessment is neither from property nor from contributions to be exempted under Sections 11 & 12 of the IT Act nor from a business of the Trust which is incidental to the object of the Trust.



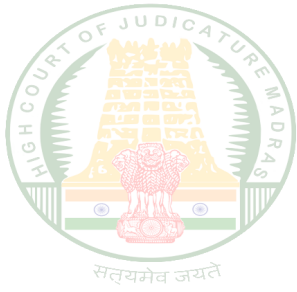
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50. In view of the above discussion, the decisions of the Appellate Tribunal in “**Kurinji Social Welfare Society Vs. ACIT**” in I.T.A.No.1594/Mds/2009 and “**Socio Economic Development Association Vs. ITO**”, 2011 TIOL 754-ITAT, Chennai are held irrelevant to the facts of this case. The ruling of the Hon'ble Supreme Court in “**Honda Siel Power Products Limited Vs. CIT**”, (2007) 295 ITR 0466 (SC) cannot be applied to the facts of this case. Merely because microfinance has emerged as an effective tool for alleviating poverty in many countries and further impetus was given in setting up such institutions *ipso facto* would not mean that the Appellant/Assessee was a “Charitable Institution” and income from lending business was incidental for its object.

51. Therefore, the claim of the Appellant has been rightly rejected by the Appellate Tribunal vide Impugned Order in I.T.A.No.625/Mds/2015 dated 07.08.2015.

52. We therefore answer the substantial questions of law against the Appellant/Assessee and in favour of the Respondent Income Tax Department.



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53. Accordingly, this Tax Case Appeal stands dismissed. No costs.

Connected Miscellaneous Petition is closed.

[R.S.K., J.]

[C.S.N., J.]

09.05.2025

Neutral Citation : Yes / No

jas / arb

To:

- 1.The Income Tax Officer (Exemptions),
Madurai.
- 2.The Income Tax Appellate Tribunal,
“C” Bench, Chennai.



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T.C.A.No.966 of 2015

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

jas / arb

Pre-Delivery Judgment in
T.C.A.No.966 of 2015
and
M.P.No.1 of 2015

09.05.2025