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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1070/2024

M/S PRANAB MICRO SERVICES FEDERATION
VS
PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX AND ORS

BEFORE:
The Hon'ble JUSTICE KAUSIK CHANDA
Date : March 25, 2026.

Appearance:

Mr. Anirban Banerjee, Adv.
Mr. Bikash Halder, Adv.
Ms. Shreshtha Gupta, Adv.
Mr. Sayantan Banerjee, Adv.
Ms. Arpita Chatterjee, Adv.
... for the petitioner.

Mr. Aryak Dutt, Adv.
Mr. Prithu Dudhuria, Adv.
... for the respondent.

The Court: The petitioner has been duly registered as a charitable institution under Section 12AA of the Income Tax Act, 1961. Subsequently, the petitioner applied for provisional approval under Clause (iv) of the First Proviso to Section 80G(5) of the Act. Such provisional approval was granted in Form 10AC, vide order dated 28 May 2021, for the period commencing from 28 May 2021 up to Assessment Year 2024–25.

Thereafter, the petitioner applied for final approval under Clause (iii) of the First Proviso to Section 80G(5) of the Act. However,

the Commissioner of Income Tax (Exemption) rejected the said application on the ground that the statutory time limit for filing such an application had not been adhered to. It was observed that the application for final approval under Section 80G was required to be made at least six months prior to the expiry of the provisional approval period, or within six months from the commencement of activities, whichever was earlier. The authority further noted that the petitioner had commenced its activities well before the grant of provisional registration; consequently, the prescribed time limit had expired, rendering the petitioner ineligible for final approval under Section 80G(5).

Aggrieved by the aforesaid order, the petitioner preferred an appeal before the Income Tax Appellate Tribunal, 'C' Bench, Kolkata. By its order dated 11 March 2024, the Tribunal disposed of the appeal, inter alia, observing as follows:

“Since, the facts and issues involved in this case in hand are identical to that of the above referred decision, the appeal of the assessee is allowed accordingly and the ld. CIT(Exemption) is directed to grant provisional approval to the assessee under Clause (iii) to First Proviso to section 80G(5) of the Act, if the assessee is otherwise found eligible. The ld. CIT(A) will decide the application for final registration within three months of the receipt of copy of this order.”

Pursuant to the said order, the matter was reconsidered on merits by the Commissioner of Income Tax (Exemption), Kolkata. By an order dated 11 July 2024, the petitioner's application for registration under Section 12A(1)(ac)(iii) of the Income Tax Act, 1961 was rejected. Being aggrieved, the petitioner has instituted the present writ petition.

Learned counsel appearing on behalf of the Revenue has relied upon the decisions in *Shalom Charitable Ministries of India v. Assistant Commissioner of Income Tax* ([2020] 81 ITR (Trib) 20 (Cochin)) and *Income Tax Officer (Exemptions) v. Kalanjlam Development Financial Services* ([2016] 6 ITR (Trib) OL 226 (Chennai)) to contend that microfinance activities do not constitute charitable purposes and are therefore not entitled to exemption under the Act.

It appears that the petitioner is incorporated as a non-profit organization under Section 8 of the Companies Act, 2013. The Memorandum of Association of the petitioner, inter alia, sets out the following objects:-

“3 (A) 4. To provide technical, managerial and human resource training and to assist in getting finances from venture capitalists, Angel Funding and other financial Government/Non-Government and international institutions.

3 (A) 5. To reduce poverty in India by carrying on the business of providing microfinance and providing credit,

to the poor section of the population for their socio-economic development in sustainable manner and providing credit to persons belonging to poorer sections either individually or joined together as self-help groups, not with the motive of profit.”

Section 2(15) of the Income Tax Act, 1961 defines the term “charitable purpose” as follows:-

“(15) Charitable purpose includes relief of the poor, education [yoga] medical relief, [preservation of environment (including water-sheds, 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, 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 percent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;]]”

It is well settled in law that the provision of microfinance and credit facilities, even if aimed at economic upliftment, may not qualify as a charitable activity where such operations involve commercial elements, including the charging of interest or other profit-oriented considerations. The determinative criterion for an activity to be regarded as charitable is the absence of a profit motive. Where income is generated in the form of interest or the activity is conducted on commercial terms, it assumes the character of a business activity.

In this context, the Commissioner of Income Tax (Exemption) recorded, inter alia, the following findings:

“9. The assessee has failed to commit itself to the version submitted by it. The assessee has failed to explain the modus operandi to be utilized, for the purpose of providing the microfinance to the poor.

10. The assessee has even not committed itself to furnish the rate of interest, to be charged from its lending and to be paid for borrowing/capital. The assessee stated that the micro finance is made

available to small business vendors, the sellers etc. rate of interest will be as per RBI norms.

RBI norms are open market norms and the assessee has failed to establish how charging of interest as per RBI can be held as charitable activities.

With regard to its aforesaid clause also the assessee has simply stated that they have not yet started any activities as per its MOA, except some food distribution etc.

11. Therefore, considering the discussion as above it is held that the objectives of micro finance, contained in the MOA of the assessee can not be held as charitable activity and therefore, not eligible for exemption under section 12AB of the Act, accordingly the application of the assessee filed in form 10AB is hereby rejected. The Provisional Certificate issued to the assessee is hereby cancelled w.e.f. the date of its issue.”

Upon consideration, no perversity or illegality is found in the order passed by the Commissioner of Income Tax (Exemption), Kolkata, warranting interference with the impugned decision. Accordingly, the writ petition is liable to be dismissed.

However, learned counsel for the petitioner submits that the petitioner has since amended its Memorandum of Association to exclude microfinance activities.

In view of this submission, it is observed that the petitioner shall be at liberty to apply afresh for exemption, subject to such amendments being duly effected in accordance with law.

Accordingly, WPO/1070/2024 stands dismissed.

(KAUSIK CHANDA, J.)

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