

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI

BEFORE SHRI C.L.SETHI, JUDICIAL MEMBER AND
SHRI K.G. BANSAL, ACCOUNTANT MEMBER

I.T. A. No.1374/Del/2010
Assessment Year: ---

Disha India Micro Credit,
Mohalla, Mandir Ji,
Sultanpur-Chilkana.
PAN: AADCDO457A

Commissioner of Income-tax,
Vs. Muzaffarnagar.

(Appellant)

(Respondent)

Appellant by: S/Sh. P.C. Yadav & Ravi Gupta, Advocate.
Respondent by: Ms. Y.S. Kakkar, Sr. DR.

ORDER

PER C.L. SETHI, JUDICIAL MEMBER:

The assessee company is in appeal against the order dated 28.01.2010 passed by the learned Commissioner of Income-tax, Muzaffarnagar under section 12AA of the Income-tax Act, 1961 (the Act), refusing registration to the assessee under sec. 12A of the Act.

2. The assessee company namely, M/s. Disha India Micro Credit, is a company registered under sec. 25 of the Companies Act, 1956. It has applied for registration under sec. 12A in Form No.10A, on 6.07.2009. The assessee's application for registration u/s 12A has been rejected by the learned Commissioner of Income-tax, Muzaffarnagar vide order dated



28.01.2010. The learned CIT has observed that the various clauses of the Memorandum of the company would clearly show that the assessee has a motive of profit also, along with the stated motive of service to the poor and needy people as claimed by the assessee. He further observed that such profit even if to be ploughed back as claimed by the assessee, is liable to income-tax under Income-tax Act. The order of the learned Commissioner of Income-tax runs as under:-

"1. On perusal of Memorandum it is noticed that:-

S.No.8, the objects are described as "To borrow or raise money pm interest or otherwise from banks, financial institutions, term lending institution, corporate person or organizations in India or abroad and in such manner as the Company may think fit for the purpose of financing the activities of the company".

S.NO.15 "To create any reserve funds, sinking funds, insurance fund or any other special fund whether for depreciation, for repairing, improving, extending or maintaining any of the property of the company or for any other purpose conducive to the interest of the company".

S.No.17 "To sell, lease, mortgage, or otherwise dispose of the undertaking of the company or any part thereof for such consideration as company may think fit and in particular for share, debentures or securities of any other company having objects altogether or in part similar to those of this company".

S.NO.21 "To borrow or raise money in such manner as the company shall think fit and to arrange the repayment of any money borrowed, raised or owing by mortgage, charge or lien upon all or any of the company's property (both present and future) including it's uncalled capital and also by a similar



mortgage, charge or lien to secure and guarantee the performance by the company or any other person or body corporate of any obligation undertaken by the company or any other person or company”.

S.NO.24 “To invest the Idle funds of the company as allowed under Income Tax Act, 1961 and Companies Act, 1956 in or upon any investments or properties and where so ever situated and turn to account, exchange or transpose any investment or properties of the company to attain the main objects”.

S.NO.V(4) “Nothing is this clause shall prevent the payment by the company in good faith of reasonable remuneration to any of its officers or servants (not being members) or to any other person (not being a member) in return for any services actually rendered to the company”.

All these clauses clearly show that the company has a motive of profit also alongwith the stated motive of the service of poor and needy people as claimed by the assessee. Such profit even if to be ploughed back as claimed by the assessee, is liable to tax under Income Tax Act.

2. It is incomprehensible as to why not assessee got itself registered as a society; if the motive was to do activities of public charity!!

3. The assessee company has relied on the case Director of Income Tax v/s Bharat Diamond Bourse (2003) 259 ITR 280 (SC). The facts of the case are different because the Bharat Diamond Bourse Company is an apex body, comprising of various diamonds associations/ bodies/ traders etc; with a view to promote diamond trade and industry. It is basically providing variety of services to general public. It is not doing any business activities on its own and also it is a non-profit organization.

The assessee on the other hand himself admitted that objects of the referred company are different from the assessee



memorandum and this company is charging higher rate of interest than other banks. The assessee admits that it would itself carry out business activities of providing loans.

4. The assessee company is not doing any activity of public utility. The assessee claimed that they will provide collateral free credit to poor persons through their solidarity groups and secondary to borrow or raise money on interest or otherwise from banks, financial institutions, term ending institution, corporate person or organizations in India or abroad and in such manner as the Company may think fit for the purpose of financing the activities of the company.

The loan distribution on interest on higher rate from the banks does not come under purview of section 2(15) i.e. Relief to poor and for public utility work that woo on its own conditions and at higher rate of interest from the Rural banks. This activity is not a charitable work. The memorandum of the company also not able to establish that company is a non-profit organization.


From the above discussion, I am in view of that the assessee "Disha India Micro Credit" a company also does not come under purview of "Institution" as envisaged in section 11, 12 and 13 of Income Tax Act. It is also not able to establish that the assessee company's work is for Relief to poor and for public utility.

Therefore, I hereby reject the application filed for registration."

3. Hence, the assessee is in appeal before us.

4. We have heard both the parties and have carefully perused the material on record.

5. In this case, we are concerned whether the assessee is entitled to get registration u/s 12A of the Act. In order to get registration of the trust or



institution, the assessee has to make an application in the prescribed form and in the prescribed manner to the Commissioner within such time as specified u/s 12A of the Act. In the present case, it is not in dispute that the assessee has made an application for registration in the prescribed form and in the prescribed manner to the Commissioner. Sec. 12AA provides that the Commissioner, on receipt of an application for registration of a trust or institution made u/s 12A, shall call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such enquiries as he may deem necessary in this behalf, and after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he shall pass an order in writing registering the trust or institution, or shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant.

6. In the light of the conditions specified u/s 12AA for granting registration to the trust or institution, we have to see the object of the present institution and genuineness of its activities.

7. It is not in dispute that the present assessee is a company registered u/s 25 of the Companies Act, 1956. Under sub-sec. (1) of sec. 25 of the



Companies Act, 1956, it has been provided that where it is proved to the satisfaction of the Central Government that an association is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Central Government may, by licence, direct that the association may be registered as a company with limited liability without the addition to its name of the word "Limited" or the words "Private Limited". In that event, the association may be registered accordingly, and on registration, the association shall enjoy all the privileges, and (subject to the provision of sec. 25 of the Companies Act) be subject to all the obligations, of limited companies. In the present case, it is not in dispute that the Central Government has directed that the assessee association is to be registered as a company with limited liability. It is thus proved that this association has been formed as a limited company for promoting commerce, art, science, religion, charity or any other useful objects and it intended to apply its profit if any, or other income, in promoting the aforesaid objects. The assessee is also prohibited from making payment of any dividend to its members. Therefore, prima facie the assessee association registered as a limited company under sec. 25 of the Companies Act, has been formed for



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charity or any other useful object as so provided under sec 25(1) of the Companies Act.

8. The assessee has produced before us a copy of Memorandum of Association. The objects for which the company was established u/s 25 of the Companies Act, 1956, are specified in Para III of the Memorandum. Para III consists of 2 parts, namely Part-A and Part-B. Part-A provides about the main objects to be pursued by the company on its incorporation u/s 25 of the Companies Act. Part-B specifies the objects incidental or ancillary to the attainment of the main objects. The main objects specified in Part-A of Para III are as under:-

- 1) *To promote micro finance services, as permitted from time to time by the Reserve Bank of India, exclusively to large number of poor persons, in their villages, towns etc. for income-generation, and thus to help them and their families rise out of poverty not with the motive of profit.*
- 2) *No objects of the company will be carried out without obtaining prior approval/no objection certificate from the concerned authority wherever required.*
- 3) *None of the objects will be carried out on commercial basis."*

9. On perusal of the aforesaid main objects to be pursued by the assessee company, the main objects of the assessee company would be to promote micro finance services as permitted from time to time by the Reserve Bank of India, exclusively to large number of poor persons in their villages, towns



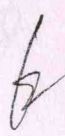
etc. for income-generation,; and thus to help them and their families rise out of poverty not with the motive of profit. It is also provided therein that no objects of the company will be carried out without obtaining prior approval/no objection certificate from the concerned authorities wherever required, and none of the objects will be carried out on commercial basis. From the objects, it is thus clear that the assessee has been pursuing its objects not with the motive of profit and on commercial basis. The learned CIT in his order has reproduced the only objects which are incidental or ancillary to the attainment of the main object specified in Part-B of Para III of the Memorandum of Association. The learned CIT has reproduced item Nos.8, 15, 17, 21 & 24 which are the objects incidental or ancillary to the attainment of the main objects and not the main objects. The CIT has ignored to take into account the main objects of the assessee company specified in Part-A of Para III. It is thus clear that the CIT has not applied his mind properly to the main objects to be pursued by the assessee company on its own incorporation u/s 25 of the Companies Act. After narrating the aforesaid incidental or ancillary clauses, the CIT has observed that all these clauses clearly show that the company has a motive of profit also, along with the stated motive of the service of poor and needy people but at the same time, the assessee has a motive of profit. This observation of the CIT is



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purely based on his assumption inasmuch as in the main object, it has been clearly stated and specified that the assessee shall promote micro finance services, as permitted from time to time by the Reserve Bank of India, exclusively to a large number of poor persons to help them and their families to rise out of poverty not with the motive of profit. In the main object under Item No.(1), it has been clearly stated that the assessee has been pursuing its objects not with the motive of profit. Section 25 of the Companies Act, 1956, also provides that the company shall apply its profit, if any, or other income in promoting its objects and it is prohibited from making any payment of dividend to its members. Therefore, the question of pursuing the objects of the company with a profit motive does not arise. We therefore, hold that the assessee company has no motive of profit in pursuing its objects as provided in the Memorandum of Association.

10. On perusal of Articles of Association, we also find that under clause 73 of the Article of Association, it has been provided that the company shall apply its profits, if any, or other income, in promoting its objects, and to prohibit the payment of any dividend to its members. The social objectives of the company are provided under clause 81 of the Articles of Association where it is provided that the company shall have among its objectives, the social and economic development of weaker section of the society and the



promotion and growth of the national economy through effective utilization of material and man-power resources and continued application of modern, scientific and managerial techniques in keeping with the national aspirations, reduction of poverty in a sustainable way and the company shall be mindful of its social responsibilities to the employees, share-holders, the local community, lenders and society in general.

11. We further find that the Regional Director of Ministry of Corporate Affairs, Northern Region, Noida, UP has also granted a licence u/s 25 of the Companies Act to the assessee association after being satisfied that the assessee association is to be registered as a company under the Companies Act for promoting objects of the nature specified in sec. 25, sub-sec.(1), clause (a) of the said Act and that it intends to apply its profits, if any, or other income in promoting its objects and to prohibit the payment of any dividend to its members. In the licence, it has been clearly provided that the income and the property of the assessee company when so ever derived, shall be applied solely for the promotion of the objects as set forth in its Memorandum of Association and that no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise by way of profit, to persons who at any time are or have been members of the



said company or to any of them or to any person claiming through anyone or more of them.

12. In Para X of the Memorandum of Association regarding consequence upon winding up or dissolution of the company, it is clearly provided therein that if upon winding up or dissolution of the company, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company or institution registered under sec. 25 of the Act having objects similar to the objects of assessee company, to be determined by the members of the company at or before the time of dissolution or in default thereof, by the High Court of Judicature that has or may acquire jurisdiction in the matter.

13. In the light of the facts and reasons discussed above, we, therefore, hold that the assessee company has no motive of profit in pursuing its objects and activities.

14. Now, the question arises as to whether the activities of promoting micro finance services, as permitted from time to time by the Reserve Bank of India, exclusively to large number of poor persons, in their villages, towns etc. for income-generation; and thus to help them and their family to rise out



of poverty not with the motive of profit, can be considered to be charitable purpose within the meaning of sec. 2(15) of the Act.

15. Sec. 2(15) of the Act defines "Charitable purpose" to include the following:-

- (i) Relief of the poor,
- (ii) Education,
- (iii) Medical relief, and
- (iv) The advancement of any other object of general public utility.

16. The expression "Relief of the poor" has been explained by the Board in its Circular No.11 of 2008 dated 19th December, 2008 stating therein as under:-

"2.2 "Relief of the poor" encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that

- (i) *the business should be incidental to the attainment of the objectives of the entity, and*
- (ii) *separate books of account should be maintained in respect of such business.*

Similarly, entities whose object is "education" or "medical relief" would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above."



17. On perusal of the aforesaid meaning of relief of the poor, it is clear that it encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy people. It would include within its ambit, purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under sec. 11(4A) or the seventh proviso to sec. 10(23C) of the Act.

18. At this stage, we may make a gainful reference to the decision dated 24th December, 2008 of ITAT, Bangalore Bench 'A' in the case of Asstt. Director of Income-tax (Exemption) vs. Bharatha Swamukhi Samsthe reported in (2009) 28 DTR (Bang)(Trib) 113 on which a great reliance has been placed by the learned counsel for the assessee. In this case, the assessee trust's work was lending money to poor women for income generating activities. Loans given to women were borrowed from bank. There was nothing on record to show that the interest charged by the assessee was exorbitant. In the light of these facts, it was held by the Tribunal that the assessee's object of using money for micro credit to poor women for their poverty alleviation and for the benefit of the socio-



economically weaker sections of the society is charitable object qualifying for exemption under sec. 11 of the Act. This decision squarely covers the present case.

19. However, the learned DR on the other hand, placed reliance upon the decision of ITAT, Bangalore Bench 'B' in the case of Janalakshmi Social Services Vs. Director of Income-tax (Exemption), Bangalore, order being dated August 22, 2008 reported in (2009) 33 SOT 197 (Bang.), to contend that micro financing if done on commercial lines is not a charitable activity. The learned DR therefore, contended that the learned CIT has rightly refused registration to the assessee association by holding that the assessee's activities are not charitable activities within the meaning of sec. 2(15) read with sec. 12AA of the Act.

20. We have carefully perused the aforesaid decision in the case of Janalakshmi Social Services (supra). In this case, we find that the assessee was providing finance to a particular section of society i.e. traders dealing in vegetables and fruits, and making purchases from Safal. The assessee was availing of loan facility from Banks/Financial Institution 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% to 24% per annum in addition to burden of processing and service charges between

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1 to 2 per cent. It was also found in that case that the assessee company was not reaching to individual beneficiaries directly but was doing so through NGOs and SHGs from whom it charges high interest rate. It was thus, held that the assessee was undertaking only business of micro financing and had not done any activity to show that it had been done as a charitable act. This case is totally distinguishable on facts from the facts of the present case. In the present case, it is not a case, where the assessee has been providing finance to a particular section of the society. The present case is not a case, where the assessee has been providing loan to individual beneficiaries not directly but through some mediator. It is also not a case where the assessee has been charging exorbitant rate of interest along with processing and service charges. In the present case, we find that the assessee has been providing micro-financial services as per the guidelines given by the Reserve Bank of India. The Reserve Bank of India has given guidelines about the nature of micro credits and the interest rates applicable thereto. In the present case, the assessee made application for financial assistance under micro scheme to Small Industries Development Bank of India, who by order dated March 2, 2009, was pleased to sanction to the assessee a loan not exceeding Rs.200 lakh only for financing the project under micro credit scheme with certain conditions and stipulations which had been duly



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complied with by the assessee. As per the conditions, the loan was to be disbursed in need based instalments and on recommendation of Project Advisory Committee. Therefore, the facts of the present case are on quite different footing than that in the case of Janalakshmi Social Services (supra).

21. In the light of the discussion made above, the present case shall be guided by the decision of ITAT, Bangalore Bench in the case of Bharatha Swamukhi Samasthe (supra) and not by the decision in the case of Janalakshmi Social Services (supra).

22. It is well settled that when a profit is used towards the achievement of the charitable objects of the trust, it would be considered to be incidental to the achievements of the objects of the trust notwithstanding the profit and gain involved therein. In this respect, a reference may be made to the decision of Hon'ble Supreme Court in the case of Asstt. CIT vs, Thanthi Trust (2001) 247 ITR 785 (SC). ~~There~~^{It} is mere because there was a surplus from the activity of micro financing, that by itself, cannot be a ground to say that the assessee does not exist for charitable purpose particularly when under the Memorandum of Association and Articles of Association, it has been clearly provided that the profit shall not be distributed amongst the members but shall be utilized towards its objects, and in the case of dissolution any property remaining after meeting out the liability shall be



transferred to the association having similar object. Therefore, the rejection of the registration of trust on this score is also unjustified.

23. Further, a reference may be made to the decision of the Hon'ble Bombay High Court – Nagpur Bench in the case of CIT vs. Agricultural Produce and Market Committee (2007) 291 ITR 419 (Bom.), where while dealing with the question, whether the market committees are entitled to registration u/s 12A/12AA of the Act, the Hon'ble High Court found that the surplus remaining in the market fund was ploughed back for carrying out the objects of the 1963 Act, and, thus, the surplus remaining in the market fund was neither distributed nor accumulated as profits, and in these circumstances, the Hon'ble High Court held that it cannot be said that the market committees are established with profit motive so as to deny registration under sec. 12A/12AA of the Act. This proposition laid down by the Hon'ble Bombay High Court is squarely applicable to the facts of the present case, where the profit or surplus remaining with the assessee was used for carrying out the objects of the assessee association and it was neither distributed as profit or dividend amongst the members nor accumulated as profits for distribution.

24. The learned CIT has also given one more reason that it is not comprehensible as to why not the assessee got itself registered as a society,

Dated: 22 January, 2011




if the motive of the assessee was to do activities of public charity. This reason given by the CIT is found, in our considered view, to be improper. It is not necessary that in order to do public charity, any one association is to be registered as a society or a trust. In the case of CIT vs. Agricultural Produce and Market Committee (supra), the Hon'ble Bombay High Court - Nagpur Bench has held that there is no requirement under the Act that an institution constituted for advancement of any object of general public utility must be registered as a trust. Therefore, in the present case before us, mere because the assessee association is registered as company under sec. 25 of the Companies Act, that by itself cannot be a ground to refuse registration under sec. 12A/12AA of the Act. Thus, this ground of rejection of registration by the Commissioner of Income-tax, is also rejected.

25. For the reasons given above, we, therefore, direct the Commissioner of Income-tax to grant registration under sec. 12A/12AA of the Act, to the assessee.

26. In the result, the appeal filed by the assessee is allowed.

27. This decision is pronounced in the Open Court on 28th January, 2011.

(K.G. BANSAL) 
ACCOUNTANT MEMBER
Dated: 28 January, 2011.

(C.L. SETHI)
JUDICIAL MEMBER

