



ITA Nos.917 & 823/Mum/2017 &
Assessment Year :2012-13

M/s. National Stock Exchange Investor Protection Fund Trust

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.917/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. National Stock Exchange Investor Protection Fund Trust Plot No.C-1, Block G, Exchange Plaza Bandra (E) Mumbai- 400 051.	बनाम/ Vs.	DCIT (E)-2(1), Piramal Chambers Parel, Mumbai- 400 012.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAATN-2497-A		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./ I.T.A. No.823/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT (E)-2(1), Piramal Chambers Parel, Mumbai- 400 012.	बनाम/ Vs.	M/s. National Stock Exchange Investor Protection Fund Trust Plot No.C-1, Block G, Exchange Plaza Bandra (E) Mumbai- 400 051.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAATN-2497-A		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri J.D. Mistry- Ld. Sr. Counsel
Revenue by	:	Shri Rahul Raman-Ld. CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	13/01/2020
घोषणा की तारीख / Date of Pronouncement	:	05/02/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross appeals for Assessment Year [in short referred to as ‘AY’] 2012-13, contest the order of Ld. Commissioner of Income-Tax



ITA Nos.917 & 823/Mum/2017 &
Assessment Year :2012-13

M/s. National Stock Exchange Investor Protection Fund Trust

(Appeals)-1, Mumbai, [in short referred to as 'CIT(A)'], Appeal No. CIT(A)-I/E-II (55)/2015-16 order dated 02/11/2016.

1.2 The grounds raised by the assessee read as under: -

1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.50,71,76,620/- by upholding the denial of exemption u/s.11(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") which is contrary to the facts and circumstances of the case, the provisions of the Act and the Rules made thereunder.
2. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ought to have deleted interest charged by the learned Assessing Officer u/s. 234C of the Act of Rs. 67,01,749/- and not doing so is wrong and contrary to the facts of the case, the provisions of the Act and rules made thereunder.
3. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ought to have deleted interest charged by the learned Assessing Officer u/s. 234D of the Act of Rs.3,73,828/- and not doing so is wrong and contrary to the facts of the case, the provisions of the Act and rules made thereunder.
4. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ought to have allowed ground relating to non-receipt of refund of Rs.32,96,542/- being wrongly mentioned as refunded by the learned Assessing Officer in the Income Tax Computation Form accompanying the assessment order u/s 143(3) though no such refund was received by the appellant and thereby erred in dismissing the said ground by treating it as consequent in nature, which is wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961 and rules made thereunder.
5. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ought to have allowed ground relating to non-receipt of refund of Rs.2,63,720/- being interest u/s 244A of the Act wrongly mentioned as refunded by the learned Assessing Officer in the Income Tax Computation Form accompanying the assessment order u/s 143(3) of the Act though no such refund was received by the appellant and thereby erred in dismissing the said ground by treating it as consequential in nature, which is wrong and contrary to the facts of the case, the provisions of the Act and rules made thereunder."

1.3 The grounds raised by the revenue read as under: -

1. Whether on the facts of the case and in law the Ld.CIT(A) erred in allowing the exemption under section 10(23EA) of the IT. Act, even though the claim was not made by the assessee during the filling of return of income but as alternative at the appellate stage before CIT(A)?
2. Whether on the facts of the case and in law the Ld.CIT(A) erred in allowing the exemption under section 10(23EA) of the IT. Act, relying on decision of Id. CIT(A) in



ITA Nos.917 & 823/Mum/2017 &
Assessment Year :2012-13

M/s. National Stock Exchange Investor Protection Fund Trust assessee's own case for A.Y. 2011-12 which was decided by relying upon decision of Hon'ble ITAT for A.Y. 2010-11, ignoring the fact that the Revenue has not been accepted the said decisions and filed an appeals before Hon'ble High Court / ITAT which is pending for adjudication.

3. The appellant prays that the order of the Commissioner of Income Tax (Appeals)-I, Mumbai be set aside and that of the Assessing Officer be restored.”

2. The Ld. Sr. Counsel, at the outset, placed on record the decision of this Tribunal in assessee's own case in cross appeals for AY 2011-12, ITA Nos.2359,2329/Mum/2016 order dated 19/12/2019 to submit that substantial issues have already been delved upon by the co-ordinate bench of this Tribunal and therefore, similar view may be taken in the matter. The Ld. Sr. Counsel submitted that facts and circumstances in year under consideration are pari-materia the same as in AY 2011-12. The Ld. CIT-DR relied upon the order of Ld.AO but could not controvert the said position. In the above background, we proceed to adjudicate various issues involved in cross-appeals.

Assessment Proceedings

3.1 Facts on record would reveal that the assessee being registered Trust, was assessed for year under consideration u/s. 143(3) on 12/03/2015 wherein the income of the assessee was determined at Rs.59.68 Crores after denial of exemption us 11 as against *Nil* return filed by the assessee on 28/09/2012. The income, in the alternative, was assessed at Rs.50.71 Crores, the facts of which shall be enumerated subsequently in the order.

3.2 The assessee Trust was stated to be established on 11/07/1995, with National Stock Exchange (NSE) being the settlor and the trustee of the trust. The said trust was stated to be created to provide an appropriate avenue for payment of compensation under bylaws of the



ITA Nos.917 & 823/Mum/2017 &
Assessment Year :2012-13

M/s. National Stock Exchange Investor Protection Fund Trust

settlor NSE to persons acting as a trading member of the settlor NSE or as a constituent of the trading member in case of loss subject to certain terms and conditions.

3.3 It transpired that the assessee received contribution exceeding Rs.50,000/- each from settlor i.e. NSE as well as from trading members. Another fact was that NSE and trading members were related parties in terms of Sec.13(3) of the Act. Upon perusal of the terms of Trust Deed, a conclusion was drawn by Ld. AO that income of the trust enures benefit for trading members of NSE which was evident from the fact that the assessee paid compensation to its trading members / their constituents during the year under consideration. All these facts led Ld.AO to form a belief that the assessee was hit by provisions of Sec. 13(1)(c)(i) & (ii) of the Act and therefore, not entitled for exemption u/s 11 and 12.

3.4 Although the assessee defended its stand by submitting that it was formed as per the directions of Central Government and as per its objects, the income could not be utilized not for the benefit of trading members only for the benefit of general investors at large when assets of the defaulted member could not make up for the loss. A plea was raised to submit that compensation was paid to public at large only. Further, while granting registration u/s 12AA, the object of the assessee were duly verified and therefore, there would be no occasion to deny the exemption u/s 11 & 12.

3.5 However, the arguments could not find favor with Ld.AO who, in the final analysis held that the assessee was hit by the provisions of Section



13(1)(c)(i) as well as (ii) and therefore, exemption as claimed by the assessee u/s 11 & 12 was not available to it.

3.6 Another observation was that Sec. 10(23EA) provides for separate exemption to such investor protection fund and therefore, the assessee could not claim its residual income to be exempt u/s 11. Resultantly, the income of Rs.59.68 Crores was brought to tax.

3.7 As an alternative, in the event of assessee being allowed exemption u/s 11 at a later stage by any appellate authority, Ld. AO noted that as per Form No. 10, the assessee claimed accumulation of an amount of Rs.50.71 Crores without specifying the purpose of accumulation but it merely reproduced its objects in Form No.10 and therefore, the income to the extent of Rs.50.71 Crores was to be treated as its income for the year.

3.8 It is quite discernible from the quantum assessment order that under both the computations, exemption u/s 10(23EA) as claimed by the assessee in return of income, has already been allowed by Ld. AO.

Proceedings Before Ld. CIT(A)

4.1 Aggrieved, the assessee contested the stand of Ld.AO before Ld. CIT(A) by way of elaborate submissions which has already been extracted in the impugned order. However, Ld. CIT(A), relying upon its own order for AY 2011-12, chose to take similar stand and partly allowed ground nos. 1,3,4 of the appeal but dismissed ground no.2 of assessee's appeal. In ground nos.5 to 9, the assessee had contested the charging of interest, for which Ld.AO was directed to charge interest as per law. Resultantly, the appeal was partly allowed.

**Decision of Ld. CIT(A) in AY 2011-12**

4.2 The stated decision of Ld. CIT(A) for AY 2011-12, in turn relied upon the decision of this Tribunal in assessee's own case for AY 2010-11, ITA No. 1021/Mum/2014 order dated 23/05/2014 wherein the matter of exemption u/s 11(2) was restored back by the Tribunal to Ld. AO for verification of certificate of auditors and re-adjudication of issue in the light of the facts arising out of the certificate. The fresh claim of exemption u/s 10(23EA) was admitted by Tribunal following the decision of Hon'ble Bombay High Court in **CIT V/s Pruthvi Brokers & Shareholders Pvt. Ltd. (349 ITR 336)** and Ld. AO was directed to entertain this claim of the assessee and adjudicate the same. Accordingly, Ld. CIT(A) directed Ld. AO to follow the aforesaid observations / directions of the Tribunal. However, the observation of Ld. AO that the purpose of accumulation as mentioned in Form No. 10 could not be too general, was upheld by Ld. CIT(A) in AY 2011-12. In other words, the exemption against accumulation of income as per Form No. 10 was denied to the assessee.

As stated in para 4.1, Ld. CIT(A) merely followed its aforesaid order for AY 2011-12. Aggrieved, the revenue as well as assessee is under further appeal before us. The assessee is aggrieved by denial of exemption u/s 11(2) for Rs.50.71 Crores. In ground nos. 2 to 9, the assessee has contested the issue of interest. The revenue is aggrieved by allowance of exemption u/s 10(23EA) even though the claim was not made by filing revised return of income. The revenue has also pleaded



ITA Nos.917 & 823/Mum/2017 &
Assessment Year :2012-13

M/s. National Stock Exchange Investor Protection Fund Trust

that it has not accepted the decision of the Tribunal in AY 2010-11 and therefore, the decision has not attained finality.

Our Adjudication

5. Upon due consideration, we find that learned CIT(A) has merely followed its own order for AY 2011-12, which in turn, relied upon the decision of Tribunal for AY 2010-11.

6. We find that the appellate decision for AY 2011-12 was subject matter of cross-appeal before this Tribunal vide ITA Nos.2359 & 2329/M/2016 order dated 19/12/2019. The para-3 of the said order contains the final outcome of issues in AY 2010-11 wherein it has been noted that pursuant to the directions of Tribunal, Ld.AO passed an order giving effect on 08/08/2014 allowing relief under Section 11 and determining the income at *Nil*. In the meantime, the revenue challenged the order of ITAT before Hon'ble Bombay High Court on the issue of claim of exemption u/s 10(23EA), which was dismissed vide ITA No.12170 of 2016 order dated 04/01/2019. Following the said decision of Hon'ble Bombay High Court, the appeal of the revenue, on the issue of exemption u/s 10(23EA), was dismissed.

Regarding assessee's appeal on denial of exemption u/s 11(2), the findings of Tribunal were as under: -

7. We have heard the rival submissions of both the parties and perused the material on record. Undisputedly, the assessee trust was formed under the direction of Ministry of Finance and SEBI and the assessee trust came into being on 11.07.1995 with the sole object of safeguarding the interest of the investors/trading members by compensating the loss which the investors or members may suffer due to settlement on the stock exchanges. The provisions of the Act were changed from time to time. Earlier the entire income of the trust comprising contribution from the members, stock exchanges and income on investments were exempt, however w.e.f. 01.04.2007 the provisions of section 10(23EA) of the Act were amended and the exemption was restricted only to the contributions received by the trust from stock



ITA Nos.917 & 823/Mum/2017 &
Assessment Year :2012-13

M/s. National Stock Exchange Investor Protection Fund Trust

exchanges and its members and thus the assessee started claiming the exemption under section 11(1) & 11(2) of the Act qua the income from investments. During the year the assessee claimed the accumulation to the tune of Rs.33,19,23,133/- by filing form No.10 along with return of income and the purpose of accumulation was mentioned in the form 10 as under:

"(i) to compensate for any loss which may be suffered by any person including a trading member or a constituent arising from a Trading Member being declared as a defaulter by the settler under Chapter XII of the Bye-laws of the settler, upto a limit as may be determined by the Trustees.

(ii) for such other purpose of the public utility as the trustees may deem fit and consistent with the object of the trust.

(iii) to utilize interest income earned on the investments made out of Investor Protection Fund either in part or in whole, for educating investors, creating awareness among the investor community at large and for any research connected therewith."

We note that the AO has rejected the claim of the assessee on the ground that assessee has not mentioned specific purposes of accumulation but only stated the objects of the trust in the form No.10. After perusing the facts on records, we are of view that the assessee trust has duly mentioned the purpose of accumulation i.e. to compensate the trading members or a constituents, where a trading member being declared a defaulter on the stock exchange. To our opinion, this was the sole object of the trust for which this protection fund was created and thus sufficiently satisfy the requirements of section 11(2) of the Act. We also note that similar claim of the assessee has been allowed in the earlier years by the Revenue. The case of the assessee finds support from the decision of Hon'ble Supreme Court in the case of CIT(E) vs. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust (supra) wherein Hon'ble Supreme Court while dismissing the SLP filed by the Revenue upheld the order of the Hon'ble Gujarat High Court in which the Hon'ble High Court has held that non specification of purpose for which the funds were accumulated by assessee trust under section 11(2) would not be fatal to the exemption claimed. In the case of BharatKalyan Prathistan vs. DDIT(E) (Delhi HC) 299 ITR 406 the Hon'ble Delhi High Court has held that specification of certain purpose or purposes is needed for accumulations of the trust's income under section 11(2) of the Act however, the details of the purposes for which the income was accumulated need not be specified. We, further, note that the decision of Hon'ble Kolkata High Court in the case of DIT(E) vs. Trustees of Singapore Charitable Trust as relied upon by the AO is distinguishable to the present case as in that case the trust has multiple objects whereas in the instant case the trust has only one object and thus there is no question of ambiguity. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to allow the claim of the assessee under section 11(2) of the Act. The ground No.1 is allowed.

It is evident that assessee's appeal was allowed primarily in view of the fact that the assessee had only one object and hence, there would be no ambiguity in specifying the purpose of accumulation in Form No. 10.



7. Upon perusal of factual matrix as enumerated in preceding paragraphs, it appears that facts are pari-materia the same in this year. Nothing has been placed on record to demonstrate any distinguishing features. Therefore, keeping in view the fact that exemption u/s 11(2) was ultimately allowed to the assessee in AY 2010-11 as well as in AY 2011-12. we hold that the assessee is entitled for exemption u/s 11(2). Ground No. 1 of assessee's appeal stand allowed.

8. The revenue is aggrieved by admission of new claim u/s 10(23EA). However, as noted by us in preceding para 3.8, this exemption was already allowed to the assessee by Ld. AO himself while framing quantum assessment order. Nevertheless, this issue also stood covered in assessee's favor by the order of Tribunal for AY 2011-12. It is also noteworthy that *Special Leave Petition (SLP)* filed by the revenue for AY 2010-11 has already been dismissed by Hon'ble Apex Court which is reported at **109 Taxmann.com 276**. Therefore, we see no reason to interfere in the impugned order, in this regard. Resultantly, the revenue's appeal stands dismissed.

9. In ground nos.2 to 5, the assessee has contested levy of interest. In view of our adjudication of quantum additions in assessee's favor, all these grounds would become infructuous. Nevertheless, rectification application u/s 154 as filed by the assessee on all these issues is already pending before Ld.AO, who is directed to dispose-off the same. It would suffice to say that interest u/s 234C was to be charged on returned income and not on assessed income. In ground Nos.4 & 5, the assessee has disputed receipt of any refund, which Ld.AO is directed to



ITA Nos.917 & 823/Mum/2017 &
Assessment Year :2012-13

M/s. National Stock Exchange Investor Protection Fund Trust

verify. The Ld. AO is also directed to re-compute the income in terms of this order and determine correct tax liability / refund against the assessee. All these grounds stand allowed for statistical purposes.

Conclusion

10. The revenue's appeal stands dismissed whereas the assessee's appeal stand partly allowed in terms of our above order.

Order pronounced in the open court on 05th February, 2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/02/2020

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.