

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3669 /Del./2012
(ASSESSMENT YEAR : 2009-10)**

Natrip Implementation Society	Vs.	ADIT
NBCC Place, South Tower		Inv. Circle II
3 rd Floor, Bisham Pitamah Marg,		
Lodhi Road		
New Delhi		New Delhi
PAN : AAATN7662F		
Appellant		Respondent

ASSESSEE BY : Sh. Saubhagya Agarwal, Adv.
REVENUE BY : Ms. Suman Jain, CA

Date of Hearing : 04 .04.2019
Date of Order : 18.04.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant Natrip Implementation Society (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 29/05/2012 passed by Ld. Commissioner of Income Tax(Appeals)-XXI, New Delhi qua the Assessment Year 2009-10 on the grounds inter alia that :

“1. That the order passed by the Ld. A.O. and partly confirmed by the CIT(A), New Delhi is not only bad in law but also against the facts of the case.

2. That the Ld. CIT(A) is erred under the law while holding the receipt of iCAT as income of the Society u/s 12 of the Act primarily in view of following facts :-

a) The appellant is trustee of Govt. of India for and on behalf of Deptt. Of Heavy Industry.

b) The appellant being agent of Govt. of India, consequently should be taxed in the same manner as if principle.

3. Any other grounds of appeal may be added/amended/deleted at the time of hearing of appeal

Therefore, it is prayed as under :-

1. That the appellant society may please be treated as trustee of Govt. of India for and on behalf of Deptt. Of Heavy Industry

2. That the receipt of iCAT should not be treated as income of the appellant at all.”

2. Briefly stated that facts necessary for adjudication of the controversy at hand are : The assessee society being registered under Societies Registration Act, 1860 has also been registered u/s

12A of the Act and is notified u/s 80G(5)(vi) of the Income Tax, Act, 1961 for the period 01.04.2007 to 31.03.2010. Assessee society filed return of income declaring nil income along with audit report. Assessee's society is drawing two types of receipts; one – from NATRIP, which is not income of the assessee society which it holds in on behalf of the Government; two - receipts from testing charges of ICAT / MANESAR which is also shown in the consolidated balance sheet.

3. AO invoked the provisions contained u/s 2(15) of the Act and noticed from the computation chart that Rs. 5,55,000/- is spent on investment in FDR and shown as application of income for which no Form 10 is submitted. Declining the contention raised by the assessee AO proceeded to conclude that receipt of testing charges of ICAT/ MANESAR does not seem to be held in the capacity of trustee of Government of India and that the amount spent on investment in FDR cannot be considered as application as the amount can be accumulated only to the extent of 85% of the total receipt. So the AO has disallowed the amount of Rs. 5,55,000/- claimed as investment in FDR out of the receipt of ICAT and assessed the income of the assessee at Rs. 1,96,48,891/-.

4. Assessee carried the matter before the Ld. CIT(A) who has partly allowed the appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing the present appeal.

5. Assessee by moving an application sought to raise additional ground that the same are legal ground which are necessary to decide the controversy at hand. Ld. DR for the revenue opposed the application on the ground that at this stage application is not maintainable.

6. Keeping in view the settled principle of law that legal ground can be raised by either of the parties to the appeal at any stage of the proceedings, application is allowed, which is otherwise necessary for adjudication of the controversy at hand. Additional grounds raised are as under :-

“1. That having regard to the facts and circumstances of the case Ld. CIT(A) is erred under the Law while holding the receipts of ICAT and other functional units as income of the Appellant Society u/s 2(15) whereas the overriding titl over such receipts belong to Department of Heavy Industry and public Enterprises, Government of India.

2. That the CIT(A) is erred under law while not taking on records Form No. 10 as filed by the appellant during appellate proceedings inspite of the

appellant being prevented by reasonable cause in not furnishing the same while filing ITR u/s 139(1), consequently denied the benefit of funds accumulated by the appellant as per section 11(2) of the Act.”

7. Undisputedly assessee society, National Automotive Testing and R & D Infrastructure Project (NATRIP) has been constituted with the investment jointly funded by Government of India and Indian Automotive Industry to carry out the aims and objectives enshrined in the memorandum available at page 43 to 44 of the paper book. It is also not in dispute that the assessee society is merely acting as a “trustee” of funds of Government of India. The aims and objectives of the society being charitable have also not been disputed by the revenue.

8. Undisputedly total estimated project cost of NATRIP established by the Cabinet Committee on economic affairs was at Rs. 1718 crore, detailed as under :-

A.	Plan Support by the Government	
	By way of grant	Rs. 817 Crore
	By way of loan	Rs. 273 Crore
B.	Contribution from automotive Cess	
	Collected from the auto Ind.	Rs. 510 Crore
C.	User Charges to be paid by auto industry	Rs. 118 Crore
	Total Project Cost (A+B+C)	1718 Crore

9. AO as well as Ld. CIT(A) have divided the receipt of Natrip under two heads inter alia that :-

“(i) first type of receipt is from NATRIP, which is not the income of Natrip Implementation Society and Society is holding the income on behalf of the Government.

(ii) Second type of receipt comes from testing charges of ICAT / Manesar, which is also shown in the consolidated Balance Sheet.”

10. So far as the case of receipt of assessee society from NETRIP i.e. Rs. 817 crore + 273 crore + 510 crore received from plan support by Government of India and contribution from automotive cess collected from Automotive industry is concerned the AO/ Ld. CIT(A) have held that the same to be not taxable for the purpose of income tax. However, AO has disputed the receipt of Rs. 118 crore by the assessee society from testing charges of ICAT MANESAR and has also disallowed the amount of Rs. 5,55,000/- being investment in FDRs out of receipt of ICAT on the ground that the amount can be accumulated only when the application falls short of 85% of the total receipts.

11. When we examine composition of the assessee society which is a mere trustee of funds of Government of India, ministry of Heavy Industries and Public Enterprises, whose aims and

objectives are not in dispute, its funds are to be utilized / spent in accordance with objectives formulated by the Government of India within specified time. Undisputedly assessee society has received an amount of Rs. 118 crore as user charges paid by the Auto Industry. It is also not in dispute that the activity of ICAT MANESAR are primarily confined to “preservation of environment”, which is certainly a charitable purpose as defined u/s 2(15) of the Act.

12. When it is not case of the assessee that the user charges paid by the Auto Industry have been mis-utilised to carry out any activity in the nature of Trade, Commerce or business the same cannot be brought to tax. Para iv memorandum of society available at page 43 to 45 of paper book goes to prove that for all intents and purposes the entire funds / receipts available with the assessee society are to be utilized to achieve and promote the aims and objectives of the society, which are extracted for ready perusal as under :-

“IV. (a) All the incomes, earnings, movable or immovable properties of the Society shall be solely utilized and applied towards the promotion of its aims and objects only as set forth in the Memorandum of the Society and no profit thereof shall be paid or transferred, directly or indirectly, by way of

dividends, bonus, profits or in any manner whatsoever to the present or the past members of the society or to any person claiming through any one or more of the present or the past members.

(b) No member of the Society shall have any personal claim on any movable or immovable properties of the Society or make any profits, whatsoever, or claim any remuneration by virtue of this membership.

(c) The Society shall abide by Governmental directions expressly issued to it.”

13. The findings of the Assessing Officer that “the receipt of testing charges of ICAT MANESAR by the assessee society does not seem to be held in the capacity of trustee of Government of India” are merely based upon conjectures and surmises without any cogent evidence on record. Because aims and objects of the assessee society are categoric enough that all incomes and receipts shall be solely utilized and applied towards the promotion of its aims and objects which are certainly of charitable nature and no member of the society shall have any personal claim on the movable, immovable property of the society or make any profit whatsoever or claim any remuneration by virtue of its membership. So, when the entire receipts is being used to carry out and promote the aims and objects of the assessee societies its receipts of testing

charges of ICAT MANESAR are certainly held by the assessee society in the capacity of a Trustee of Government of India.

14. The Ld. AR for the assessee brought to our notice “Broad Functional Modalities”, of the assessee’s society available at page 88 to 89 of the paper book to examine as to how the assessee society functions, which are extracted for ready perusal as under :-

5. Department of Heavy Industry will release funds in advance on quarterly basis to NATIS and the funds will be spent in furtherance of the besent objectives in terms of rules and regulations to be framed by NATIS. NATIS will furnish utilization certificates to the Government at regular periodicity the funds released to NATIS from Plan and Cess allocations will flow in a merged form with appropriate percentage marked as loan corresponding to the El recommendations.

6. NATIS will maintain detailed accounts of the funds received and spent and the accounts will be subject to audit by statutory auditors as well as by Comptroller and Auditor General of India.

7. NATIS will be empowered to take all decisions in the context of project Implementation including finalization of contracts, award of tenders engagement of personnel, fixing their remuneration package /sitting fee etc. No reference will be needed to the Government in discharge These obligatory functions of NATIS.”

15. Aforesaid functional modalities laid down by Government of India, Ministry of Heavy Industry and Public Enterprises go to prove that assessee society will work as autonomous organization

under department of Heavy Industry, the Government of India. It will maintain detailed accounts of funds receipt, which will be subject to audit by statutory auditors as well as by Comptroller and Auditor General of India (CAG) and all the accounts will be laid on the table of both Houses of Parliament on annual basis.

16. So, we are of the considered view in these circumstances all the funds received by assessee society as per its memorandum are to be considered as a fund held in the capacity of trustee of Government of India. Moreover no evidence has been brought on record by the AO to prove otherwise but has merely proceeded on the basis of assumptions. At the same time Ld. CIT(A) has not examined the issue in entirety rather passed a cryptic order. So, we are of the considered view that funds on account of receipts of testing charges of ICAT MANESAR by the assessee society are held in the capacity of trustee of Government of India.

17. So far as the question of disallowance of amount of Rs. 5,55,000/- claimed as investment in FDRs as application for assessee society is concerned, the assessee has duly filed Form no. 10 during the appellate proceedings but has not been taken into account by Ld. CIT(A) but denied the benefits of funds accumulated by the assessee as per Section 11(2) of the Act.

18. Hon'ble High Court of Karnataka in case cited as **Commissioner of Income-tax vs. Karnataka Urban Infrastructure Development & Finance Corpn.** has decided the identical issue in favour of the assessee in the identical set of facts that the amount received by the assessee from the Government of India was deposited in the FDRs during the unutilized period and confirmed the decision rendered by Tribunal that the assessee is nothing but Trustee of the funds entrusted to carry out the objects of the Government while implementing the scheme. Operative part of the decision rendered by Hon'ble High Court is extracted as under :-

“4. The material on record shows that the very purpose of constitution of the assessee was to act as a nodal agency for implementation of Mega-city scheme worked out by the Planning Commission. Both the Central and the State Governments are expected to provide requisite finances for implementation of the said project. The funds from the Central and State Governments will flow directly to the specialised institutions/nodal agencies as grant and the nodal agency will constitute a revolving fund with the help of Central and state shares out of which finance could be provided to various agencies such as Water, sewerage boards, municipal corporations etc. The objective is to create and maintain a fund for the development of infrastructural assets on a continuing basis and, therefore,

the assessee is a nodal agency formed/created by the Government of Karnataka as per the guidelines; there is no profit motive as the entire fund entrusted and the interest accrued therefrom on deposits in bank though in the name of the assessee has to be applied only for the purpose of welfare of the Nation/States as provided in the guidelines; the whole of the fund belongs to the State Exchequer and the assessee has to channelise them to the objects of centrally sponsored Scheme of infrastructural development for Mega-city of Bangalore. Funds of one wing of the Government is distributed to the other wing of the Government for public purpose as per guidelines issued. The monies so received, till it is utilised, is parked in a bank. The finding recorded by the Tribunal clearly shows that the entire money in question is received for implementation of the scheme which is for a public purpose and the said scheme is implemented as per the guidelines of the Central Government and, therefore, the assessee is only acting as a nodal agency of Central Government for implementation of these projects. It is not the case of the revenue that the assessee was carrying on any business or activities of its own while implementing the scheme in question. The unutilised money, during which the project, could not be fully implemented, is deposited in a bank to earn interest. That interest earned is also again utilised for the implementation of the Mega-city, scheme which is also permitted under the scheme. Therefore in computing the total income of the assessee for any previous year the interest accrued on bank deposits cannot be treated

as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of Mega-city scheme.

19. So, following the decisions rendered by Hon'ble High Court discussed in preceding para, we are of the considered view that AO/ Ld. CIT(A) have erred in not considering the amount of Rs. 5,55,000/- spent by the assessee society as investment in FDRs as of application of income which cannot be disallowed because the entire funds are held by assessee society as Trustee of the Government of India which are to be utilized within the specified period to carry out the aims and objectives of the assessee society. So the unutilized money deposited in the Bank to earn interest, which is also to be accounted for in order to implement the schemes, the interest accrued on the same cannot be treated as income of the assessee as the same has been earned out of funds given by the Government of India and earned by the assessee society from the testing charges of ICAT MANESAR.

20. In view of what has been discussed above, we are of the considered view that AO/ CIT(A) have erred in holding the receipt of ICAT as income of the society u/s 12 of the Act and has also erred in disallowing the amount of Rs. 5,55,000/- claimed as

investment in the FDR, out of receipt of ICAT. Consequently, appeal filed by the assessee stands allowed.

Order pronounced in open court on this 18th Day of April, 2019.

**Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated: 18th Day of April, 2019
BR**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVI, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI**

Date of dictation	05.04.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	18/04/2019
Date on which the fair order comes back to the Sr. PS/PS	24/04/2019
Date on which the final order is uploaded on the website of ITAT	24/04/2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	

The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	