

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.2359/M/2016
Assessment Year: 2011-12**

M/s. National Stock Exchange Investor Protection Fund Trust, Plot No.C-1, Block G, Exchange Plaza, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 PAN: AAATN2497A	Vs.	Assistant Director of Income Tax (E)-II(2), Now Deputy Commissioner of Income Tax-2(1) Exemption, Piramal Chambers, Parel, Mumbai – 400 012
(Appellant)		(Respondent)

**ITA No.2329/M/2016
Assessment Year: 2011-12**

Assistant Commissioner of Income Tax (E)-2(1), 510, 5 th Floor, Piramal Chambers, Lalbaug, Mumbai – 400 012	Vs.	M/s. National Stock Exchange Investor Protection Fund Trust, Plot No.C-1, Block G, Exchange Plaza, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 PAN: AAATN2497A
(Appellant)		(Respondent)

Present for:

Assessee by : Shri J.D. Mistry, Sr. Counsel
Revenue by : Shri Santanu Kumar Saikia, D.R.

Date of Hearing : 11.09.2019
Date of Pronouncement : 19.12.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above tilted appeals – one by the assessee and the other by the Revenue have been preferred against the order dated 15.02.2016 of the Commissioner of Income Tax (Appeals)

[hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12. We will first take the appeal of the assessee in ITA No. 2359/Mum/2016.

2. The issue raised in ground No.1 is against the confirmation of addition of Rs.33,19,23,133/- by Ld. CIT(A) by upholding the denial of exemption under section 11(2) of the Act by the ld.AO.

3. The facts in brief are that the Government of India vide notification No.F.No.14/4/SE/85 dated 22.08.1985 has stipulated the setting up of Investor Protection Fund(hereinafter called as IPF)/Customer Protection Fund(hereinafter called as CPF) for stock exchanges in order to protect the investors interest. Accordingly, SEBI, has issued guidelines to all stock exchanges vide letter No.SMD/RCG/PJ/268/96 dated 19.01.1996 for setting up for IPF. In terms of the said direction given by the Ministry of Finance and SEBI, the National Stock Exchange Stock Exchange Investor Protection Fund Trust was set up on 11.07.1995 with an object of safeguarding the interest of the investors. The CBDT vide various notifications exempted the income of the appellant trust for A.Y. 1996-97 to A.Y. 2001-02 under section 10(23C)(iv) of the Act. Therefore, the entire income of the Trust being the contribution received in terms of SEBI guidelines as well as income on investments was claimed as exempt under section 10(23C)(iv) of the Act. Subsequently, section 10(23EA) of the Act was inserted w.e.f. 01.04.2001 to exempt any income of IPF set up by the recognized stock exchange in India ,as the Central Government made, by notification in the official gazette, may specify in this behalf . The CBDT circular vide notification No.253 dated 29.11.2005 had

notified the appellant trust for the purpose of section 10(23EA) of the Act, therefore the entire income of the Trust was exempt under section 10(23EA) of the Act for 2002-03 to 2006-07. The Finance Act, 2006 amended section 10(23EA) of the Act w.e.f. 01.04.2007 whereby a contribution received from stock exchange and members thereof were allowed as exempt under section 10(23EA) of the Act. Accordingly, from A.Y. 2007-08 the appellant trust had claimed contribution received from stock exchanges and its members as exempt under section 10(23EA) of the Act and in respect of residual income being income on investments the appellant trust claimed the benefit of exemption under section 11(1) and 11(2) of the Act. The purpose of accumulation was specified in form 10 furnished along with the return of income in A.Y. 2007-08 to A.Y. 2009-10 and returns of income were accepted in the original assessment orders passed under section 143(3) of the Act allowing the accumulation of income under section 11(2) of the Act. In A.Y. 2010-11 for the first time the AO invoked the provisions of section 13(1)(c) of the Act and denied the benefit of section 11 of the Act to the assessee. In the appellate proceedings before the Tribunal, the said issue was in principle allowed in favour of the assessee and only for limited purpose of verification of any benefit to trading member was restored back to the AO vide order dated 23.05.2014. In terms of ITAT direction for A.Y. 2010-11, the AO passed an order dated 08.08.2014 being order giving effect to ITAT order by allowing relief under section 11 of the Act and determining the income at nil. Now the Revenue has challenged the order of the ITAT before the Hon'ble Bombay High Court on the issue in respect of claim of exemption under section

10(23EA) of the Act in respect of contribution received from NSE clearing Limited (earlier called National Security Clearing Corporation Ltd) as the same was claimed at the appellate stage, however, the Hon'ble Bombay High Court has dismissed the Revenue's appeal. In this background during the year AO found that assessee has accumulated Rs.33,19,23,133/- under section 11(2) of the Act for which the assessee has submitted form 10 filed along with the return of income. The AO was of the view that the assessee has not elaborately mentioned the purposes for which the accumulation was done and therefore why this accumulation should not be treated as income of the assessee. The assessee replied vide letter dated 24.03.2014 submitting therein that the assessee has duly complied with the requirements of section 11(2) which is reproduced by the AO in para 11.1. However, the same did not find favour with the AO and AO observed that the section 11(2) clause (a) of the Act does not say that objects should be mentioned in the form No.10 but the purpose of accumulation is required to be mentioned and thereafter the AO relying upon certain decisions rejected the accumulation and treated the same as income during the year. In other words, the claim of the assessee was rejected primarily on the ground that the purpose of accumulation is not mentioned but the objects were mentioned in form 10.

4. In the appellate proceedings, the Ld. CIT(A) affirmed the order of AO on this ground after taking into consideration the submissions of the assessee by observing and holding as under:

"In ground No. 2 of appeal the appellant has disputed denial of exemption u/s. 11(2) made by the AO on the ground that specific objects were not mentioned in Form No. 10. The appellant during the course of appellate proceedings has made same submissions which were made before the AO. It is noted that in the

assessment order the AO has elaborately discussed this issue in paragraph 11 of her order. It has clearly been brought out that the purpose of accumulation [which has been quoted in para 11 of the order], does not mention the specific purpose of accumulation but appellant has merely reproduced its objects. Generality of the purpose .3,5 mentioned in Form No. 10 is also evident from the language used e.g. *"upto a limit as may be determined by the Trustees "and " for such other purpose of the public utility as the trustees may deem fit"*. Further, AO has relied upon the judgment of Hon'ble Kolkata High Court in the case of **D1T(E) vs. Trustees of Singhania Charitable Trust** 199 ITR 819 wherein it was held that the purpose of accumulation mentioned in Form No. 10 cannot be too general, which is applicable to the facts of the appellant's case in view of the generality of the purpose mentioned in the Form 10. Further the AO has discussed and distinguished the case laws relied upon by the appellant. In view of these facts and the legal position as discussed above, findings of the AO in this regard are upheld. Ground of appeal No. 2 is, therefore, dismissed".

5. The Ld. A.R. vehemently submitted before the Bench that all the requirements were duly complied with by the assessee as envisaged by the provisions of section 11(2) of the Act. The A.R. submitted that the assessee has filed the form 10 within the due time along with the return of income duly specifying therein the purpose of accumulation under section 11(2) of the Act. The Ld. A.R. submitted that the similar claims were made in the earlier years and were duly allowed by the AO. The Ld. A.R. while taking us through the object of the assessee trust submitted that the primary object of the trust was to compensate the investors against any loss which may be suffered by the investors including trading members or constituents, where trading members are declared as a defaulter by settler note upto a limit as may be decided by the trustees. Therefore, the objections of the AO that the purpose of accumulation was not mentioned is wrong and against the facts. The Ld. A.R. relied on a series of decisions in defense of his arguments and submitted that even if the assessee has not mentioned the purpose specifically even then the same is to be allowed under section

11(2) of the Act, as the same are for the charitable purposes. The Ld. A.R. relied heavily on a couple of decisions namely;

1. CIT(E) vs. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust 263 Taxman 247 (SC)
2. CIT(E) vs. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust 409 ITR 591(Guj HC)

The Ld. A.R. submitted that the decision relied upon by the AO in the case of DIT(E) vs. Trustee of Singapore Charitable Trust (1993) 199 ITR 820 is not applicable to the facts of the instant case as in the assessee's case there was only one object as stated hereinabove whereas in the said decision the facts were different as there were multiple objects and the question of vagueness and ambiguity very much was there. The Ld. A.R. therefore prayed that the appeal of the assessee may kindly be allowed in view of the fact that the similar deduction has been allowed in the earlier years and also that there is no violation of provision of section 11(2) of the Act.

6. The Ld. D.R., on the other hand, relied on the order of Ld. CIT(A) by submitting that the section 11(2) of the Act specifically provides for specifying the purposes for which accumulation was being made and therefore there is no force in the arguments of the Ld. A.R. that the general mentioning of the purposes would be suffice and therefore the order of Ld. CIT(A) may kindly be upheld on this issue.

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 exchanges and it's 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 Bharat Kalyan 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.

8. The issue raised in ground No.2 is not pressed at the time of hearing and therefore the same is dismissed as not pressed.

9. The issue raised in ground No.3 is against the order of Ld. CIT(A) not deleting the interest charged by the AO under section 234A of the Act of Rs.23,46,936/- as the same is contrary to the provisions of the Act.

10. After hearing both the parties and perusing the material on record, we observe that there is no delay in filing the return of income by the assessee trust. We have perused the provisions of section 234A of the Act and are of the opinion that the interest under section 234A is attracted only where the return is furnished after the due date as envisaged u/s 139(1) of the Act or is not furnished at all by the assessee. In the present case, the assessee has duly filed the return of income well within the time under section 139(1) of the Act. We observe that the Ld. CIT(A) has not adjudicated the matter and simply directed the AO to dispose of the petition under section 154 of the Act. In our opinion, the charging of interest under section 234A is apparently wrong and against the provisions of the Act. Accordingly, we direct the AO to delete the interest charged.

11. The issue raised in ground No.4 is against the assessment order of Ld. CIT(A) not directing the AO to delete the interest charged under section 234C amounting to Rs.43,41,831/-.

12. After hearing both the parties and perusing the material on record, we observe that an interest of Rs.43,41,831/- was charged under section 234C of the Act on the assessed income.

The same issue was challenged before the Ld. CIT(A) but Ld. CIT(A) instead of adjudicating the issue directed the AO to dispose of the pending application filed by the assessee under section 154 of the Act. We have perused the provisions of Section 243C of the Act and observed that the interest under section 234C of the Act is to be charged on the returned income and not the assessed income and therefore the interest under section 234C has wrongly been charged by the AO. Accordingly, we direct the AO to charge interest under section 234C of the Act as per the provisions of the Act. The ground No.4 of the appeal is allowed for statistical purpose in the terms aforesaid.

13. The appeal of the assessee is partly allowed.

ITA No. 2329/Mum/2016

14. The grounds raised by the Revenue are as under:

“1. Whether on the facts of the case and in law, the Ld. CIT(A), Mumbai erred in allowing the exemption under 10(23EA) of the I.T. Act, even though the claim was not made by the assessee during the filing of return of income but as alternative at the appellate stage before CIT(A)?

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

15. At the outset, the Ld. counsel of the assessee submitted that issue is covered in favour of the assessee by the order of Hon'ble Bombay High Court in the case of DIT(E) vs. Exchange M/s. National Stock Investor Protection Fund Trust in ITA No.1217 of 16 order dated 04.01.2019. The Ld. A.R. therefore prayed that the appeal filed by the Revenue may kindly be dismissed.

16. The Ld. D.R., on the other hand, relied on the order of AO.

17. After hearing both the parties and perusing the material on record, we observe that identical issue has been raised before the Hon'ble Bombay High Court as stated hereinabove in ITA No.1217/2016 wherein the question of law was raised is reproduced below:

“Whether on the facts and circumstances of the case and in law, the ITAT has erred in allowing the exemption under section 10(23EA) of the Act, even though the claim was not made by the assessee during the filing of return of income but as an alternative at the appellate stage before the CIT(A)”?

The Hon'ble Jurisdictional Bombay High Court has adjudicated the issue as under:

“2. Briefly stated facts are that,

The respondent - assessee is a Trust registered under the Charitable Trusts Act and is also a National Stock Exchange Investor Protection Fund Trust which has been duly recognized under a Notification issued by Government of India for the purpose of benefit under Section 10 (23EA) of the Income Tax Act, 1961 ('the Act'¹ for short). For assessment year 2010-11, the respondent had filed a return of Income in which in connection with two different sources of the receipts the assessee had claimed exemption under Section 10 (23EA) of the Act. We are informed that the Assessing Officer also granted such exemption.

3. Before the Commissioner of Income Tax (Appeals) the assessee claimed similar exemption with respect to yet another receipt which the Commissioner of Income Tax (Appeals) rejected inter alia on the grounds that the claim was not made in the return filed and that a Trust which receives the benefits under Section 11 to 13 of the Act cannot claim exemption under Section 10 (23EA). In further Appeal the Tribunal allowed the assessee's Appeal on this ground. The Tribunal held that there is no prohibition in law that the Trust which qualifies under Section 11 to 13 cannot claim exemption under Section 10 (23EA) of the Act. The Tribunal noted that the Trust is duly notified for the purpose under Section 10 (23EA). With respect to the Revenue's objection to claim raised for the first time before the Appellate Authority, the Tribunal relied upon and referred to a decision of the Division Bench of this Court in case of CIT v/s. Pruthvi Brokers & Share Holders Pvt. Ltd. 349 ITR 336.

4. Going by the question framed by the Revenue. in the Appeal, the sole objection projected is of the Tribunal allowing the claim which was raised by the assessee for the first time before the Appellate Authority. The Revenue does not dispute that necessary facts were already on record to examine such a claim. That being the position, the assessee's claim was based on pure interpretation of statute. The

Tribunal, therefore, -correctly rejected the Revenue's objection relying upon the decision of this Court in the case of Pruthvi Brokers & Share Holders Pvt. Ltd. (supra). The reference can also be made to the decision of the Supreme Court in case of National Thermal Power Corporation vs. CIT 229 ITR 383(SC) holding that the powers of Commissioner of Income Tax (Appeals) are much wider than that of the Assessing Officer.

5. The other contention though not specifically mentioned by the Revenue in the question framed, we have examined the same. There is no prohibition in law which would prevent the assessee - Trust which qualifies for benefits under Section 11 to 13 of the Act from claiming exemption under Section 10 (23EA) of the Act. In fact when the Assessing Officer allowed such an exemption for two claims which assessee had raised in the return, the Revenue accepted this position.”

18. Since the issue is squarely covered in favour of the assessee by the order of the Hon'ble Bombay High Court in the case of DIT(E) vs. Exchange M/s. National Stock Investment Protector Fund Trust (supra), the appeal filed by the Revenue is dismissed.

19. In the result, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 19.12.2019.

Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 19.12.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.