

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

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM**

आयकर अपील सं/ I.T.A. No.2311/Mum/2021

(निर्धारण वर्ष / Assessment Years: 2015-16)

National Stock Exchange Investor Protection Fund Trust Plot C-1, Block-G, Exchange Plaza, Bandra Kurla Complex Bandra (E), Mumbai-400051.	<b>बनाम/</b> Vs.	DCIT(E)-2(1) 4 <sup>th</sup> Floor, Room No. 519, Piramal Chambers, Lalbaug, Parel-400012.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATN2497A</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Jehangi D. Mistry
Revenue by:	Dr. Mahesh Akhade (DR)

सुनवाई की तारीख / Date of Hearing: 21/07/2022

घोषणा की तारीख /Date of Pronouncement: 28/07/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 25.10.2021 for assessment year 2015-16.

2. The main grievance of the assessee is against the action of the CPC (Bangalore) making certain adjustments whereby denied benefit of exemption u/s 10(23EA) of the Income Tax Act, 1961 (hereinafter "the Act") to the tune of Rs.38,45,84,494/- and deduction of amount accumulated u/s 11(2) of the Act to the tune of Rs.43,95,37,307/-.

3. At the outset, the Ld. AR of the assessee submits that the CPC erred in denying the exemption u/s 11(2) as well as u/s 10(23EA) of the Act while processing the return of income u/s 143(1) of the Act could have made adjustments only if there was mistake apparent from records [as per the law which was in force during AY. 2015-16]. And



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drew our attention to Section 143(1)(a) of the Act which reads as under: -

“143 (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of Section 142, such return shall be processed in the following manner, namely:-

(a) the total income or loss shall be computed after making the following adjustments, namely: -

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

4. And it was pointed out by the Ld. AR that only after the Finance Act, 2016 w.e.f. 01.04.2017 sub-clause (iii) to (vi) was inserted and certain other adjustments was permitted u/s 143(1)(a) of the Act. Therefore, according to the Ld. AR, in the present case for AY. 2015-16 only if there was any arithmetical error in the return or mistake which is apparent from the information in the return, the CPC could have made any adjustments. According to the Ld. AR, the reason for the adjustments given for the adjustments u/s 143(1) reads “*Dear Taxpayers, as per section 13(9), exemption u/s 11(2) is allowed if (a) Return is filed before due date (b) Statement in Form-10 has to be E-filed before due date. You have E-filed the Form-10 after the due date specified u/s 139(1) hence the exemption u/s 11(2) is not allowed.*” According to the Ld. AR, the CPC is patently wrong to suggest that for AY. 2015-16, E-filing of Form-10 before due date was mandatory. According to him, in terms of Rule 17 of Income Tax Rules, 1962 (hereinafter “the Rule”) electronic filing of Form-10 was



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made mandatory vide notification dated 14.01.2016 issued by the CBDT in respect of income accumulated or set apart for the Previous Year relating to Assessment Year beginning on or after 01.04.2016. Therefore, according to the Ld. AR, no adjustments could have made in respect of claim made by the assessee u/s 11(2) and 10(23EA) of the Act u/s 143(1)(a) of the Act. Moreover, it was brought to our notice in any case the adjustments made by the CPC u/s 143(1)(a) of the Act dated 22.03.2017 can't survive after the AO has passed the scrutiny assessment u/s 143(3) of the Act vide order dated 20.12.2017.

**5.** Per contra, the Ld. DR supported the action of the Ld. CIT(A) and does not want us to interfere with the order of the Ld. CIT(A).

**6.** Having heard both the parties and after perusal of the records, we note that the assessee trust had e-filed its return of income for the AY. 2015-16 on 21.09.2015 declaring total income at Rs. Nil and claimed a refund of Rs.3,49,78,921/-. The return was processed u/s 143(1) of the Act and assessee received intimation dated 22.03.2017 wherein the CPC determined the total income of the assessee trust at Rs.82,41,21,801/- by making adjustments (1) Denial of deduction of amount accumulated u/s 11(2) of the Act to the tune of Rs.43,95,37,307/- (2) Denial of benefit of exemption u/s 10(23EA) of the Act to the tune of Rs.38,45,84,494/- (total to the tune of Rs.82,41,21,801/-). The reason for making adjustments is that the assessee have not e-filed the Form-10 within the due date specified u/s 139(1) of the Act and hence exemption u/s 11(2) of the Act was denied. We note that the reason for denying the claimed u/s 11(2) of



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the Act i.e. non-filing of Form-10 in the e-mode was not a requirement as per the law for AY. 2015-16. The requirements of e-filing of Form - 10 before the expiry of time allowed u/s 139(1) of the Act was mandated by Rule 17 of the Rules vide CBDT notification dated 14.01.2016 and came into force from 1<sup>st</sup> April, 2016 meaning the requirement of electronic filing of Form 10 was for AY. 2016-17 onwards. Therefore, the reason given by CPC for making adjustment denying claim u/s 11(2) of the Act is erroneous. And therefore, for this reason itself the adjustment has to be deleted. Further, in respect of adjustment made denying the benefit of exemption u/s 10(23EA) of the Act, the CPC has not given any reason, which itself is arbitrary exercise of power and cannot be sustained in the eyes of law because Section 143(1)(a) of the Act allows adjustments to be made by the CPC only if there is any arithmetical error in the return or if any apparent mistake in respect of a claim is evident from the information given in the return. And as noted supra, the power to make adjustments by the CPC has been enlarged by insertion of sub-clause (iii) to (vi) by Finance Act, 2016 w.e.f. 01.04.2017 (AY. 2017-18 onwards) and so is not there for AY. 2015-16. Therefore, the impugned adjustments made by CPC u/s 143(1)(a) of the Act dated 22.03.2017 to the tune of Rs.82,41,21,801/- is directed to be deleted. Moreover, we note that the AO has passed the scrutiny assessment u/s 143(3) of the Act dated 20.12.2017. Therefore, by application of doctrine of merger, the impugned adjustment by CPC dated 22.03.2017 stands merged with the assessment order dated 20.12.2017 and only scrutiny assessment



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order u/s 143(3) of the Act dated 20.12.2017 survives. Therefore, in the light of the aforesaid discussion, the adjustments made by CPC dated 22.03.2017 is directed to be deleted.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 28/07/2022.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28/07/2022.  
Vijay Pal Singh, (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai