

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'E' NEW DELHI]**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 1251/DEL/2022 (A.Y. 2016-17)

DCIT Circle-2(1) 2408, 24 th floor, E-2, Block, Civic Centre, Minto Road, New Delhi (APPELLANT)	Vs.	Natrip Implementation society, 3 rd Floor, South Tower Lodhi Road, New Delhi PAN No. AAATN7662F (RESPONDENT)
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I.T.A. No. 1617/DEL/2022 (A.Y. 2017-18)

DCIT (E) Circle-2(1) 2408, 24 th floor, E-2, Block, Civic Centre, Minto Road, New Delhi (APPELLANT)	Vs.	Natrip Implementation society, 3 rd Floor, South Tower Lodhi Road, New Delhi PAN No. AAATN7662F (RESPONDENT)
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Assessee by :	Shri Saubhagyay Aggarwal, Adv & Ms. Suman Jain, CA
Department by:	Ms. Sarita Kumari, CIT DR

Date of Hearing	31.05.2023
Date of Pronouncement	31.05.2023

ORDER**PER YOGESH KUMAR U.S., JM**

These two appeals are filed by the Revenue against the order dated 17/03/2022 and 23/05/2022 of the National Faceless Appeal Centre (hereinafter referred to ('NFAC') Delhi- for assessment years 2016-17 & 2017-18 respectively.

2. Since, the issues involved in both appeals are common in nature; hence, they are clubbed together, heard together and disposed off by this common and consolidate order for the sake of convenience.

3. The common grounds raised by the Revenue in both the appeals are as under:

- (i) *Whether on the facts and circumstances of the case Ld. CIT(A) is right in law in allowing exemption u/s 11 of the Income Tax Act, 1961 to the assessee.*
- (ii) *Whether on the facts and circumstances of the case, Ld. CIT(A) is justified in not treating the activities of the assessee as advancement of any other object of general public utility and the same is hit by the amended proviso to Section 2(15).*
- (iii) *The Appellant craves leave to add, alter, amend, append or delete any of above grounds.*

4. Since both the appeals for the Assessment Year 2016-17 & 2017-18 are having identical issues, the brief facts of the case of the Assessment Year 2016-17 are considered for the sake of convenience which are as under:-

The assessee is a registered society under Registration Act, 1860 and also registered u/s 12A of the Income Tax Act. In the return filed by the assessee it has declared gross income in Column 6 in Part BTI at Rs. 70,04,01,731/- and an amount of Rs. 70,04,01,731/- has been claimed in part 9(i) of Part BTI of Form ITR 7 as application of amount to charitable purposes in India during the year on revenue account. Further the assessee has claimed nil amount on capital account in part 9(ii) of Part BTI of Form ITR7.

5. The assessment order came to be passed on 27/12/2018 wherein the Ld. A.O. rejected the claim of the Assessee that the activities of the Assessee as advancement of any other object of general public utility and held that the same is hit by amended proviso to Section 2 (15) of the Act, accordingly, amount of Rs. 23,91,65,691/- being a surplus amounts and brought to tax. Aggrieved by the assessment order dated 27/12/2018, the assessee preferred an Appeal before the CIT(A) and the Ld.CIT(A) vide order dated 27/12/2018 allowed the Appeal filed by the assessee by following the order of the Tribunal in Assessee's own case for the Assessment Year 2009-10 and also on the ground that the Department has not denied the exemption to the Assessee for the Assessment year 2011-12 to 2015-16.

6. As against the order of the CIT(A) dated 27/12/2018, the Department of Revenue preferred the present appeal on the grounds mentioned above.

7. The Ld. DR relied on the assessment order and submitted that the Ld.CIT(A) committed error in deleting the additions. On the other hand, the Ld. AR at the outset submitted that the very same issue came for consideration by the Co-ordinate Bench of the Tribunal in ITA No. 3669/Del/2012 for the Assessment Year 2009-10 wherein the Coordinate Bench of the Tribunal held that the A.O./CIT(A) erred in holding receipt of ICAT as income of the society u/s 12 of the Act and erred in disallowing amount claimed as investment in FDR, out of receipt of ICAT. Therefore, prayed for dismissal of the Appeal filed by the Revenue.

8. We have heard both the parties and perused the material available on record. It is found that the Co-ordinate Bench of the Tribunal in ITA No. 3669/Del/2012 for the Assessment Year 2009-10 in Assessee's own case vide order dated 18/04/2019 while dealing with the similar issue, decided the same in favour of the Assessee in following manners:-

“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.”

9. By respectfully following the order of the Tribunal for the Assessment Year 2009-10 in Assessee’s own case and also considering the fact that in the Assessment Years 2011-12, 2012-13, 2013-14 & 2015-16, the exemptions have not been denied to Assessee and in absence of change in activity of assessee, we find no error or infirmity in the order of the CIT (A) for both the Assessment Year 2016-17 and 2017-18 and find no merit in the Grounds of appeal of the Revenue.

10. In the result, the Appeal filed by the Revenue in ITA No. 1251/Del/2022 for Assessment Year 2016-17 and ITA No. 1617/Del/2022 for Assessment Year 2017-18 are dismissed.

Order pronounced in the open court on : **31/05/2023**.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated : 31/05/2023

R.N, Sr. PS

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI