

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1917/Mum/2023

(Assessment Year: 2018-19)

Ncdex Investor (Client)
Protection Fund Trust
1st Floor, Akrti Corporate Park,
LBS Marg, Near GE Garden,
Kanjur Marg (W),
Mumbai-400 078

Vs.

The Commissioner of Income
Tax, (Exemptions)
Room No.601, 6th Floor,
Cumballa Hill,
MTNL TE Building,
Pedder Road,
Dr. Gopalrao Deshkukh Marg,
Mumbai-400 026

(Appellant)

(Respondent)

PAN No. AABTN7481R

Assessee by : Shri Abdulkadir Jawadwala, AR

Revenue by : Shri S Srinivasu, CIT DR

Date of hearing: 27.09.2023

Date of pronouncement : 27.09.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by NCDEX Investor (Client) Protection Fund Trust for A.Y. 2018-19, wherein the Revisionary order passed under Section 263 of the Income-tax Act, 1961 (the Act) dated 27th March, 2023, by the Commissioner of Income Tax (Exemption), Mumbai [the learned CIT] holding that assessment order dated 4th March, 2021, passed under Section 143(3) read with section 143 (3A) and 143 (3B) of the Act is erroneous and prejudicial to the interest of the Revenue and therefore,

the learned Assessing Officer was directed to conduct the assessment proceedings denovo.

02. Assessee is in appeal, raising following grounds of appeal:-

"The grounds/sub-grounds mentioned herein by the Appellant are independent and without prejudice to one another.

1. Ground 1 Validity of revisionary proceedings.

1.1. That on the facts and the circumstances of the case and in law, the learned Commissioner of Income-tax (Exemptions) ("Id. CIT(E)") has erred in initiating the revisionary proceedings and passing an order under section 263 of the Income-tax Act, 1961 ("the Act") for the year under consideration.

1.2. That on the facts and the circumstances of the case and in law, the impugned order under section 263 of the Act is in excess of jurisdiction and bad in law.

1.3. That on the facts and the circumstances of the case and in law, the proceedings under section 263 of the Act are not in accordance with law and consequently ought to be struck down.

2. Ground 2-Assessment Order passed under section 143(3) r.w.s. 143(3A) and 143(38) of the Act after due verification.

2.1. That on the facts and the circumstances of the case and in law, the Ld. CIT(E) has erred in treating the Assessment Order dated 4 March 2021 as

erroneous, considering it to be prejudicial to the interests of the revenue.

2.2. That on the facts and the circumstances of the case and in law, the Ld. CIT(E) has erred in considering that the Assessing Officer ('Ld. AO') had not made detailed inquiry and verification while passing the assessment order under section 143(3) r.w.s. 143(3A) and 143(3B) of the Act. The Ld. CIT(E) also erred in considering that there was no application of mind by the Ld. AO while passing the afore-mentioned assessment order.

Without prejudice to the above,

3. Ground 3 - Denial of exemption claimed under section 10(23EC) of the Act of INR 8,55,81,601/-

3.1. That on the facts and the circumstances of the case and in law, the Ld. CIT(E) has erred in appreciating the fact that claim of exemption under section 10(23EC) of the Act is available to the Appellant for income received by way of statutory contribution from commodity exchanges and members thereof.

3.2. That on the facts and the circumstances of the case and in law, the Ld. CIT(E) has erred in invoking provisions of section 11(7) of the Act and denying the exemption claimed under section 10(23EC) of the Act, disregarding the fact that Income received by way of statutory contribution from commodity exchanges and members is not an income derived from property held under trust.



3.3. That on the facts and the circumstances of the case and in law, the learned CIT(E) has erred in not appreciating that provisions of Section 11(7) of the Act would apply only to Income from property held under Trust and not otherwise.

3.4. That on the facts and the circumstances of the case and in law, the learned CIT(E) has erred in not appreciating the fact the income from statutory contributions received from commodity exchange and member thereof, cannot be deemed to be the income derived from property held under trust.

The above grounds are without prejudice to each other. The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing."

03. The brief facts of the case shows that assessee is a investor protection fund, being a public charitable trust registered under Section 12A of the Act having the main source of income as contribution from its members and also the other income such as interest etc. Assessee is notified u/s 10 (23EC) of the act for relevant exemption also.
04. Assessee filed its return of income for A.Y. 2018-19 on 28th September, 2018, declaring a total income of ₹17,60,920/-. In the return of income, so far as,



contribution received by the assessee was claimed as exempt under Section 10(23EC) of the Act. With respect to the other income, the assessee claimed deduction of expenditure and also accumulation under Section 11(1)(a) of the Act. The balance income which ceased to be accumulated in terms of Section 11(3) of the Act of ₹17,60,924/- was offered as an income.

05. The case of the assessee was picked up for scrutiny and after examination of the details, the return income was accepted by passing assessment order u/s 143(3) of the Act.
06. The learned CIT on examination of the record found that assessee is claiming exemption under Section 10(23EC) of the Act as well as availing benefit of Section 11 and 12 of the Act simultaneously, which is not in accordance with Provision of Section 11(7) of the Act and therefore, the order passed by the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue.
07. The show cause notice was issued on 24th February, 2023, which was replied by the assessee on 2nd March, 2023. The learned CIT concluded that the assessment order passed is erroneous and prejudicial to the interest of the Revenue as per Para no.9 of his order, it was held that assessee at one point is considering the same amount as property to claim exemption under Section 11 of the Act and on the same time, it is claiming exemption under Section 10(23EC) of the Act. According to section 11(7) of the Act, once the assessee claimed the benefit under



Section 11 of the Act, benefit under Section 10(23EC) of the Act is not available to the assessee. Thus, exemption granted to the assessee under Section 10(23EC) of the Act is not allowable. Therefore, the claim made by the assessee needs to be examined in detail at the level of learned Assessing Officer and therefore, the assessment order was set aside.

08. The assessee is in appeal before us stating that the order is neither erroneous nor prejudicial to the interest of the Revenue. The assessee submitted a paper book containing 170 pages. It referred to the computation of total income and details submitted before the learned Assessing Officer. The learned Authorized Representative also referred to the provision of Section 11(7) of the Act stating that for the impugned assessment year there was no bar in claiming simultaneous exemption under Section 10(23EC) of the Act and Section 11 and 12 of the Act. However, he submitted that assessee has not claimed benefit on the same income under both the sections. He submitted that exemption under Section 10(23EC) of the Act is claimed with respect to contribution income and further benefit of section 11 and 12 of the Act is claimed with respect to other income, i.e. other than contribution income. He further stated that the co-ordinate Bench in assessee's own case reported in TS-557-ITAT-2023(Mum) has categorically held that only with effect from 1st April, 2024, amendment is made whereby the exception of Section 10(23EC) has been removed from section 11(7) of the Act. He therefore submitted that assessment years prior to

April, 1st, 2024, the computation of the income and the assessment order are in accordance with the law. It was further stated that the learned Assessing Officer starting from A.Y. 2013-14, till A.Y. 2017-18 has also granted the benefit of exemption under Section 10(23EC) of the Act and Section 11 and 12 of the Act. These assessment orders are not disturbed under Section 263 of the Act. Thus, the assessment order passed by the learned Assessing Officer is not at all erroneous.

09. The learned Departmental Representative vehemently supported the order of the learned CIT (Exemption).
010. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee trust is established by National Commodity and Derivative Exchange Limited (NCDEX) by Trust deed dated 25th June, 2012 as per the guidelines issued by Forward Markets Commission (FMC). The assessee is also notified for exemption under Section 10(23EC) of the Act, vide notification dated 18th June, 2017. Thus, the contribution received by the assessee is exempted under Section 10(23EC) of the Act. The assessee is also registered under Section 12A of the Act as per registration dated 17th March, 2016. Therefore, on other income the assessee applied the Provision of Section 11 and 12 of the Act and accordingly, the return of income was filed. After examination of all the details, the learned Assessing Officer granted the benefit of exemption under Section 10(23EC) of the Act on contribution income and benefit of

section 11 and 12 of the Act on other income. The learned CIT held that for the impugned assessment year assessee should not have been granted benefit under Section 10(23EC) of the Act as it is registered under Section 12A of the Act.

011. Section 10 (23EC) provides as under :-

Incomes not included in total income.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(23EC) any income, by way of contributions received from commodity exchanges and the members thereof, of such Investor Protection Fund set up by commodity exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette⁴³, specify in this behalf:

Provided that where any amount standing to the credit of the said Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a commodity exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax.

Explanation.—For the purposes of this clause, "commodity exchange" shall mean a "registered association" as defined in clause (jj) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952)⁴⁴;

012. Provisions of section 11 (7) provides as under :-



(7) Where a trust or an institution has been granted registration ³⁷[under section 12AA or section 12AB] or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than ³⁸[clause (1), clause (23C) ^{38a}[and clause (46)]] thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year:]

³⁹[**Provided** that such registration shall become inoperative from the date on which the trust or institution is approved under clause (23C) of section 10 or is notified ^{39a}[*under clause (46)*] of the said section, as the case may be, or the date on which this proviso has come into force, whichever is later:

Provided further that the trust or institution, whose registration has become inoperative under the first proviso, may apply to get its registration operative ⁴⁰[under section 12AA] ⁴¹[or section 12AB] subject to the condition that on doing so, the approval under clause (23C) of section 10 or notification ^{41a}[*under clause (46)*] of the said section, as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption under the respective clauses.]



⁴²[*Explanation.*—For the purposes of this section, any sum payable by any trust or institution shall be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it):

Provided that where during any previous year, any sum has been claimed to have been applied by the trust or institution, such sum shall not be allowed as application in any subsequent previous year.]

013. With effect from 1/4/2024 exclusion of section 10 (23EC) is included by The Finance Act 2023.
014. We find that the co-ordinate bench in assessee's own case for AYs 2019-20, 2016-17 and 2020-21 vide order dated 22nd September, 2023 has categorically held that up to 1st April 2024, the assessee is entitled to exemption under Section 10(23EC) of the Act despite it is registered under Section 12A of the Act. It was so held based on the amendment to the Provision of Section 11(7) of the Act made with effect from 1st April, 2024. Therefore, it is apparent that as per the order of the co-ordinate Bench, there is no error in the order of the learned Assessing Officer. Therefore, as the assessment order cannot be said to be erroneous, the order passed by the learned PCIT



under Section 263 of the Act is not sustainable and hence, quashed.

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

Order pronounced in the open court on 27.09.2023.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.09.2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai