

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

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

ITA Nos. 3807 & 3808/Mum/2023
Assessment Years : 2013-14 & 2014-15

National Commodity & Derivatives Exchange Limited, First Floor, Ackruti Corporate Park, LBS Marg, Near GE Garden, Kanjurmarg(W). Mumbai- 400 078. PAN AABCN7696K (Appellant)	Vs.	The Assistant/Deputy Commissioner of Income Tax, 15(2)(1), Mumbai (Now Circle 15(1)(2)). (Respondent)
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Appellant By : Shri Ketan Ved
Respondent By : Shri Ashok Kumar Ambastha

Date of Hearing : 23.04.2024	Date of Pronouncement: 03.05.2024
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ORDER

Per Justice (Retd.) C V Bhadang :

These appeals by the assessee involve a common question of the TDS credit to the appellant. As such, they are being disposed off by this common order.

2. The appellant-assessee National Commodity & Derivatives Exchange Limited (NCDEX) is a commodity exchange, providing platform for market participants to trade in wide spectrum of commodity derivatives. The assessee is regulated by the Forward Market Commission (FMC), under the aegis of the Ministry of Consumer Affairs, Food and Public Distribution,

Government of India. The assessee is required to comply with the statutory rules and guidelines prescribed by FMC from time to time.

3. In the year 2007-08, there was a directive from the FMC to the appellant to constitute an Investor Protection Fund (IPF) for which specific guidelines were prescribed, under which the assessee was, inter alia, required to credit all the penalties received from the members to be kept in a separate account till IPF was created by the exchange. It is a matter of record that the appellant had collected penalty during the years under consideration, which was kept in a separate account till NCDEX Investor (Client) Protection Fund Trust (IPF Trust) was constituted on 25.06.2012. The said IPF Trust is registered under the Bombay Public Trust Act, 1950 vide certificate dated 21.12.2012.

4. The issue involved in these appeals is limited to the non-grant of the credit for the TDS deducted on the penalty income, which is transferred by the appellant to the IPF Trust.

5. For A.Y 2013-14 the appellant filed its RoI on 20.11.2013 declaring total income of ₹27,53,67,070/-. The Assessing Officer completed the assessment on 17.03.2016 making the addition of ₹500,29,652/- on account of disallowance of penalty income transferred to Investor Protection Fund and ₹ 18,03,402/- on account of disallowance u/s 14A of the Act r/w Rule 8D of the Rules. Before the Assessing Officer, it was contended on behalf of the appellant that the penalty income is statutorily required to be transferred to the IPF and as such cannot be taxed in the hands of the appellant. In short, it was contended that the penalty income is vested with the IPF even before it reaches the hands of the assessee and thus, cannot be considered as income of the assessee as it is the case of diversion of income by overriding title. For this purpose, reliance was placed on the decision of this Tribunal in respect of

assessee's own case for A.Ys 2007-08 to 2010-11. The Assessing Officer refused to accept the said contention and proceeded to make the said addition.

6. Insofar as disallowance u/s 14A r/w Rule 8D for A.Y 2013-14 is concerned, the assessee had shown an income of ₹8,27,21,363/- as exempt dividend income. The Assessing Officer found that the expenditure attributable to the earning of the exempt income was required to be worked out on the basis of formula as prescribed in Rule 8D which the Assessing Officer found at ₹21,60,769/-. After giving a credit for a voluntary disallowance of ₹3,57,367/-, the Assessing Officer made a further disallowance of ₹18,03,402/-.

7. Insofar as A.Y 2014-15 is concerned, the disallowance on account of penalty income is ₹1,89,98,671/- while it is ₹25,71,957/- for disallowance u/s 14A r/w Rule 8D. The principal grounds on which these disallowances are made are similar to the one made for A.Y 2013-14.

8. Before the CIT(A), it was contended by the appellant that the penalty income cannot be taxed in the hands of the appellant as it was deducted at source on account of overriding title of IPF. Insofar as disallowance made u/s 14A r/w 8D is concerned, reliance was placed on the decision of this Tribunal in assessee's own case for A.Ys 2007-08 and 2008-09 where this Tribunal had restricted the disallowance to 1% and 0.87% respectively of the dividend income.

9. The CIT(A) by impugned order, both dated 24.08.2023 for A.Ys 2013-14 and 2014-15 has allowed the ground against the disallowance towards penalty income. In other words, the CIT(A) had accepted the contention on behalf of the appellant that the penalty income was diverted at source to the IPF and thus, was not taxable in the hands of the assessee. However, at the same time, the CIT(A) in para 5.2.6 has

refused to accept the contention on behalf of the appellant for giving credit towards the TDS deducted by the appellant. Here the CIT(A) has found on the basis of Rule 37BA of the Rules that the TDS credit can be claimed only if the respective income is offered for tax. In other words, the CIT(A) has found that if the penalty income cannot be taxed in the hands of the appellant, the appellant cannot claim credit of the TDS deducted.

10. Insofar as disallowance u/s 14A r/w Rule 8D is concerned, the CIT(A) has accepted the contention on behalf of the appellant and has restricted the disallowance to 1% of the divided income.

11. We have heard the Id. Counsel for the appellant and the Id. CIT-DR. Perused record.

12. It is contended on behalf of the appellant that the credit towards the amount of TDS deducted by the members (on whom the penalty was imposed) ought to be allowed to the appellant. In the alternative, it is submitted that the said credit ought to be given to the IPF which is a separate assessee.

13. The Id. CIT-DR has submitted that credit for TDS can only be given to the deductee in whose hands the amount (out of which the tax is deducted at source) is brought to tax. He submitted that once amount of penalty was not treated as income in the hands of the appellant, the credit for TDS has rightly been refused. It is submitted that grant of credit to the IPF, which is a separate assessee, is not subject matter of present appeals.

14. We have considered the submissions made. It is necessary to note that the TDS credit can be claimed by an assessee in whose hands, the amount (out of which said deduction is made) is taxed as income. In the

present case, the penalty income is held to be not taxable in the hands of the appellant and, therefore, the TDS credited has rightly been refused to the appellant.

15. On behalf of the assessee, reliance was placed on the decision of this Tribunal in *Arvind Murjani Brands (P.) Ltd. vs ITO (2012) 21 taxmann.com 131 (Mum)*. We find that the said decision turned on its own facts. In para 15 it has been held that credit for the TDS has to be allowed to the payee of the amount in the year for which said tax was deducted and the amount was paid after deduction of tax at source.

16. So far as the alternate prayer for allowing such credit, to the IPF Trust is concerned, we find that the said issue is not the subject matter of these appeals. However, it would be open to the appellant to furnish a declaration as contemplated by the proviso to sub-rule (2) of Rule 37 BA of the said Rules to the deductor, on whom the penalty was imposed. In the event such declaration is furnished and the deductor reports the tax deduction in the name of the IPF Trust, it would be open to the concerned authorities to consider grant of the TDS credit to IPF Trust. Subject to this, no case for interference is made out.

17. In the result, the appeals are dismissed.

Order pronounced in the open court on 3rd May, 2024.

Sd/-

[B R Baskaran]
ACCOUNTANT MEMBER

Mumbai, Dated : 3rd May, 2024.
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Sd/-

[Justice (Retd.) C V Bhadang]
PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'B' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai