

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA no.3153/Mum./2024
(Assessment Year : 2022-23)

**IEI Shareholding (Recreational Facilities –
1987) Trust**

ION House, Dr. E. Moses Road, Mahalaxmi,
Mumbai- 400011
PAN-AAAAI0909F

..... Appellant

v/s

DCIT, Circle 22 (1)

Piramal Chambers, Lalbaug, Mumbai

..... Respondent

ITA no.3154/Mum./2024
(Assessment Year : 2022-23)

**IEI Shareholding (Educational Assistance –
1987) Trust**

ION House, 4th Floor, Dr. E. Moses Road, Near
Famous Studio Mahalaxmi, Mumbai- 400011
PAN-AAATI0077M

..... Appellant

v/s

ITO Ward 22(2)(1)

Piramal Chambers, Lalbaug, Mumbai

..... Respondent

ITA no.3155/Mum./2024
(Assessment Year : 2022-23)

IEI Shareholding (Personal Development – 1991) Trust

ION House, Dr. E. Moses Road, Mahalaxmi,
Mumbai- 400011
PAN-AAATI0081R

..... Appellant

v/s

ITO Ward 22(2)(1)

Piramal Chambers, Lalbaug, Mumbai

..... Respondent

Assessee by : Shri. Motichand Gupta
Revenue by : Shri R.R. Makwana, Sr. DR

Date of Hearing – 05/08/2024

Date of Order – 26/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee trusts challenging the separate impugned orders dated 07/05/2024, 10/05/2024, and 14/05/2024, passed under section 250 of the Income Tax Act, 1961 (“*the Act*”) by the learned Addl./Joint Commissioner of Income Tax (Appeals) [“*learned Addl./Joint CIT(A)*”], for the assessment year 2022-23.

2. Since all the appeals pertain to the trusts settled by Ion Exchange (India) Ltd. involving a similar issue arising out of a similar factual matrix, therefore, as a matter of convenience, these appeals were heard together and are being decided

by way of this consolidated order. In all the appeals, the assessee trusts have raised similar grounds. For reference, the grounds raised by the assessee in the appeal being ITA No. 3153/Mum./2024 are reproduced as under:-

"1. That on the facts and in the circumstances of the case, the Ld. Assessing Officer and the Ld. First Appellate Authority erred in facts as well as in law by treating the appellant as an Association of Person, and the Ld. First Appellate Authority erred in upholding the treatment adopted by the Ld. Assessing Officer.

2. That on the facts and in the circumstances of the case, the Ld. Assessing Officer and the Ld. First Appellate Authority erred in facts as well as in law by determining the tax liability of the Appellant at Maximum Marginal Rate (MMR).

3. That on the facts and in the circumstances of the case, the Ld. Assessing Officer and the Ld. First Appellate Authority erred in facts as well in law, in computing the tax liability of the Appellant by applying section 167B of the Act, without appreciating the fact that the appellant is not an Association of Person and merely acting as a representative.

4. That on the facts and in the circumstances of the case, the Ld. Assessing Officer and the Ld. First Appellate Authority erred in facts as well in law, in not computing the tax liability of the Appellant under section 164(1) of the Act read with proviso (iv), at the slab rates.

5. That on the facts and in the circumstances of the case, the Ld. First Appellate Authority has erred in holding that the delay was on account of deliberate inaction by the Appellant and that the delay was without 'sufficient cause'.

6. That on the facts and in the circumstances of the case, the Ld. First Appellate Authority erred in holding that an appeal under Section 246A of the Act is maintainable unless there is an adjustment to the income declared in the return of income, when the statute specifically permits an assessee to file an appeal against any order that the assessee is aggrieved against.

7. That on the facts and in the circumstances of the case, the Ld. AddI/JCIT(A) has erred in disposing off the appeal without granting the Appellant Trust an opportunity of being heard.

8. That the Appellant craves leave to add to or alter, by deletion, substitution, or otherwise, any or all of the foregoing grounds of appeal at or before the hearing, and to submit such statement, documents, and papers as may be considered necessary either at or before the appeal hearing."

3. We have considered the submissions of both sides and perused the material available on record. The assessee trusts are settled by Ion Exchange (India) Ltd. with the objective of providing benefits to the employees of the company. The trust seeks to advance appropriate assistance to the employees of the company towards recreational facilities such as indoor and outdoor, advancement of educational career including reimbursement of expenses for attending part-time courses, training programs, etc., organising programs for leadership development, public speaking, programs for developing personal qualities, etc. The employees of the company are the beneficiaries of the assessee trusts. Further, the trust was settled by its authors by settling certain shares of the company in the assessee trusts, with a direction that the income from the shares should be used for the purpose stated therein. The trustees hold the equity shares of the company on behalf of the assessee and earn dividend income therefrom, which is the major source of income of the assessee trust.

4. As per the assessee trusts, since their inception they have been offering income as a trust falling under clause (iv) of the first proviso to section 164(1) of the Act, and hence, at the slab rates. However, for the year under consideration, i.e. the assessment year 2022-23, the assessee trusts erroneously offered its income to tax in the manner provided under section 167B of the Act, i.e. as an Association of Persons ("AOP") and at Maximum Marginal Rate. The said return of the assessee was processed vide intimation issued under section 143(1) of the Act assessing the assessee trusts as an AOP. Since the shares of employees, being the beneficiaries of the assessee trust were unknown, the tax liability was

computed at Maximum Marginal Rate as per section 167B of the Act and demand was raised by adding a surcharge at 37% on dividend income as against the surcharge at 15% added by the assessee trust.

5. As per the assessee, since initially it was under the belief that the action of the AO was correct and that it had committed an error in computing the tax liability, it did not prefer any appeal against the aforesaid intimation within the limitation period. However, thereafter it sought professional advice on the correct legal position of law and upon realising that the demand raised was not as per the provisions of the Act and the assessee had committed an error, separate appeals were filed before the learned CIT(A) after a delay. The learned Addl./Joint CIT(A), vide impugned orders, dismissed the appeal filed by the assessee trust on the ground of delay and also upheld the demand raised vide intimation issued under section 143(1) of the Act.

6. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the assessee trusts have also filed an application under section 154 of the Act seeking to rectify the impugned intimation, to restrict the tax on the income of the assessee to slab rate. The learned AR submitted that the said application is currently pending consideration by the Assessing Officer. It was further submitted that on a similar dispute raised in relation to identically placed employee benevolent trusts settled by Ion Exchange (India) Ltd., the CPC has granted relief on an application under section 154 of the Act, and the assessee trusts are also hopeful of a similar relief in their cases.

7. Having considered the submissions of both sides and perused the material available on record, we are of the considered view that whether the assessee's income is taxable at slab rates falling under clause (iv) of the first proviso to section 164(1) of the Act, or is taxable under section 167B of the Act as an AOP at Maximum Marginal Rate is required to be examined in detail by the Jurisdictional Assessing Officer having regard to the all the relevant material. Since the assessee's rectification application in this regard is also pending consideration under section 154 of the Act, we deem it appropriate to restore the issue on merits to the file of the Jurisdictional Assessing Officer for consideration afresh after examination and verification of all the necessary details/documents. Needless to mention no order shall be passed without affording a reasonable and adequate opportunity of being heard to the assessee trusts. Further, we direct the assessee to furnish all the details before the AO in support of its claim and also furnish any other document as may be required by the AO. With the above directions, the impugned orders are set aside and the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeals by the assessee trusts are allowed for statistical purposes.

Order pronounced in the open Court on 26/08/2024

Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 26/08/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Shubham P. Lohar

By Order

Assistant Registrar
ITAT, Mumbai

