

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'D', MUMBAI

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 3262/Mum/2024 (A.Y. 2014-15)
ITA No. 3198/Mum/2024 (A.Y. 2016-17)
ITA No. 3197/Mum/2024 (A.Y. 2017-18)
ITA No. 3195/Mum/2024 (A.Y. 2018-19)**

Dy. Commissioner of Income Tax (Exemptions) - 2(1), Mumbai	vs	Multi Commodity Exchange Investor Protection Fund Exchange Square, CTS No. 255, Suren Road, Chakala, Andheri(E), Mumbai - 400093. PAN: AADTM 1169 M
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Tanzil Padvekar
Revenue by : Shri R.R. Makwana, Sr. DR

Date of Hearing : 19.11.2024

Date of Pronouncement : 04.12.2024

ORDER

PER AMARJIT SINGH, AM:

All these four appeals filed by the Revenue are directed against the different order passed by the Id. CIT(A), NFAC. Since common issue on identical facts are involved in all these four appeals for the sake of convenience of theses appeals are adjudicated together by taking ITA No. 3262/M/2024 for A.Y. 2014-15 as lead case and its finding will be applied mutatis mutandis to the other three appeals wherever applicable.

ITA No. 3262/M/2024 (A.Y. 2014-15)

1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in allowing the exemption u/s 11 of the Act, ignoring the fact the objects of assessee falls under the category of

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"advancement of any other object of general public utility", the activities of assessee are in the nature of trade, business and commerce and total receipts of the assessee from such activities are more than 20% of the total receipts, hence the proviso to section 2(15) of the I.T. Act is applicable and not entitled to exemption u/s 11 of the Act in view of the provisions of section 13(8) of the I.T. Act, 1961?

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in allowing the exemption u/s 11 of the Act on the basis of the decision of the Hon'ble ITAT's on identical facts in the case of M/s NCDEX Investor (Client) Protection Fund Trust for AY 2016-17, A.Y. 2018-19, AY 2019-20 & 2020-21 vide ITA No.854 to 856/Mum/2023 dated 22/09/2023 without appreciating the fact that the department has not accepted the decision of Hon'ble ITAT and filed appeal before Hon'ble Bombay High Court vide lodging No. ITXAL/12245/2024 for A.Y 2016-17, ITXAL/12249/2024 for A.Y. 2019-20, ITXAL/12244/2024 for A.Y. 2020-21 and ITXAL/12251/2024 for A.Y. 2018-19 and the same are pending for adjudication?

3. Whether on the facts and circumstances of the case and in law and in light of the law laid down by Hon'ble Supreme Court in Civil Appeal No. 21762 of 2017 in various batch of appeal and SLP's (lead case ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority (2022) 143 taxmn.com 278(SC)), the Ld.CIT(A) erred in not appreciating that even if the activities of the assessee are held to be covered under residuary part of section 2(15) as "advancement of any other object of general public utility even then it is not entitled to exemption u/s 11 because it is hit by the proviso to section 2(15) as the income of the assessee consists of activities which are in the nature of trade, commerce or business?

4. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) is right in allowing exemption u/s 11 of the Act without appreciating the fact that the fund created is for the benefit of the related parties mentioned in section 13(3) of the Act and activities of the fund are not for public at large but for MCX and its members in particular, who are contributing funds?

5. Whether on the facts and circumstances of the case and in law the Ld.CIT(A) is right in upholding the decision of the Hon'ble ITAT

in assessee's own case for A.Y. 2013-14 that the interest income from Fixed Deposits and savings account and voluntary contributions from MCX is not a business income but such contribution from MCX was towards corpus fund and thus proviso to section 2(15) will not apply in the assessee's case despite the fact that the objects of the trust are only in the nature of "advancement of any other object of general public utility?"

2. Fact in brief is that assessee e-filed its return of income on 30.09.2014 declaring total income at Rs. Nil. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 31.08.2015. The trust was registered with the Directorate of Income Tax (Exemption), Mumbai u/s 12A of the Act and it was also registered with the Charity Commissioner, Mumbai. The assessee trust was formed to promote business activity of Multi Commodity Exchange (MCX) in the form of boosting confidence of investors in MCX as per the mandatory requirement of Forward Market Commission (FMC)/SEBI to attract more investors/clients/players to maximize profits of MCX and the income of the trust was in the form of contributions received from the MCX and its members.

3. During the course of assessment, the AO asked the assessee to explain why its income be not assessed as profit and gains of business and the exemption claimed u/s 11 of the Act be not denied to it. The assessee made submission before the ld. Assessing officer which is reproduced as under:

“(a) It had been formed as per direction of FMC/SEBI, it was registered with Charity Commissioner, Mumbai for charitable purposes. Its objects were not all commercial in nature and it did not have any intention to maximize/earn profits on its own for the MCX. Its objectives were purely to protect the investors (i.e. public at large) against any defaulter

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member of the Exchange, creating awareness by educating general public and other stake holders through publishing books and other literature by means of media, advertisements, holding events, etc. of trading on commodity exchange.

(b) The appellant also elaborated upon the mechanism for settling the claims it receives against defaulting members to demonstrate that such claims were audited and scrutinized at various levels. It was also stated that in the event of winding up of MCX, the funds of the appellant were to be utilized as per directions of SEBI as the ultimate trustee and these were not to be diverted to the present trustees or MCX.

(c) The appellant also referred to its receipts which were in the form of interest from savings accounts, fixed deposits and Government bonds and it was stated that such receipts showed that the appellant did not collect any charge or fee or cess either directly or indirectly from anyone, that it had not rendered any services for a fee. In view of this, it was stated, that it cannot be said that the appellant was involved in carrying on any business, trade or commerce nor carrying on any service in relation to any trade, commerce or business and hence, the appellant was not hit by proviso of section 2(15) of the Act and therefore the it was entitled to exemption u/s 11 of the Act.

(d) The appellant also placed reliance on the decisions in cases of ICAI Writ Petition (Civil) No. 1927 Of 2010 dated 19/09/2011, Stuart art Silk Mfrs. Association (1979) 121 ITR 1, Ahmedabad Rana Caste Association dated (1983) 140 ITR 1(SC), Sai Publication Fund (2002) 4 SCC 57. H. Abdul Bakhi (1964) 15 STC 664 (SC), Lahore Electric Supply Company (1966) 60 ITR 1(SC).”

4. However, the AO has not agreed with the submission of the assessee and held that its activities were not charitable. The AO was also of the view that assessee trust was set up as per SEBI/FMC guidelines which was not a voluntary activity. The assessing officer also of the view that activity of the assessee trust was for the benefit of related parties mentioned in section 13(3) of the Act as it was settled

by MCX and beneficiaries were MCX and members and investors. Therefore, assessing officer opined that activities of the assessee was not for the benefit of public at large but the same was for the benefit of its members those who made contribution to the funds of the assessee. Alternatively, the AO also held that activity of the assessee was also hit by section 2(15) of the Act as the assessee was charging contribution charges and penalty towards profiting or rendering of services. Therefore, it was deemed to be engaged in various commercial activities which prima facie were in the nature of business. Since the object or activity of the assessee falls under the category of “advancement of any other object of general public utility therefore the AO held that it has been found to be engaged in any commercial activities for a fees or cess either direct or indirect and also the receipt from such commercial activities were more than Rs. 25 lakh. Therefore, the proviso to section 2(15) of the Act was attracted. Accordingly, the receipt of the assessee was treated by the assessing officer as business profit and exemption claimed u/s 11 of the Act was not allowed to the assessee.

5. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal filed by the assessee vide order dated 04.11.2019 stating that assessee had not complied with hearing notices and concurring with the view of the AO held that assessee trust was not eligible for exemption u/s 11 of the Act. The assessee filed appeal before the ITAT. The ITAT vide order dated 19.03.2020 (ITA No. 861/Mum/2020) restored the issue to the file of ld. CIT(A) for deciding on merit. The ld. CIT(A) held that the assessee is eligible for exemption u/s 11 of the Act and directed the AO to allow the same.

6. During the course of appellate proceedings before us, the ld. Counsel filed paper book comprising details and copies of documents filed before the lower authorities. The ld. Counsel has also filed copy of decision of ITAT in the case of the assessee itself vide ITA No. 5759/M/2013 for A.Y. 2013-14 wherein the assessee was granted registration u/s 12A of the Act. The ld. Counsel also referred the decision of ITAT vide ITA No. 7922/M/2011 wherein MCX Exchange Investor Protection Fund was granted registration u/s 12A of the Act. The assessee also referred decision of ITAT in the case of Exchange Investors Protection Fund vide ITA No. 3544/M2016 A.Y. 2011-12 dated 17.04.2018 for providing exemption u/s 11 of the Act. The assessee also referred the decision of ITAT on similar matter in the case of NCDEX Investor (Client) Protection Fund Trust vide ITA No. 854/M/2023, ITA No. 855/M/2023 and ITA No. 856/M/2023 dated 22.09.2023.

7. On the other hand, ld. DR supported the order of lower authorities.

8. Heard both the sides and perused the material on record. We find that assessee trust was created as per the mandatory requirement of FMC/SEBI for the benefit of investor which include public at large. The contributions are received from MCX based on FMC/SEBI guidelines which form part of corpus of assessee as specifically directed in such contribution. The assessee trust does not collect any fees, charge or cess directly or indirectly from anyone, neither does it render any services for any fees there was no element of any commercial / business angles in its activities. The assessee has

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applied registration u/s 12A of the Act which has been granted by the ITAT, Mumbai as per the decision referred above holding that assessee is a charitable trust set up in advance an object of general public utility The assessing officer has nowhere demonstrated how the activities of the assessee trusts were for the benefit of persons covered u/s 13(3) r.w.s. 13(1)(c) of the Act. The CBDT vide Notification No. 77/2023/F-173/105/2013-ITA-1 dated 12.09.2023 specified that the Multi Commodity Exchange Investors Protection Fund Trust was set up by multi commodity exchange Ltd., Mumbai for the purpose of section 10(23EC) for the A.Y. 2014-15. We have perused the decision of the ITAT in the case of Multi Commodity Exchange Investor (Client) Protection Fund vide ITA No. 5759/M/2013 dated 08.04.2014 wherein after following the decision of the ITAT on the identical matter in the case of MCX Stock Exchange Investors Protection Fund Currency Derivatives Segment Fund held as under:

“2. Before us, Authorized Representative(AR)submitted that the similar issue was decided by the Mumbai Tribunal in the matter of MCX Stock Exchange Investors Protection Fund Currency Derivatives Segment Trust (ITA/7922/Mum/2011-AY.2011-12, date-02.01.2014) and in the case of Inter-connected Stock Exchange Investors Protection Fund (ITA/7436/M/2011-20.9.2013), that the objects and facts and circumstances in the case of the assessee as well as in the above referred two cases were identical. DR stated that matter should be decided on merits.

3. We have heard the rival submissions and perused the material available on record. We find that in the case of MCX Stock Exchange Investors Protection Fund Currency Derivatives Segment Trust (supra) C Bench of the Mumbai Tribunal has held as under:

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"5. Having considered the rival submissions and careful perusal of the relevant record we note that the application for registration u/s 12AA has been rejected by the DIT (Exemption) on the following grounds:

1) the activity of the assessee being carried out not for the object of the general public utility but meant for benefit for specific persons investing through specific Stock Exchanges.

ii) that the assessee does not qualify as a charitable institution as it does not cater, for any public at large but it has been created to indemnify the investors against the loss caused on account of negligence etc.

6. At the outset we note that the Co-ordinate Bench of the Tribunal has dealt with both the objections of the DIT(Exemption) in the case of Interconnected Stock Exchange Investors Protection Fund Vs DIT(Exemption) (supra) and the conclusion of the co-ordinate Bench of the Tribunal has dealt with both the objections of the DIT(Exemption) in the case of Interconnected Stock Exchange Investors Protection Fund vs DIT(Exemption) (supra) and the conclusion of the coordinate bench is as under:

"However, a comprehensive and holistic reading of the trust deed would allay all such misgiving/s or inference/s, and, in our clear view there is no scope for taking any such view. Firstly, as a condition for an eligible claim, the relevant member or the stock exchange is to be declared as a 'defaulter following the prescribed procedure. Two the corpus of the fund is to be built through, inter alia, share of listing fees, interest on 19 listing deposit, paid, and kept by the issuer companies with the respective stock exchange. An individual member of a particular member stock exchange is not called upon to pay any direct charges to the applicant fund, in fact, a part of the auction money of the defaulting money is also, in terms of the SEBI circular (FIITC/F11/02/2002 dated 15.05.2002), made over to the corpus of the fund. Accordingly, the object of the applicant cannot be as a service In relation to any trade, etc. Further, even assuming so, the same does not involve any consideration inasmuch as no quid pro quo can be attributed to the mandatory contributions to the fund by the participating stock exchanges In our considered view, therefore, the applicant fund is a public charitable fund, set up to advance an object of general public

utility, and has been wrongly denied registration as one by the Revenue We, accordingly, vacating the findings of the competent authority vide the impugned order, direct it to grant registration applied for We decide accordingly. 7.As it is clear that the Co-ordinate Bench of Tribunal has decided the identical issue in favour of the assessee by holding that the assessee is a public charitable fund, set up in advance an object of general public utility and therefore, the registration w/s 12A has been wrongly, denied by the authority. Following the decision of the Co-ordinate Bench we set aside the impugned order of the DIT(Exemption) with the direction to grant registration u/s 12A of the Income tax Act to the assessee."

Respectfully, following the orders of the coordinating benches, we decide the effective ground of appeal in favour of the assessee and direct the DIT-E, Mumbai to grant registration to the assessee-trust u/s 12A of the Act."

Further, we have perused the decision of ITAT, Mumbai in the case of NCDEX wherein identical issue on similar fact has been adjudicated in favour of the assessee and the relevant extract of the decision is reproduced as under:

"014. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the income of the assessee with respect to contribution received from recognized stock exchange and the members thereof is eligible for exemption under section 10 (23EC) of the act. Central government for this exemption also notifies the assessee. Therefore, as far as the income of contribution is concerned, the learned CIT – A has correctly granted the assessee under that section.

015. Provisions of section 11 (7) provides that where a trust or institution has been granted registration under section 12 AA and the said registration is in force for any previous year then nothing contained in section 10 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. However, there is an exception to this rule with respect to income exempt under section 10 (23C) (1), (23EC), (46)

and (46A). With effect from 1 April 2024 such is removed with respect to income under section 10 (23EC), (46) (46A) of the act. Thus prior to 1- 4- 2024 there was no bar on assessee claiming exemption under section 10 (23EC) and under section 11 and 12 of the act. The impugned assessment year before us is assessment year 2016 – 17, 2019 – 20 and 2020 – 21. Therefore, we find no justification in the claim of the revenue that assessee can only claim exemption under section 11 and 12 even prior to 1/4/2024. Thus, we do not find any merit in the argument of the revenue. Further the assessment orders passed under section 143 (3) of the act for earlier years and subsequent years have granted assessee exemption on contribution income under section 10 (23EC) of the act and all other income under section 11 and 12 of the act. In view of this, the grounds of appeal raised by the learned assessing officer do not hold any merit. Therefore, dismissed.

016. Accordingly, as similar issue involved in other two appeals of the learned assessing officer, we dismiss the appeal of the revenue for assessment year 2016 – 17, 2019 – 20 and 2020 – 21.

017. As we have already dismissed the appeal of the revenue, the cross objection filed by the assessee becomes infructuous, therefore those are also dismissed.”

Since identical issue was dealt with by the Tribunal as discussed therefore there is nothing before us on hand to differ from the issues raised in the cases cited (supra) so as to take a different view on the issue. Therefore, following the principle of consistency, we find merit in the submission of the assessee and allow the grounds of appeal 1 to 5 of appeal of the assessee. In the result, appeal of the assessee is allowed.

ITA 3198/M/2024 (A.Y. 2016-17)

9. Since we have adjudicated the similar issue on identical fact vide ITA No. 3262/M/2024 as supra, therefore, applying the same mutatis mutandis. This appeal of the Revenue is dismissed.

ITA 3197/M/2024 (A.Y. 2017-18)

10. Since we have adjudicated the similar issue on identical fact vide ITA No. 3262/M/2024 as supra, therefore, applying the same mutatis mutandis. This appeal of the Revenue is dismissed.

ITA 3195/M/2024 (A.Y. 2018-19)

11. Since we have adjudicated the similar issue on identical fact vide ITA No. 3262/M/2024 as supra, therefore, applying the same mutatis mutandis. This appeal of the Revenue is dismissed.

12. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 04.12.2024**Sd/-****Sd/-****(SAKTIJIT DEY)
VICE PRESIDENT****(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai: 04.12.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai