

SIN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "E" Bench, Mumbai.

Before Shri Rahul Chaudhary (JM) &
Shri Omkareshwar Chidara (AM)

ITA No. 4589/MUM/2025 (Assessment Year : 2022-23)

ITO 22(1)(1) 319 Piramal Chambers Lalbaugh, Parel Mumbai-400 012.	Vs.	EARC Trust SC143 Edelwiess House CST Road, Kalina Mumbai-400 098.
		PAN : AAATE6542R
Appellant		Respondent

Assessee by	:	Shri Rajesh Kalyani, CA & Shri Ajay Dhoot, CA
Revenue by	:	Shri Hemanshu Joshi
Date of Hearing	:	09/10/2025
Date of pronouncement	:	21/11/2025

O R D E R

Per Omkareshwar Chidara (AM) :-

The Revenue filed an appeal in the above cited case aggrieved by the order of Ld. CIT(A) where relief was given to the appellant Trust adjudicating that they are entitled for the exemption under section 10(23DA) of the I.T. Act. The Revenue is mainly aggrieved because none of the basic details like Trust Deed, investor details or income application records were filed before the Ld. AO. The Revenue has taken the following grounds of appeal :-

1. On facts and in law, the Ld. CIT(A) has erred in allowing exemption under section 10(23DA) of the Income-tax Act, 1961 to the assessee trust without verifying or calling for a remand report on the trust's eligibility under the provisions of the Income-tax Act, RBI guidelines, or the SARFAESI Act, particularly when the assessee failed to furnish any evidence during the assessment proceedings to substantiate the claim.
2. On facts and in law, the Ld. CIT(A) has erred in allowing the appeal merely on the basis of submissions made during appellate proceedings without affording the Assessing Officer an opportunity to rebut the new material, in violation of the principles of natural justice.
3. On facts and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.1,11,38,02,657/- made by the Assessing Officer on account of ineligible exemption claimed under section 10(23DA), despite

the assessee's failure to produce any documentary evidence in support of the exemption, such as trust deed, investor details, or income application records,

4. On facts and in law, the Ld. CIT(A) has erred in holding that the assessee is a securitization trust eligible for pass-through exemption under section 10(23DA) and section 115TCA of the Income-tax Act, 1961, without verifying compliance with the conditions prescribed under those sections and related CBDT circulars and regulatory guidelines.

5. Without prejudice, on facts and in law, the Ld. CIT(A) has failed to appreciate that the addition of Rs.1,11,38,02,657/- was made by the Assessing Officer in the absence of any evidence of genuineness, source, or creditworthiness of contributors and the trust's activities, warranting its treatment as unexplained income under section 69A of the Act.

6. The appellant craves leave to amend or alter any ground or submit additional ground which may be necessary.

2. The Ld. DR has pointed out before the ITAT that from the assessment order the appellant was asked to furnish the details of donors, name, PAN and address, mode of payment, bank account details, purpose of contribution, application of such exempt income for the purpose of Trust object, note on eligibility etc. It was also mentioned by Ld. AO that even the source of funds has not been disclosed by appellant. The Ld. AO has mentioned that the appellant failed to submit the certificate of Registration under section 10(23DA) of the Act. No details were furnished by the appellant before the Ld. AO in pursuance of notice under section 142(1) of the Act dated 19.10.2023 and also in pursuance of show-cause notice dated 1.2.2024 asking the appellant why the exemption should not be denied. As the appellant did not furnish any details, the Ld. AO concluded that the exemption is unexplained and unverifiable and hence the Ld. AO correctly denied the exemption claimed by appellant company. It was also pointed out by Ld. DR that the order of Ld. CIT(A) is very cryptic, where entire assessment order was reproduced alongwith section 115TC and section 10(23DA) of the Act and Ld. AR's submissions. Then, the Ld. CIT(A) adjudicated the issue in favour of the appellant Trust without saying anything about why these details were not furnished before Ld. AO as

mentioned in the assessment order. Hence, the Ld. DR has emphasized that the Grounds of Appeal comes into play as the Ld. AO was not given any opportunity to rebut the evidences filed before Ld. CIT(A) nor any remand report was called from Ld. AO. It was also pointed by Ld. AR that the paper book filed by Ld. AR of the appellant Trust, at page No. 109 and 115 also shows that some details were not filed before the Ld. AO as the individual who was responsible for supervising the tax notices and whose e-mail address was updated on the Income Tax Portal had left the Organisation and the appellant was unaware of such notices being issued. The appellant submitted before Ld. CIT(A) that the non-compliance before AO was neither willful nor driven by any malafide intent, but occurred due to circumstances beyond its control. In view of this admission of appellant before Ld. CIT(A), Rule 46A was correctly invoked by the Revenue in the Ground of Appeal and the matter should go back to the file of Ld. AO.

3. As against this, Ld. AR of the appellant has submitted that in similar circumstances, another EARC Trust of their group was given exemption under section 10(23DA). It was further argued by Ld. AR that the Ld. CIT(A) has given relief to them only after getting satisfied that the conditions under section 10(23DA) of the Act were complied with. As all the transactions are “pass through” only, no fresh materials were required to be submitted.

4. Heard both parties. The Ld. AO in assessment order, categorically says not even basic details were submitted before him to claim exemption under section 10(23DA). The Ld. AR of the appellant filed the details, it appears, before Ld. CIT(A) for the first time the fact which was admitted by appellant before Ld. CIT(A) in their written submissions, vide pages 109 and 115. Even though prima-facie, the appellant Trust has a case for exemption under section 10(23DA), the conditions to be fulfilled should be examined by Ld. AO. From the order of Ld. CIT(A), it is observed that no remand report was called for from Ld. AO. In the case of CIT Central-1 Vs. Manish Buildwell (P) Ltd. 345 ITR 102 (Del), Hon'ble Delhi High Court has held that Ld. CIT(A)

should give reasonable opportunity to AO to examine/rebut the evidence filed by appellant and same is mandatory. The Hon'ble Delhi High Court further held that, otherwise Rule 46A is redundant and non-compliance of Rule 46A is a serious procedural defect and constitutes jurisdictional error. It was held that Rule 46A is not a procedural formality, but mandatory safeguard and wherever the Ld. CIT(A) entertains fresh evidence before him which was not filed before AO, he should record reasons also for the same. From the order of Ld. CIT(A), it is observed that no such reasons are recorded nor remand report was called for. In view of the same, the Bench decides to remit the issue to the file of Ld. AO where all details should be filed before him and AO is directed to pass the order afresh after giving reasonable opportunity to the appellant Trust.

5. The appeal of Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 21/11/2025.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai