

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAHUL CHAUDHARY, JM

**ITA No. 854/Mum/2023**

(Assessment Year: 2019-20)

**ITA No. 855/Mum/2023**

(Assessment Year: 2016-17)

**ITA No. 856/Mum/2023**

(Assessment Year: 2020-21)

Income Tax Officer  
(Exemption)-2(1)  
Room No.618, 6<sup>th</sup> Floor,  
MTNL Building, Cumballa Hill,  
Mumbai-400 026

Vs.

NCDEX Investor (Client)  
Protection Fund Trust  
First floor,  
Akruti Corporate Park,  
L.B.S. Marg, Near GE Garde  
Kanjurmarg (W),  
Mumbai-400 078

**(Appellant)**

**(Respondent)**

**PAN No. AABTN7481R**

**CO No. 48/Mum/2023**

(Arising in ITA No. 856/Mum/2023 for A.Y. 2020-21)

**CO No. 49/Mum/2023**

(Arising in ITA No. 855/Mum/2023 for A.Y. 2016-17)

**CO No. 50/Mum/2023**

(Arising in ITA No. 854/Mum/2023 for A.Y. 2019-20)

NCDEX Investor (Client)  
Protection Fund Trust  
First floor,  
Akruti Corporate Park,  
L.B.S. Marg, Near GE Garde  
Kanjurmarg (W),  
Mumbai-400 078

Vs.

Income Tax Officer  
(Exemption)-2(1)  
Room No.618, 6<sup>th</sup> Floor,  
MTNL Building, Cumballa Hill,  
Mumbai-400 026

**(Appellant)**

**(Respondent)**

**Assessee by** : Shri K.K. Ved, AR  
**Revenue by** : Shri Ashok Kumar Ambastha,  
DR

**Date of hearing:** 14.09.2023

**Date of pronouncement :** 22.09.2023



## **ORDER**

### **PER BENCH:**

01. These are three appeals filed by Income Tax Officer, Exemption 2(1), Mumbai (the learned Assessing Officer) for A.Y. 2016-17, 2019-20 and 2020-21, in case of NCDEX Investor Protection Fund Trust, Mumbai (assessee / appellant) against the appellate order passed by the National Faceless appeal Centre, Delhi, on 6<sup>th</sup> May, 2022 for A.Y. 2016-17 and on 13<sup>th</sup> June, 2022 for A.Y. 2019-20 and 2020-21.
02. In all these three appeals, identical grounds of appeal are raised as under:-

*"ITA No.855/Mum/2023*

*1. Whether on the facts and in circumstances of the case and in law Ld.CIT(A) is justified in simultaneously allowing the claim of exemption u/s 10(23EC) as well as exemption u/s 11 of the act despite the restriction provided u/s 11(7) of the Act?*

*2. Whether on the facts and in circumstances of the case and in law, Ld.CMA) erred in not appreciating that as per section 11(7) of the Act, where a trust or an institution has obtained registration under section 12AA/12A of the Act and said registration is in force for any previous year, then only exemption under clause (46), clause (1) and Clause 23(C) of section*



*10 are allowed whereas exemption u/s 10(23EC) is not allowed?*

*3. When on the facts and in circumstances of the case and in law there is no dispute that the registration under section 12AA/12A of the Act of the assessee trust is in force then exemption u/s 10(23EC) of the Act should not have been allowed by Ld.CIT(A)?*

*4. Whether on the facts and in circumstances of the case and in law, Ld.CIT(A) erred in agreeing with the arguments of the assessee that the income by way of contributions received from commodity exchange and members thereof claimed u/s 10(23EC) of the Act / is not be treated as property held by the trust, whereas such income is kept in Fixed Deposits and the interest earned from such FD's (claimed u/s 11 of the Act) is to be treated as property held by the trust?*

*5. Whether on the facts and in circumstances of the case and in law, Ld.CIT(A) has failed to notice that the amounts claimed as property held by the trust for claiming exemption u/s 11 of the Act are nothing but the same amounts received as contributions from members and by such claim the assessee was not justified in taking opposite stand so as to claim dual exemptions u/s 10(23EC) as well as u/s 11 of the Act which is not allowable as per the provisions of section 11(7) of the Act?*

*6. That the appellant craves leave to add/amend delete and /or modify the above grounds of appeal on or before retrospectively."*



03. In all these three appeals the assessee has filed Cross Objection raising issue against the validity of adjustment made to the return income in terms of intimation issued under Section 143(1) of the Income-tax Act, 1961 (the Act). Identical grounds are as under:-

*"CO No. 49/Mum/2023*

*1. Re. Validity of the adjustment made to the returned income in terms of the Intimation issued under Section 143(1) of the Income-tax Act, 1961:*

*1.1 The CPC-Bangalore/ Assessing Officer has erred in making an adjustment of ₹9,24,58,751/- to the returned income of the Appellant in terms of the Intimation dated 17 March 2018 issued under Section. 143(1) the Income-tax Act, 1961 ('Act) by denying exemption claimed u/s.10(23EC) of the Act.*

*1.2 The Respondent submits that considering the facts and circumstances of its case and the law prevailing on the subject, the adjustment made by the CPC-Bangalore/ Assessing Officer is misconceived, incorrect, erroneous and not in accordance with the law.*

*1.3 The appellant submits that the CPC0Banglroe/ Assessing Officer be directed to delete the adjustment so*



*made and to re-compute its total income accordingly."*

04. In all these appeals identical issue is involved.
05. The facts of A.Y. 2016-17 shows that Assessee trust has been established by National Commodity & Derivatives Exchange Limited (NCDEX) by trust deed dated 25<sup>th</sup> June, 2012, in terms of guidelines issued by the Forward Markets Commission (FMC) with an object of compensating eligible claims of investors against defaulting members. It has the object also of creating awareness and educating public about the benefits of trading on commodity exchange and to publish books etc for the same object. As per notification dated 18th January 2017, the assessee has been specified as assessee trust for claiming exemption under that section 10 (23EC) of The Act. Assessee is also registered under Section 12A of the Act as per registration dated 17 March 2016.
06. Assessee trust filed its return of income on 17<sup>th</sup> October, 2016 declaring total income at ₹ 15,37,007/-. In the return of income assessee claimed exemption under section 10 (23EC) of the act on account of the contribution received of ₹ 92,458,751/-. As assessee has also other income other than the contribution income to which provisions of section 10 (23EC) of the act applies amounting to ₹ 44,934,879/-, assessee claimed deduction of amount of expenditure incurred on the object of the



trust, income under section 11 (1) (a) and further accumulation under section 11 (2) of the act. However as assessee has spent on expenditure incurred outside India of ₹ 1,537,007/-, the same remained as income of the assessee as taxable income. Thus, in nutshell, assessee on the income of contribution claimed exemption under section 10 (23EC) of the act and on the balance other income from property held under trust applied provisions of section 11 and 12 of the act.

07. The return was processed under Section 143(1) of the Act and intimation was issued on 17<sup>th</sup> March, 2018. The total income of the trust was determined at ₹ 9,39,95,760/- denying the claim of exemption under Section 10(23EC) of the Act. Thus, Centralized processing Centre of Income Tax did not grant exemption under section 10 (23EC) of the act of ₹9,2458,751/-.
08. Prior to filing of appeal before the learned CIT (A), the assessee filed an application for rectification on 3<sup>rd</sup> April, 2018, which was rejected on 10<sup>th</sup> April, 2018, in the communication, the reasons for raising demands were that where the trust has been granted registration under Section 12A or 12AA of the Act and said registration is in force, then exemption claimed under Section 10 other than clause (1) and (23C) shall not be allowed, therefore, assessee was advised to claim exemption under Section 11 of the Act instead of section 10 of the Act.



09. Aggrieved, once again filed an application under Section 154 of the Act on 17<sup>th</sup> August, 2018, which is pending. Therefore, aggrieved assessee preferred an appeal before the learned CIT (A).
010. Before the learned CIT (A), assessee submitted that assessee has claimed exemption under Section 10 (23EC) of the Act of ₹9,24,58,751/- being contribution received. Further, assessee has claimed exemption under Section 11 of the Act on other income being income derived from property held under trust as assessee is registered under Section 12AA of the Act. Before the learned CIT (A), assessee explained provision of Section 10(23EC), provision of Section 11(7) of the Act and submitted that assessee is eligible for exemption of contribution under Section 10(23EC) of the Act. Further, on other income those are chargeable to tax as per provisions of Section 11 and 12 of the Act assessee is also eligible for those benefits. The learned CIT (A) was also urged that identical issue arose in the case of the assessee for A.Y. 2015-16, 2017-18 and 2018-19, wherein identical intimation under Section 143(1) of the Act were passed disallowing exemption under Section 10(23EC) of the Act. However, when those years were picked up for scrutiny, assessment orders were passed under Section 143(3) of the Act for those years and assessee was granted exemption under that provision of the law.
011. The learned CIT (A) found that assessee has received an income of ₹ 92,458,750 by way of statutory contribution



received from National commodity derivatives exchange Ltd and its members. Therefore in view of the provisions of section 10 (23EC), section 11 (7) and section 12 of the act and the notification dated 18/1/2017 issued by the central government the assessee is entitled to claim the exemption. Therefore he directed the learned assessing officer to delete the addition of ₹ 92,458,750 and grant exemption under section 10 (23EC) of the act.

012. The learned AO is aggrieved with that order and has preferred this appeal. The learned departmental representative vehemently supported the order of the central processing Centre and the reasons given therein.
013. The learned authorized representative submitted that assessee is entitled to exemption under section 10 (23EC) on the income of contribution received from recognized stock exchange and the members. With respect to the other income derived from the property held under trust for charitable purposes, assessee is entitled to the benefit of section 11 and 12 of the act as assessee holds the registration under section 12 A of the act. He further submitted that in the several years, the learned assessing officer has granted exemption to the assessee under section 10 (23EC) and under section 11 and 12 of the act Simon tenuously on different incomes.
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.

018. In the result appeal of the learned AO and the cross objections of the assessee for all the three assessment years (all three appeals and the cross objections) are dismissed.

Order pronounced in the open court on 22.09.2023.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.09. 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