DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 1217 OF 2016

Director of Income Tax – (Exemption) ..Appellant
Vs.
Exchange M/s. National Stock Investor
Protection Fund Trust ..Respondent

…........

Mr. Tejveer Singh for appellant.
Mr. R. Murlidhar a/w. Mr. Atul Jasani for respondent

…........

CORAM : AKIL KURESHI &
M.S. KARNIK, JJ.
DATE : 4th JANUARY, 2019

<u>P.C.</u> :

This Appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ('ITAT' for short), Mumbai, dated 23/5/2014. Following question has been presented for our consideration :

“1. Whether on the facts and circumstances of the case and in law, the ITAT has erred in allowing the exemption under section 10(23EA) of the Act, even though the claim was not made by the assessee during the filing of return of income but as an alternative at the appellate stage before the CIT(A)”?

2. Briefly stated facts are that,

The respondent – assessee is a Trust registered under the Charitable Trusts Act and is also a National Stock Exchange Investor Protection Fund Trust which has been duly recognized under a Notification issued by Government of India for the purpose of benefit under Section 10 (23EA) of the Income Tax Act, 1961 ('the Act' for short). For assessment year 2010-11, the respondent had filed a return of Income in which in connection with two different sources of the receipts the assessee had claimed exemption under Section 10 (23EA) of the Act. We are informed that the Assessing Officer also granted such exemption.

3. Before the Commissioner of Income Tax (Appeals) the assessee claimed similar exemption with respect to yet another receipt which the Commissioner of Income Tax (Appeals) rejected inter alia on the grounds that the claim was not made in the return filed and that a Trust which receives the benefits under Section 11 to 13 of the Act cannot claim exemption under Section 10 (23EA). In further Appeal the

Tribunal allowed the assessee's Appeal on this ground. The Tribunal held that there is no prohibition in law that the Trust which qualifies under Section 11 to 13 cannot claim exemption under Section 10 (23EA) of the Act. The Tribunal noted that the Trust is duly notified for the purpose under Section 10 (23EA). With respect to the Revenue's objection to claim raised for the first time before the Appellate Authority, the Tribunal relied upon and referred to a decision of the Division Bench of this Court in case of **CIT v/s. Pruthvi Brokers & Share Holders Pvt. Ltd. 349 ITR 336**.

4. Going by the question framed by the Revenue in the Appeal, the sole objection projected is of the Tribunal allowing the claim which was raised by the assessee for the first time before the Appellate Authority. The Revenue does not dispute that necessary facts were already on record to examine such a claim. That being the position, the assessee's claim was based on pure interpretation of statute. The Tribunal, therefore, correctly rejected the Revenue's objection relying upon the decision of this Court in the case of **Pruthvi Brokers & Share Holders Pvt. Ltd.**

(*supra*). The reference can also be made to the decision of the Supreme Court in case of **National Thermal Power Corporation vs. CIT 229 ITR 383(SC)** holding that the powers of Commissioner of Income Tax (Appeals) are much wider than that of the Assessing Officer.

5. The other contention though not specifically mentioned by the Revenue in the question framed, we have examined the same. There is no prohibition in law which would prevent the assessee – Trust which qualifies for benefits under Section 11 to 13 of the Act from claiming exemption under Section 10 (23EA) of the Act. In fact when the Assessing Officer allowed such an exemption for two claims which assessee had raised in the return, the Revenue accepted this position.

6. In the result no question of law arise, Income Tax Appeal is dismissed.

(M.S. KARNIK, J.) **(AKIL KURESHI, J.)**