

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.Nos.291 & 292/Viz/2018

(निर्धारण वर्ष/ Assessment Year: 2012-2013 and 2013-14 respectively)

The ACIT,
Circle-1
Eluru

Vs. The District Cooperative
Central Bank Ltd.
Ramachandra Rao Pet
Eluru, West Godavari Dist.
[PAN : AADFT3506D]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

Cross Objection Nos.74 & 75/Viz/2018

(Arising out of I.T.A. Nos.291 & 292/Viz/2018 respectively)

(निर्धारण वर्ष/ Assessment Year: 2012-2013 and 2013-14 respectively)

The District Cooperative
Central Bank Ltd.
Ramachandra Rao Pet
Eluru, West Godavari Dist.
[PAN : AADFT3506D]

Vs. The ACIT,
Circle-1
Eluru

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

राजस्व की ओर से/ Revenue by
निर्धारिती की ओर से/ Assessee by

: Shri K.C.Das, DR
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 18.09.2018

घोषणा की तारीख/Date of Pronouncement

: 20.09.2018

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

These appeals are filed by the revenue against the order of the Commissioner of Income Tax(Appeals) [CIT(A)]-11,Hyderabad vide Appeal No.237 & 238/2017-18/DCIT C-1 ELR/CIT(A)-11Hyd/17-18dated 31.01.2018 and Cross Objections are filed by the assessee supporting the order of the Ld.CIT(A) for the assessment year 2012-13 and 2013-14. Since the grounds raised in the appeals are common, these appeals are heard together and a common order is being disposed of for the sake of convenience as under.

2. All the grounds of appeal are related to the disallowance of payment of Rs.50,00,000/- for the assessment year 2012-13 and 2013-14 by the Assessing Officer (AO) u/s 36(1)(v) r.w.s 40A(7) of the Act relating to the contribution to gratuity fund to Life Insurance Corporation of India.

3. The AO made the addition observing that the assessee has made the payment to LIC Group Gratuity fund which has not been approved by the CCIT/CIT, hence it is not allowable as per section36(1)(v) r.w.s 40A(7) of

the Act. For ready reference, we extract relevant part of the order of the AO which reads as under :

"4. It has been found that the assessee has made payment of Rs50 Lakhs towards gratuity fund for the welfare of employees. As per the provisions of sec.40A(7) of the I.T.Act1961, payment of premium towards group gratuity scheme in respect of a gratuity fund which has not been approved by the Commissioner of Income Tax is not allowable. This issue has been discussed at length in course of hearing with reference to the provisions of Sec.40A(7) and 36(1) (v) of the I.T.Act, 1961. The AR. Sri J.Radhakrishnan,C.A., of the assessee-bank has been specially interacted regarding non-allowability of the amount paid towards the Gratuity Fund set up with LIC of India. Their special attention was drawn to the detailed discussion made in the assessment order for the A.Y.2010-11 & 2011-12. The clear-cut provisions of the aforesaid two sections state that no deduction is allowable for contribution made to an unapproved fund. All this proves that the amount paid to LIC of India towards the Gratuity Fund is not to be allowed. The claim is not found to be acceptable."

4. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition following the order of this Tribunal in assessee's own case in ITA Nos.49, 50, 78, 476/Viz/2012, 515,524/Viz/2014, 269/Viz/2014 & CO 33/Viz/2013 & CO 29/Viz/2015 and allowed the appeal of the assessee holding that the assessee is entitled for deduction for payment of gratuity to LIC on actual payment basis. For the sake of clarity and convenience, we extract relevant part of the order of Ld.CIT(A) which reads as under :

4.4. Upon search of the official website of the ITAT, namely, www.itat.gov.in, the order of ITAT, Visakhapatnam dated 25/01/2018 in ITA Nos. 49,50,78,476/VizagJ2012, 515,524/Vizag/2014, 269/Vizag/2015 & CO 33/Vizag/2013 & CO 29/Vizag/2015 has been found, which is downloaded. In paragraphs 8 to 11 of the order, the ITAT, Visakhapatnam discussed the decision

part on this issue. For the sake of ready reference, relevant part of para 10 is reproduced below:-

"10. In the case of Verizon Data Services India Pvt Ltd (supra) the coordinate bench of Madras held that payment made to gratuity fund maintained with LIC has no control over the irrevocable trust created exclusively for the benefit of employees and deduction shall be allowed. The coordinate bench of Madras while deciding the appeal relied on the decision of Hon tie Madras High court in the case of Textool India Pvt. Limited (supra) (civil appeal No. 447 of 2003). In the instant case the assessee has made the payments to the LIC towards group gratuity scheme directly in approved schemes. The assessee has also obtained the policy in favour of the bank. The assessee has no control over the funds contributed to LIC towards the gratuity. The assessee is receiving the gratuity payment directly from the LIC of India as per the scheme which is paid to the employee on happening of the event i.e. retirement or death or resignation. Therefore, the facts of the assessee's case are squarely covered by the decisions cited supra. The coordinate bench of Hyderabad while delivering the ruling relied on the decision of jurisdictional High Court in the case of Warner Hindustan Ltd. Since the facts are identical, respectfully following the view taken by the coordinate benches, we hold that the assessee is entitled for the deduction for payment of gratuity to LIC and accordingly, we set aside the order of the lower authorities and allow the appeal of the assessee.

4.5 Respectfully following the latest decision of ITAT, Visakhapatnam, in assessee's own case, referred to supra, the Assessing Officer is directed to delete the disallowance of Rs.50,00,000/- each for AYs 2012-13 & 2013-14 respectively."

4.1. Since the facts are identical, and Ld.CIT(A) allowed the appeal of the assessee following the order of this tribunal respectfully following the view taken by this Tribunal in the assessee's own case cited supra, we direct the AO to allow the payment made to LIC gratuity fund towards the group

gratuity on actual payment basis. Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue .

5. The cross objections filed by the assessee in support of the order of the Ld.CIT(A) are barred by limitation and the assessee has not filed any petition for condonation. Therefore, the cross objections are dismissed.

In the result, appeals of the revenue as well as the cross objections filed by the assessee are dismissed.

Pronounced in the open court on 20th September 2018.

Sd/-

(बी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER** लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 20.09.2018

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- The District Cooperative Central Bank Ltd., Ramachandra Rao Pet, Eluru, West Godavari Dist.
2. राजस्व/ The Revenue – The ACIT, Circle-1, Eluru
3. The Pr.Commissioner of Income Tax, Rajahmundry
4. The Commissioner of Income-Tax (Appeals)-11, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM