आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत
INCOM TAX APPELLATE TRIBUNAL-SURAT-BENCH-SURAT
श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE C .M. GARG, JUDICIAL MEMBER
AND O. P. MEENA, ACCOUNTANT MEMBER
आ.अ.सं./I.T.A No.2502/Ahd/2016/SRT
निर्धारण वर्ष/Assessment Year:2013-14

Gujarat State Co-op. Fruit and Vegetable Marketing Federation Ltd. , 43 Sardar Baug Bardoli 394602 Surat PAN:AAAG0983H	**V.**	**Deputy Commissioner of Income-Tax, Circle – 2(3), Surat**
अपीलार्थी Appellant		**प्रत्यर्थी/Respondent**
निर्धारिती की ओर से **Assessee by**		**Shri Shailesh Vaidya, CA**
राजस्व की ओर से **Revenue by**		**Shri Vinod Kumar, Sr. D.R.**

सुनवाई की तारीख **Date of hearing**	**31.10.2018**
उद्घोषणा की तारीख **Date of pronouncement**	**01.11.2018**

आदेश /ORDER

PER O. P. MEENA, AM

1. This appeal at the instance of the Assessee is directed against an order dated 30.08.2016 passed by learned Commissioner of Income tax (Appeals)-1,Surat (in short "the CIT (A)") for the Assessment Year 2013-14.

2. Ground no. 1 states that the ld. CIT (A) erred in confirming the action of the AO in not granting the claim of deduction of Rs. 2,45,017 on account of Provident Fund.

3. Brief facts are that during the course of assessment proceedings, the assessee submitted a revised computation of total income stating the

Provident Fund expenses of Rs. 2,45,017 which were added back in original computation of income. However, the AO found on verification of letter dtd. 05.05.1982 that the employees fund scheme was not approved nor the assessee has submitted approval letter of CCIT or CIT, therefore, the expenses of Rs. 2,45,017 were disallowed.

4. Being dissatisfied, the assessee preferred an appeal before the CIT (A). However, CIT (A) upheld the action of the AO on the ground that the assessee has not got approved the Provident Fund approved from Chief CIT/Pr.CIT, so any approval granted by the Provident Fund Commissioner is not relevance as per provisions of section 36(1)(iv) of the Act.

5. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee referred the provision of section 2(38) of the Act and submitted that recognized Provident Fund is an inclusive definition and the second condition of Provident Fund established under a scheme framed under the Employees Provident Fund Act, 1952 is independent from the first condition of recognition of the fund by the CCIT as lays down under section 2 (38) of the Act. Therefore, claim of deduction under section 36(1)(iv) of the Act under the scheme framed under Employees Provident Fund or approved by the Commissioner under the Act is allowable. The learned counsel for the assessee further, placed

reliance in the case of M/s. Voxiva India Pvt. Ltd. v. ITO ward 17 (4) New Delhi [I.T.A.No. 3448/Del/2016 dtd. 27.04.2017].

6. *Per contra*, the learned Departmental Representative (the ld. D.R.) relied on the order of lower authorities.

7. We have heard the rival submissions and perused the relevant material on record. We find that the Co-ordinate Bench of del Tribunal in the case of **Voxiva India Pvt. Ltd., New Delhi v. ITO, New Delhi on 27 April, 2017 has held as follows.**

> *"7. It was argued by the ld. counsel for the assessee that the from above explanation and sections quoted above it is evident that definition of 'recognized provident fund' is an inclusive definition and the second condition of a provident fund established under a scheme framed under the Employees' Provident Funds Act, 1952 (19 of 1952) is independent from the first condition of recognition of the fund by the Chief Commissioner as lays down under section 2(38) of the Income Tax Act, 1961. Therefore, to claim deduction under section 38(1)(iv) of the Income Tax Act, 1931 scheme should either be framed under the Employees' Provident Funds or should be approved by Commissioner under the Income Tax Act, 1961. The appellant has relied on the following case laws:-*
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> *b) (2009) 27 SOT 31 (DELHI) In the ITAT Delhi Bench 'G' Deputy Commissioner of Income Tax", Central Circle-6, New Delhi v. Sahara India Employees Contributory Provident Fund.*
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> *b) ITA No.3107/Del/2010 In the Income Tax Appellate Tribunal Delhi Bench : H : New Delhi ACIT, Haldwani, Uttarakhand Vs Udham Singh Nagar Distt. Co- operative bank ITA No. 3448/Del/2016*
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> *8. From the definition of the 'Recognized Provident Fund' in Section 2(38) of the Act, it is evident that there are two independent limbs of the definition, i.e. firstly, the approval/recognition should be by the Principal CIT or Chief Commissioner or the Principal Commissioner or Commissioner in accordance with the I.T. Act and Rules. The second limb is that the Provident Fund should be*

established under a scheme framed under the Employees Provident Fund Act, 1952. These are two independent conditions and either of the condition has to be satisfied by the assessee. In the present case, the assessee has contributed to the Provident Fund established under a scheme framed under the Employees Provident Fund Act, 1952 and it has not taken any recognition from the I.T. department u/s 2(38) of the Act. In my view, the assessee satisfies the condition of contributing to Recognized Provident Fund as per section 2(38) of the Act. Reliance is placed on the decision of the Dy. CIT Vs. Sahara India Employees Contributory Provident Fund in ITA No. 1568/DEL/2007 dated 24.10.2008 and relevant para 11 is reproduced hereunder:

"11. A perusal of the definition given in section 2(38) as above shows that a provident fund which has been or continues to be // recognized by the Chief Commissioner or the Commissioner in accordance with the rules contained in Part A of the Fourth Schedule is said to be a "recognized provident fund" as per the first limb of the definition given in section 2(38). Further, as per the second limb of the definition, a recognized provident fund also includes a ITA No. 3448/Del/2016 provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952. The definition given in section 2(38) thus is an inclusive definition and as per the second limb of the said definition which is independent of the first limb, it includes a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952. It is pertinent to note here that the condition of recognition of the fund by the Chief Commissioner or Commissioner as stipulated in the first limb is consciously absent in the second limb which clearly depicts that such recognition is not a condition precedent for a provident fund established under a scheme framed under the Employees' Provident Fund Act. 1952 to be a "recognized provident fund" within the meaning of section 2(38), We, therefore, find no merit in the contention raised by the learned DR that such recognition by the Chief CIT or CIT is required even in case of a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952. In our opinion, a reading of the provisions of section 2(38) defining "recognized provident fund" especially the second limb thereof clearly shows that a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952 has to be regarded as a recognized provident fund irrespective of whether the same has

been recognized by the Chief Commissioner or Commissioner or not as rightly held by the learned CIT(A). Since the provident fund of the assessee-trust in respect of other concerns was undisputedly established under a scheme framed under the Employees' Provident Fund Act, 1952, we are of the view that the same was a recognized provident fund within the meaning of section 2(38) even without recognition by the Chief CIT or CIT and any income received by the trustees on behalf of the said fund was exempt from tax as per clause (//) of sub-section (25) of section 10.

In that view of the matter, we uphold the impugned order of the ITA No. 3448/Del/2016 learned CIT(A) deleting the addition of Rs. 32,84,310 made by the Assessing Officer to the total income of the assessee on account of income earned by the assessee from provident fund contributions from other concerns holding that the same was exempt under section 10(25) and dismiss this appeal filed by the revenue

9. This decision in the case of Sahara India Employees Contributory Provident Fund [supra] has been followed by the Division Bench of the ITAT Delhi in the case of Udham Singh Nagar Dist. Co -operative Bank Ltd in ITA No. 3107/DEL/2010 vide order dated 08.04.2013. The relevant part is reproduced hereinbelow:

"7. Section 2 (38) of the Act reads as follows:-
"(38) "recognized provident fund" means a provident fund which has been and continues to be recognized by the Chief Commissioner or Commissioner in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952 (19 of 1952)"
8. Thus, the Section is very clear in that it defines a "recognized provident fund" to include a Provident Fund established under a Scheme framed under the Employees' Provident Fund Act, 1952. Now, obviously, the Assessing Officer erred in disallowing the claim of the assessee, inasmuch as in the assessment order, it was not even noted that the Trust of the assessee Bank was a Trust established under a Scheme framed under the Employees' Provident Fund Act, 1952.

9. Once Section 2 (38) of the Act, as above, itself specifically provides a Provident Fund established under a Scheme framed under the Employees' Provident Fund Act, 1952 to be a recognized

Provident fund there is no reason for the claim of the assessee to be denied and we find the Ld. CIT (A) to have correctly rectified the error committed by the Assessing Officer."

10. In the facts and circumstances of the case and the decisions relied upon hereinabove, the contribution made by the assessee is treated as contribution made to the recognized provident fund and accordingly deduction is allowable. Reliance placed by the ld. DR on the decision of the Hon'ble Delhi High Court in the case of Sony India [P] Ltd Vs. CIT reported in [2006] 285 ITR 213 [DEL] is on different facts where the issue before the Hon'ble High Court was not with respect to the two limbs of the decision u/s 2(38) of the Act and accordingly, this decision in the case of Sony India [P] Ltd Vs. CIT is not applicable in the present case. Thus Ground No. 1 of the assessee is allowed.

8. In the light of above discussion and the ratio laid down therein, we find that the perusal of the definition given in section 2(38)of the Act as above shows that a provident fund which has been or continues to be recognized by the Chief Commissioner or the Commissioner in accordance with the rules contained in Part A of the Fourth Schedule is said to be a "recognized provident fund" as per the first limb of the definition given in section 2(38). Further, as per the second limb of the definition, a recognized provident fund also includes a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952. The definition given in section 2(38) thus is an inclusive definition and as per the second limb of the said definition which is independent of the first limb, it includes a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952. It is pertinent to note here that the condition of recognition of the fund by the Chief Commissioner or

Commissioner as stipulated in the first limb is consciously absent in the second limb which clearly depicts that such recognition is not a condition precedent for a provident fund established under a scheme framed under the Employees' Provident Fund Act. 1952 to be a "recognized provident fund" within the meaning of section 2(38), We, therefore, observe that Section 2 (38) of the Act, itself specifically provides a Provident Fund established under a Scheme framed under the Employees' Provident Fund Act, 1952 to be a recognized Provident fund there is no reason for the claim of the assessee to be denied. In view of this matter, respectfully following the above decision and decision cited therein of Hon`ble High Courts, this grounds of appeal is allowed in favour of the assessee.

9. Ground No. 2 relates to confirming addition of Rs. 1,32,341 of interest received from other than co-operative societies and thereby not granting the proportionate deduction of expenses as claimed by the assessee by offering income of Rs. 2,11,183 in the return of income.

10. Succinct facts are that the AO has disallowed Rs. 3,43,524 pertaining to interest income received from banks other than co-operative societies. It was contended that before CIT (A) that the assessee has himself offered income of Rs.2,11,183 after deducting proportionate interest expenses Rs. 50,053 in the original return. However, in the revised computation of income under the head income from other source, the assessee has offered

interest income at Rs. 3,43,524 and claimed proportionate interest expenses at Rs. 65,819 @ 19.16%. Thus, net interest income of Rs. 2,77,205 was offered to tax as against original interest income of Rs. 2,11,183. However, the AO has computed disallowance of interest income at Rs. 3,43,524 and on the basis of his computation of income from original return of income in which the assessee has already offered interest income of Rs.2,11,183. Hence, addition of interest income was made twice. Further, the AO has denied the proportionate expenses claimed against interest income.

11. Being aggrieved, the assessee filed an appeal before the ld. CIT (A). However, CIT (A) was of the view that the appellant has accepted interest income of Rs. 3,43,524 is taxable income as income from other source and not as business income. Thus, the appellant unconditionally accepted the applicability of ratio of Totagars Co-operative Sales Society Ltd. v. ITO 322 ITR 283 (SC) that income is taxable as income from other source and not as business income and such income is not eligible for deduction under section 80P(2)(a)(i) of the Act . Thus, there is no denying fact that interest income of Rs. 3,43,524 is taxable under the head income from other source and not eligible for deduction under section 80P(2)(a)(i).Against this the assessee has offered only Rs. 2,11,183 in the computation of income (Original) which has been adopted only at Rs.2,11,183 in the computation

of income. Therefore, CIT (A) observed that to this extent the AO made double addition, hence, the AO was directed to delete the addition of Rs. 2,11,183 being added twice. The CIT (A) further, observed that the assessee has made alternate contention the AO has erred in taxing entire interest income of Rs. 3,43,524 on gross basis. Even if it is assumed that AO was correct in taking income from other source. The assessee has worked out taxable amount at Rs. 2,77,705 on property rata basis. However, CIT (A) was of the view that the assessee has already claimed interest expenses as deduction from business income, hence, it cannot claim same deduction against interest income which amounted to double deduction. Therefore, the claim of proportionate expense on account of interest was denied.

12. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the assessee in his revised computation of income has offered interest income at Rs.3,43,524 and after claiming deduction of Rs. 65,819 net interest income was offered for tax at Rs. 2,77,705. The assessee has offered in original return interest income from banks at Rs. 2,61,236 after claiming financial expenses of Rs. 50,053 However, proportionate expenses are at Rs. 65,819 resulting into net taxable income at Rs. 2,77,705 asper revised working filed before the AO. The CIT (A) has allowed deduction of double addition made by the AO

by considering original return as base in which interest income of Rs. 2,11,183 was already offered to tax. However, CIT (A) has denied proportionate interest expenses of Rs. 65,819. This has resulted that addition of Rs. 1,32,341 i.e. [3,43,524- 2,11,183] has been remained in the to total income. Learned counsel , therefore, placing reliance in the case of The Kabilpore Peoples Co-operative Society Ltd. v. ITO Ward-2 Navsari [I.T.A.No. 806/Ahd/2015 dtd. 21.01.2017 (Ahmedabad –Trib)] and Shree Dhansobhavak Co-operative Credit Society Ltd. v. ITO Ward- 5 [I.T.A.No. 3375/Ahd/2016 dtd. 28.08.2018] has submitted that only net interest income is taxable hence, deduction of proportionate interest expenses should have been allowed by the Ld. CIT (A).

13. The ld. Sr. DR supported the order of lower authorities.

14. We have heard the rival submissions and perused the relevant material on record. We find that that CIT (A) viewed that interest expenses has been claimed against business income and same stands allowed is not logical as the said business income is exempt under section 80P of the Act. Therefore, on the logic of disallowance of interest expenses u/s. 14A as against exempt income the expenses for income from other source as shown under the head interest income is also required to be allowed. We find that Co-ordinate Benches of Tribunal in the case of The Kabilpore Peoples Co-operative Society Ltd. v. ITO Ward-2 Navsari [I.T.A.No.

806/Ahd/2015 dtd. 21.01.2017 (Ahmedabad –Trib)] and Shree Dhansobhavak Co-operative Credit Society Ltd. v. ITO Ward- 5 [I.T.A.No. 3375/Ahd/2016 dtd. 28.08.2018] have held that proportionate interest expenses are allowable from interest income. In view of this matter, we delete the addition of Rs. 1,32,341 in which interest expenses component of Rs. 65,819 is also included. Accordingly, Ground No. 2 of appeal is allowed.

15. In the result, the appeal of the assessee stands allowed.

16. Pronounced in the Open Court on 01.11.2018.

Sd/- Sd/-

(सी.एम.गर्ग /C.M. GARG) (ओ.पी.मीना/O.P.MEENA)

न्यायिकसदस्यतथा/JUDICIAL MEMBER लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

Surat Dated: 01 November 2018/opm

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी/ The Appellant; 2. प्रत्यर्थी/ The Respondent; 3. आयकरआयुक्त(अपील-The CIT(A), 4. Pr. CIT 5.विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, सूरत/ DR, ITAT, Surat; 6. गार्डफाईल / Guard file.

By order

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Assistant Registrar, Surat