

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

I.T.A. No. 1857/HYD/2017

Assessment Year: 2009-10

The Dy. Commissioner of
Income Tax,
Circle-17(2),
HYDERABAD

M/s. VST Industries Ltd.,
Vs HYDERABAD
[PAN: AAACV6799C]

(Appellant)

(Respondent)

For Revenue : Shri Phani Raju, DR
For Assessee : Shri T.S. Ajai, AR

Date of Hearing : 06-02-2019
Date of Pronouncement : 13-02-2019

ORDER

PER Smt. P. MADHAVI DEVI, J.M. :

This is Revenue's appeal for the AY. 2009-10, against the order of the Commissioner of Income Tax (Appeals)-5, Hyderabad, dated 22-09-2017.

2. Brief facts of the case are that, assessee-company, engaged in the business of manufacture of sale of cigarettes and trading of tobacco, filed its return of Fringe Benefit Tax for the AY. 2009-10 on 25-09-2009, declaring total fringe benefits of Rs. 2,82,69,350/-. The scrutiny assessment of the fringe benefit was completed u/s. 115WE(3) of the Act on 30-11-2011, assessing the total fringe benefits at the amount

declared by the assessee. Subsequently, Assessing Officer observed that the assessee has not considered payment of Rs. 1,84,83,124/- made to Superannuation Fund for FBT which was debited to the Profit & Loss A/c. Therefore, he re-opened the assessment u/s. 115WH of the FBT Act and required assessee to explain as to why the amount of Voluntary Retirement Scheme (VRS) contribution to Superannuation Fund should not be brought to tax. Assessee submitted that the amount of Rs. 1,84,83,124/- was not a contribution to Superannuation Fund, but was an amount paid to the employees under the Voluntary Retirement Scheme during the FY. 2006-07, relevant to the AY. 2007-08 and which was claimed as deduction u/s. 35DDA of the Act. Therefore, according to the assessee, it was not a contribution to the Superannuation Fund and cannot be treated as a fringe benefit. Assessing Officer, however, held that Voluntary Retirement Scheme is also covered under the ambit of Superannuation Fund and therefore it has to be brought to FBT and accordingly, he brought it to tax.

2.1. Aggrieved, assessee preferred an appeal before the CIT(A), who allowed the same by observing that the amount which was claimed as a deduction u/s. 35DDA was a payment made to the employee under Employees Voluntary Retirement Scheme and cannot be held as a contribution to the Superannuation Fund of the employees. Against the relief granted by the CIT(A), Revenue is in appeal before us by raising the following grounds of appeal:

“1. The learned CIT(A) has erred both in law and on facts of the case.

2. The CIT(A) erred in directing the Assessing Officer to allow the deduction u/s. 35DDA towards payment made to employees under an employee Voluntary Retirement Scheme without appreciating the principle that the provision made for VRS Scheme is also covered under the ambit of Superannuation Fund which attracts Fringe Benefit Tax.

3. Any other ground that may be urged at the time of hearing.”

3. While Ld.DR supported the order of the Assessing Officer, Ld. Counsel for the assessee relied upon the order of the CIT(A).

4. Having regard to the rival contentions and after perusing the material on record, we find that the assessee had submitted before the Assessing Officer and CIT(A) that it had paid the sum to its employees on their opting to avail the Voluntary Retirement Scheme and that it was not a contribution to the approved Superannuation Fund as observed by the Assessing Officer. The assessee had claimed the sum as a deduction u/s. 35DDA and was allowed during the assessment u/s. 143(3) of the Act. Thus, it is clear that the payment is not towards the Superannuation Fund as held by the Assessing Officer. In fact Section 2(6) of the Income Tax Act defines the – *“approved superannuation fund” as a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Principal Chief Commissioner or Chief Commissioner or Principal*

Commissioner or Commissioner in accordance with the rules contained in Part B of the Fourth Schedule;

4.1. Fringe Benefits are defined u/s. 115WB of the Act Clause-C of Section-1 thereof refers to - *any contribution by the employer to an approved superannuation fund for employees ;*

4.2. In the case before us, the payment made towards Voluntary Retirement Scheme is not a contribution to the approved Superannuation Fund for employees as rightly held by the CIT(A). Therefore, we do not find any reason to interfere with the findings of the Ld.CIT(A). The grounds raised by Revenue are accordingly rejected.

5. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 13th February, 2019

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 13th February, 2019

Copy to :

- 1. The Dy. Commissioner of Income Tax, Circle-17(2), Hyderabad.*
- 2. M/s. VST Industries Ltd., 1-7-1063/1065, Azamabad, Musheerabad, Hyderabad.*
- 3. CIT(A)-5, Hyderabad.*
- 4. Pr.CIT-5, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*