

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 3589/MUM/2019  
Assessment Year: 2013-14**

M/s Tata Securities Limited, C/o Kalyaniwalla and Mistry LLP, 2 <sup>nd</sup> Floor, Esplanade House, 29 Hazarimal Somani Marg, Fort, Mumbai- 400001 PAN: AA ACT2150R	<b>Vs.</b>	The Deputy Commissioner of Income Tax -4(2)(1), Room No. 669, 6 <sup>th</sup> Floor, Aayakar Bhawan, M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri M.M. Golvala (AR)  
Revenue by : Shri Vijay Kumar Menon (DR)

Date of Hearing: 23/06/2021  
Date of Pronouncement: 09/07/2021

**ORDER**

**PER SAKTIJIT DEY, JM**

This is an appeal by the assessee against order dated 05.04.2019 of learned Commissioner of Income Tax (Appeals)-9, Mumbai for the assessment year 2013-14.

2. The only dispute arising in the appeal relates to disallowance of Rs. 13,14,859/- under section 40(a)(ia) of the Income Tax Act, 1961.

3. Briefly the facts are, the assessee is a resident company engaged in the business of distribution of investment oriented financial products and fixed income products, stock broking and depository services, merchant banking and investment banking. For the assessment year under dispute, the assessee filed its return of income on 29.11.2013 declaring loss of Rs.9,68,60,314/-. In course of assessment proceedings, the Assessing Officer (AO) while verifying the tax audit report noticed that the auditor has stated that the assessee has

made provision for payment of gratuity of Rs.13,14,859/-, which is not allowable under section 40(a)(ia) of the Act. Whereas, the assessee had not added back the amount while computing its income. Accordingly, the AO disallowed the amount in dispute and added back to the income of the assessee. Contesting the aforesaid addition, assessee preferred appeal before learned Commissioner (Appeals). However, the addition was sustained.

4. Learned counsel for the assessee submitted, the assessee has created a gratuity fund for the benefit of its employees named "Tata Securities Limited Employees Gratuity Scheme". He submitted, the fund was established under a irrevocable trust deed for making provision for gratuity benefit to the employees of the assessee. He submitted, the gratuity scheme has been finalized in collaboration with the Tata AIG Life Insurance Company Ltd. He submitted, though, an application was filed before the Commissioner of Income Tax for approval of the gratuity scheme as early as on 05.04.2007, till date, no approval has been received by the assessee. Drawing our attention to the trust deed and board resolution learned Counsel submitted, the assessee is making payment to the gratuity fund as per the scheme. In this context, he drew our attention of the bank statement and the certificate/received from Tata AIG Life Insurance acknowledging the receipt of payment under gratuity scheme. Thus, he submitted, there being no default on the part of the assessee, it has been unduly harassed by making disallowance under section 40(a)(ia) of the Act. He submitted, during the pendency of assessee's application for approval the payment made to the gratuity scheme created for benefit of employees is allowable as deduction. In support of such contention he relied upon the following decisions:

1. *"CIT v. Textool Co. Ltd. (2013) 35 taxmann.com 639 (SC).*
2. *Narasu's Spinning Mills v. ACIT, Circle - 1(2), Chennai, (2016) 66 taxmann.com 277 (Chennai-Trib.).*
3. *ACIT, Company Circle-III (4), Chennai v. Verizon Data Services India (P) Ltd. (2017) 82 taxmann.com 50 (Chennai-Trib.).*

4. *Capital IQ Information Systems (India) (P) Ltd. v. Additional Commissioner of Income Tax, Circle 1(2), Hyderabad (2014) 49 taxmann.com 313 (Hyderabad-Trib).*
5. *CIT v. Jaipur Thar Gramin Bank, (2016) 388 ITR 228 (Rajasthan)*
6. *Rajasthan Financial Corpn. V. Deputy Commissioner of Income Tax (1998) 66 ITD 1936 (Jaipur)*
7. *M/s Rajasthan Co-operative Dairy Federation Ltd. v. The ACIT, Circle 6, Jaipur (ITA No. 352/JP/2017).*
8. *Commissioner of Income Tax, Meerut v. Electra (Jaipur) (P) Ltd. (2006) 282 ITR 598 (Allahabad)*
9. *Peerless General Finance and Investment Company Ltd. v. Commissioner of Income Tax (416 ITR 1) (S.C)*
10. *Pr. Commissioner of Income Tax v. Rajasthan State Seed Corporation Ltd. (386 ITR 267) (Raj)”*

5. He submitted, even while completing assessments in assessee's own case in assessment years 2011-12 and 2014-15 the AO has allowed assessee's claim of deduction. In this regard, he drew our attention to the copies of the assessment orders placed in the paper book.

6. The learned Departmental Representative strongly relying upon the observations of learned Commissioner (Appeals) submitted, in absence of approval of the gratuity scheme, no deduction can be allowed.

7. We have considered rival submissions and perused the materials on record. Undisputedly, the assessee has formulated a gratuity scheme in collaboration with Tata AIG Life Insurance Company Ltd for the benefit of its employees. It is evident, as early as on 05.04.2007, the assessee had filed an application before the Competent Authority seeking approval of the gratuity scheme. A copy of the said application is placed at page 35 of the paper book. It is the specific contention of the assessee that the aforesaid application seeking approval of the gratuity scheme has been kept in suspended animation till date and no order either approving or rejecting the application has been passed by

the Competent Authority. On a specific query, learned Departmental Representative could not controvert this fact. It is also evident, in terms of the gratuity scheme the assessee is regularly contributing to Tata AIG Life Insurance Company Ltd. towards the gratuity benefit of its employees. The aforesaid factual position has not been disputed either by AO or learned Commissioner (Appeals). The only reason for disallowance of assessee's claim of deduction is due to non-approval of the gratuity scheme. When, it is fact on record that assessee has applied for approval of the gratuity scheme in the year 2007, non-approval of the said scheme even after more than 14 years is undesirable and has resulted in undue harassment to the assessee. Due to no fault of the assessee the deduction otherwise allowable has been denied.

8. In case of CIT vs. Textool Company Ltd. (supra), the Hon'ble Supreme Court while dealing with identical issue of disallowance arising out of non approval of gratuity fund has observed, though, the fiscal statute is to be construed strictly, however, construction of provision does not rule out the application of the principles of reasonable construction to give effect to the purpose and intent of a particular provision. The Hon'ble Supreme Court has observed that the legislative intent behind introducing this type of provision is that the employer should not have any control over the funds of the irrevocable trust created exclusively for the benefit of the employees. Akin to the facts involved in case of CIT vs. Textool Company Ltd. (supra), there is no allegation by the departmental authorities that either the assessee has any control over the funds created for the benefit of the employees or contribution made to the said fund has come back to the assessee. Even, in a number of cases of similar nature, it has been held by Courts and different Benches of the Tribunal that even if assessee's application seeking approval of the gratuity scheme is pending before the Competent Authority, however, no disallowance of deduction claimed can be made. In this regard, we may refer to the following decisions:-

1. *"Narasu's Spinning Mills v. ACIT, Circle - 1(2), Chennai, (2016)*  
*66 taxmann.com 277 (Chennai-Trib.).*

2. *ACIT, Company Circle-III (4), Chennai v. Verizon Data Services India (P) Ltd. (2017) 82 taxmann.com 50 (Chennai-Trib.).*
3. *CIT v. Jaipur Thar Gramin Bank, (2016) 388 ITR 228 (Rajasthan)*
4. *Rajasthan Financial Corpn. V. Deputy Commissioner of Income Tax (1998) 66 ITD 1936 (Jaipur)*
5. *Pr. Commissioner of Income Tax v. Rajasthan State Seed Corporation Ltd. (386 ITR 267) (Raj)”*

10. Thus, the legal principle which emerges from the aforesaid judicial precedents is, no disallowance of deduction claimed towards provision made for gratuity fund can be made even during the pendency of assessee's application for approval of the gratuity scheme. In the facts of the present appeal, as earlier discussed, there has been inordinate and unacceptable delay in disposing of assessee's application seeking approval of the gratuity scheme. Pertinently, while completing the assessment for assessment years 2011-12 and 2014-15 in assessee's own case, the AO himself has allowed deduction claimed towards provision created for gratuity, though, assessee's application seeking approval of the gratuity scheme is still pending. Thus, considering the overall facts and circumstances of the case in the light of the ratio laid down in the decisions cited before us, we are of the view that the assessee is eligible to claim deduction of the contribution made towards the gratuity fund of the employees. Accordingly, we delete the impugned disallowance. Grounds are allowed.

11. In the result, appeal is allowed.

Order pronounced in the open court on 9<sup>th</sup> July, 2021.

**Sd/-**  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

**Sd/-**  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 09/07/2021  
Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.  
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai