

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI M. BALAGANESH, AM

आयकर अपील सं./ ITA No. 4017/Mum/2019

(निर्धारण वर्ष / Assessment Year 2015-16)

Lubrizol Advanced Materials India Private Limited. Industrial Estate, LBS Marg, Vikhroli (West), Mumbai-400 079	बनाम/ Vs.	The Dy. Commissioner of Income Tax-14(2)(1) Room No. 432, 4 th Floor Aayakar Bhawan, MK Road, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACI4361B		

अपीलार्थी की ओर से/ Appellant by	:	Shri Dhanesh Bafna, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Brajendra Kumar, DR

सुनवाई की तारीख / Date of hearing:	28.06.2021
घोषणा की तारीख / Date of pronouncement:	13.08.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-22, Mumbai, [in short CIT(A)], in appeal No. CIT(A)-22/DCIT-14(2)(1)/IT-10227/2017-18 dated 20.03.2019. The assessment was framed by the Dy. Commissioner of Income Tax, Circle Ward-14(2)(1), (in short DCIT/ Assessing Officer) for the A.Y. 2015-16 vide order dated 24.11.2017 under section 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) upholding the action of the Assessing Officer in disallowing employer's contribution to superannuation fund. For this, assessee has raised the following ground:-

"1. On the facts and in the circumstances of the case and in law, the Hon'ble Commissioner of Income –tax 14(2)(1), Mumbai [Ld. Assessing Officer] in disallowing employer's contribution to superannuation fund amounting to ₹55,35,549 u/s 36(1)(iv) of the Income Tax Act, 1961 (Income Tax Act, 1961 (hereinafter referred to as 'Act'))."

3. Brief facts are that the Assessing Officer noted from tax audit report that the assessee has debited a sum of ₹55,35,549/- on account of superannuation fund under the head 'employee's benefit' and charged to Profit and Loss Account. According to Assessing Officer, the superannuation fund scheme is not approved by PCIT. Hence, he required the assessee to explain as to why this amount should not be disallowed. The assessee stated before the Assessing Officer that assessee vide letter dated 28.03.2011 made an application with DCIT, Circle 1(2), Vadodara and has duly complied with all the formalities as required to secure the approval for the superannuation fund. It was admitted by the assessee that the superannuation fund still not approved despite having duly followed up from time to time. The Assessing Officer disallowed the claim of employees contribution towards superannuation fund amounting to ₹55,35,549/- in the absence of approval. Aggrieved, assessee preferred the appeal before Commissioner of Income Tax (Appeals). The CIT(A) also confirmed the action of the Assessing Officer by observing in Para 3.3 as under:-

"3.3 Decision

The Appellant contributed ₹55,35,549/- towards superannuation fund set up by the Appellant, which was yet to be accorded approval by the CIT. The

Appellant filed an application before CIT on 28.3.2011. However, as on the date of the Assessment Order, the application was pending to be accorded approval. The Assessing Officer disallowed the contribution to the superannuation fund since the same was unapproved as on date of the Assessment Order. Section 36 of the income-tax Act, 1961, provides for deductions that are admissible while computing the income referred to in section 28. One of the deductions which is made admissible under clause (iv) of section 36 is "any sum paid by the assessee by way of contribution towards a recognized provident fund or an approved superannuation fund". Clause(v) of section 36(1) similarly provides for deduction of "any sum paid by the assessee, by way of contribution towards an approved gratuity fund provided the same is under an irrevocable trust". A plain reading of section 36(1)(iv) and (v) makes it manifest that deductions there under are admissible only if the employer pays the contributions towards a recognized provident fund,

an approved superannuation fund or an approved gratuity fund; The provisions of a taxing statute have to be interpreted strictly applying the rule of literal interpretation. Nothing can be added or substituted by implication or intendment. If Parliament has made deductions towards provident fund, superannuation fund or gratuity fund admissible only in cases where such funds are approved, granting deduction of amounts paid into unapproved funds under the cover of section 37 may defeat the legislative intent and frustrate the very purpose underlying the specific provisions made there under. The assessee made contributions towards superannuation funds for the benefit of its employees. The assessee made an application to the Commissioner for approval for the superannuation scheme; however, the same was yet to granted approval by the CIT. The contribution to an unapproved fund did not qualify for deduction under section 36(i)(iv). Further the deduction which the assessee claimed was admittedly of the nature described in section Therefore section 37 would not come to the aid of the assessee. From above it becomes clear that if particular fund is not approved then Section 36(1)(iv) would come into operation and such expenditure cannot be allowed. In such situation Sec 37 is not applicable because as held by the

Courts from time to time deductions admissible U/s 30 to 36 cannot be claimed u/s 37. Therefore, in my opinion, the claim of the assessee has been correctly denied by the A.O. and accordingly, I confirm the order of the A.O. The Ground No. 1 and 2 are dismissed."

Aggrieved, now assessee is in appeal before Tribunal.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the assessee stated that the facts are very clear that the assessee has applied before PCIT on 28.03.2011 for approval of superannuation fund and it is pending for approval. The learned Counsel for the assessee stated that the assessee filed application before PCIT on 28.03.2011 along with requisite documents and also provided various clarifications vide letter dated 30.12.2013 and 26.06.2014. The assessee followed up with the PCIT and the details are as under:-

"Application dated 28 March 2011 to seek approval for Employees Group superannuation fund

Questionnaire dated 30 October 2012 seeking clarifications in respect of the application and response thereto

Submissions dated 26 June 2014 providing certain clarifications in respect of the application.

Letter dated 24 September 2018 requesting for approval of the Employees Group superannuation fund.”

5. Hence, he stated that the assessee has provided all information/clarification to the PCIT towards its application for recognition of superannuation fund and has also cooperated with the PCIT as and when called. In this regard, the learned Counsel for the assessee relied on the case laws, which is identical to the facts of the present case of Hon'ble Rajasthan High Court in the case of CIT vs. Jaipur Thar Gramin Bank [2016] 388 ITR 228 (Rajasthan) dated 12.07.2016 wherein it is held as under:-

“The assessee cannot suffer for the inaction of the Revenue authorities and the AO ought not to have disallowed the claim merely because the Commissioner has not granted approval of the Gratuity Scheme. Once the assessee fulfills the condition laid down for approval having created a trust with the Life Insurance Corporation of India, and it is not the case of Revenue that assessee has not deposited money in terms of creation of the trust, therefore, in our view the Tribunal on such facts is well justified in holding that the claim is just, proper and allowable. A just and reasonable claim deserves to be allowed. We find that both the appellate authorities have found it allowable on the facts found and is essentially a finding of fact based on material and evidence on record. No

substantial question of law can be said to emerge out of the order of the Tribunal, so as to call for interference of this Court. We also do not find any perversity in the order impugned. The appeals are dismissed.”

6. Further, he also relied on other case laws of Calcutta High Court in the case of CIT vs. Continental Commercial Co. Ltd. [1991] 192 ITR 66 (Calcutta) dated 12-06-1989, wherein it is held as under:-

“The admitted fact was that the assessee made an application for approval of its gratuity fund on 31-12-1975, to the Commissioner. The approval of the fund was not granted by the Commissioner before the assessment was completed. Section 40A(7)(b)(ii) prescribes three conditions for allowance of the deduction of the provision for gratuity. One of such conditions is that the assessee must create an approved gratuity fund for the exclusive benefit of its employees under an irrevocable trust, the application for the approval of the fund having been made before 1-1-1976. The assessee cannot create an approved gratuity fund unless the approval is granted by the Commissioner. Once an application has been made within the time prescribed by the Act, there is nothing more that could be done by the assessee under the law. The Commissioner by withholding the grant of approval on the one hand could not

contend on the other, that the assessee did not satisfy the conditions laid down under section 40A(7)(b)(ii). The Commissioner may refuse to accord approval if he finds that the assessee has not satisfied all the conditions required for such approval to the gratuity fund. It was not the case here that the gratuity fund created by the assessee was not liable to be approved. Once the application has been made within the time prescribed by the Act to the Commissioner for approval, it is immaterial when such approval is accorded, inasmuch as the approval would relate back to the date of application for such approval. If, however, for any reason, the approval is not granted, the Department may withdraw the benefit extended to the assessee under section 40A(7). However, the assessee has to satisfy all the three conditions mentioned in section 40A(7)(b)(ii). The condition of creating an approved gratuity fund would be satisfied if the assessee makes an application for such approval on or before 1-1-1976, irrespective of the fact whether such approval was accorded to the assessee before the assessment was completed."

7. When the facts were confronted to the learned CIT DR, he only argued that the approval has not yet been received, hence, Assessing Officer has rightly disallowed the claim.

8. We noted that there is no fault on the part of the assessee in getting approval of superannuation fund for which the assessee has framed a scheme for superannuation fund and also made a total contribution as under:-

Financial Year	Total Contribution Paid (in Rs.)
2011-2012	3,669,135
2012-2013	3,947,687
2013-2014	4,720,294

9. We noted that the application filed by the assessee is as long as in 2011 and till date there is no approval by the PCIT despite the assessee filing of necessary evidences and clarifications. It is also a fact that assessee has complied with all the other conditions for claim of deduction except approval which is to be granted by the Department. We see no reason that the assessee cannot claim deduction for the in action of the PCIT. Hence, we reverse the orders of the lower authorities and respectfully following the legal proposition laid down by High Courts in the above case laws, we allow the claim of the assessee.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 13.08.2021.

Sd/-

(एम. बालगणेश / M. BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 13.08.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS



आदेश की 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.**

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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