

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 1353/Ahd/2014
Assessment Year : 2009-10

M/s. Jyoti Ltd., Nanubhai Amin Marg, Industrial Area, Vadodara-390003 PAN : AAACJ 4909 N	Vs	Asstt. Commissioner of Income-tax, Circle-1(2), Baroda
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Manish J. Shah, Advocate
Revenue by :		Shri Mohd Usman, CIT-DR & Shri Purushottam Kumar, Sr. DR

सुनवाई की तारीख/Date of Hearing : 09/05/2022
घोषणा की तारीख /Date of Pronouncement: 13/05/2022

आदेश / O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-Tax-I, Baroda ("CIT" in short) dated 20.03.2014 passed under Section 263 of the Income-tax Act, 1961 ("the Act" in short) for Assessment Year 2009-10.

2. During the course of appellate proceedings before the Tribunal, the assessee has filed following additional ground with an application to admit the same:

"The learned Commissioner of Income-tax-I, Baroda erred in law and on facts in holding that contribution to superannuation fund of Rs.21,70,186/- paid to ICICI Prudential Life Insurance Company is not allowable expenditure if Superannuation Trust was not approved by the Income Tax Department."

3. Since the additional ground raised by the assessee is arising from the impugned order passed by the learned CIT under Section 263 of the Act and the adjudication of the same does not involve investigation into new facts, the additional ground filed by the assessee is admitted by us. The learned DR has also not raised any material objection for the same.

4. Insofar as the issue raised in additional ground relating to the deduction on account of contribution to Superannuation Fund amounting to Rs.21,70,186/- is concerned, it is observed that this issue has been considered by the learned CIT in paragraph No. 3.3 of his impugned order passed under Section 263 of the Act which reads as under:

“3.3 On verification of case records of the assessee, it is noticed that the assessee had debited Profit and Loss account by Rs.21,70,184/- on account of contribution to superannuation fund. The assessee had taken a new policy for superannuation with ICICI prudential life insurance Co. Ltd. and accordingly, it has created required trust. But it is worthwhile to mention herewith that the trust so created was not approved yet from the Income Tax Department. Therefore, in view of this allowing the claim of the assessee was not correct. In this regard, the Assessing Officer is directed to ascertain current states of the assessee's application and disallow the claim if no approval has been granted.”

5. In support of the assessee's case on the issue raised in additional ground, the learned Counsel for the assessee has submitted that the same is squarely covered in favour of the assessee by the judgment of Hon'ble Supreme Court in the case of CIT Vs. Textool Co. Ltd., reported in 263 CTR 257 (SC). He has also placed on record copy of the said judgment wherein the Hon'ble Apex Court has decided a similar issue in paragraph Nos.7 and 8 of its judgment as under:-

“7. Learned counsel appearing on behalf of the Revenue has submitted before us that the provisions of Section 36(1)(v) of the Act have to be construed strictly and for claiming deduction, conditions laid down in Section 36(1)(v) of the Act must be fulfilled. It is urged that since during the relevant previous year the contribution by the assessee towards the gratuity

fund was not in an approved gratuity fund the High Court was not justified in affirming the view taken by the Commissioner as also by the Tribunal while answering the reference in favour of the assessee. However, on a query by us as to whether the contribution made by the assessee in the approved gratuity fund credited by the LIC for the employees of the assessee and ultimately the entire amount deposited with the LIC came back to the fund created by the assessee for the benefit of its employees and approved by the Commissioner w.e.f. 25th February, 1983, or not, learned counsel is not in a position to make a categorical statement in that behalf.

8. Having considered the matter in the light of the background facts, we are of the opinion that there is no merit in the appeal. True that a fiscal statute is to be construed strictly and nothing should be added or subtracted to the language employed in the Section, yet a strict construction of a provision does not rule out the application of the principles of reasonable construction to give effect to the purpose and intention of any particular provision of the Act. (See : Shree Sajjan Mills Ltd. v. CIT [1985] 156 ITR 585/23 Taxman 37 (SC). From a bare reading of Section 36(1)(v) of the Act, it is manifest that the real intention behind the 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. In the instant case, it is evident from the findings recorded by the Commissioner and affirmed by the Tribunal that the assessee had absolutely no control over the fund created by the LIC for the benefit of the employees of the assessee and further all the contribution made by the assessee in the said fund ultimately came back to the Textool Employees Gratuity Fund, approved by the Commissioner with effect from the following previous year. Thus, the conditions stipulated in Section 36(1)(v) of the Act were satisfied. Having regard to the facts found by the Commissioner and affirmed by the Tribunal, no fault can be found with the opinion expressed by the High Court, warranting our interference.

6. It is thus clear that the issue raised in the additional ground is squarely covered in favour of the assessee by the decision of Hon'ble Apex Court in the case of Textool Co. Ltd. (supra) and this position is not disputed even by the learned DR. We, therefore, respectfully follow the said decision of Hon'ble Apex Court and cancel the direction given by the learned CIT to the Assessing Officer on this issue vide paragraph No.3.3 of his impugned order. The additional ground raised by the assessee is accordingly allowed.

7. As regards Ground Nos. 1 to 4 raised originally by the assessee in this appeal, the learned Counsel for the assessee has submitted that the assessee is not interested to press the same as the Assessing Officer in the order passed under Section 143(3) r.w.s. 263 of the Act has not taken any adverse view against the assessee on the issues raised in these grounds. The Ground Nos. 1 to 4 as raised originally by the assessee in this appeal are accordingly dismissed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 13th May, 2022 at Ahmedabad.

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad, Dated 13/05/2022

Dr

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad