

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH : COCHIN**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.10/Coch/2022
Assessment Year : 2016-17

M/s. Cochin Refineries Limited Staff Provident Fund, Kochi Refinery P. B. No.2, Ambalamugal – 682 302, Kerala. PAN : AAATC 1545 Q	Vs.	ACIT, Exemption Circle, Kochi.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Radhesh L Bhatt, CA
Revenue by	:	Smt. J M Jamuna Devi, Sr AR

Date of hearing	:	05.12.2022
Date of Pronouncement	:	13.12.2022

ORDER

Per Padmavathy S, Accountant Member

This is an appeal against the order of CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 08.11.2021, for Assessment Year 2016-17.

2. The assessee raised the following grounds:

1. *The order passed by the learned Commissioner of Appeals (CIT-A) to the extent appealed against is against law, equity and justice.*
2. *The Learned CIT (A) erred in disposing ground no.2 of the appeal filed by the appellant with a direction to the AO to grant benefit of a recognised Provident Fund after necessary approval has been granted by CIT (Exemption). Kochi. Since the appellant had filed all relevant documents/records to substantiate the fact that the application for renewal of the Exemption was filed before the CIT (Exem.) as required under the Statute, CIT (A) ought to have allowed the appeal with a direction to the AO to allow the relief without waiting for any approval from CIT (Exem.).*
3. *The Learned CIT (A) ought to have held that since CIT(Exem.) has not disposed the application for renewal within a reasonable time (say six months). the application ought to have been treated as allowed. Hence, CIT(A) erred in not allowing the renewal registration of the Provident Fund.*
4. *The Learned AO grossly erred in not disposing the ground no.3 raised in appeal regarding treating the redemption loss Rs.18,90,133/- as contingent in nature.*
5. *The Learned CIT(A) erred in stating in para 6 that the grounds of appeal no.1,2 &3 are effectively against disallowing by AO, the amount of Rs.18.90,133/-being redemption loss which is not contingent in nature. This statement by the Learned CIT(A) is factually incorrect. Only the ground no.3 is related to treating the redemption loss as contingent in nature (which was not disposed off by the CIT (A)) and ground 1&2 related to treating the appellant an AOP.*

3. The assessee is a recognized provident fund (PF) which primarily deals with the PF contributions of its members. Assessee has been granted exemption by the Government of Kerala under section 17(3) of the Employees' PF Act, 1952 vide Gazette notification No.23696/B1/71/LSWD dated 31.07.1971. The assessee is a recognized fund as per the Income Tax Act w.e.f. 30.06.1967 as

per the order of the CIT (Kerala) dated 05.01.1968 and therefore claimed that its income is exempt under section 10(25) of the Act. As required under section 77(5) of the Income Tax Rules, 1962, the assessee has submitted Form 40-C on 31.07.2015 for continuation of such recognition. The CIT(Exemp) has not disposed off this application and has not disposed off the application and neither any order is passed withdrawing recognition.

4. The assessee filed the return of income for Assessment Year 2016-17 on 29.-09.2016. The return was selected for scrutiny. The AO completed the assessment by treating the assessee as AOP and charged to tax at maximum marginal rate on the ground that though the assessee has filed the application in Form 40-C before the CIT(Exemp), no evidence of a formal approval as required under Rule 77(5) was furnished. The AO also disallowed a sum of Rs.18,90,133/- being redemption loss including provisions for the reason that the same is contingent in nature.

5. Aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) held that :

“I have gone through all the facts available on record as narrated above. I have also gone through all the annexures to written submission filed by the appellant. I have observed that the appellant has complied with the amended provisions of the IT Rules and no formalities are pending on appellants part to retain the recognition under the Act.

I have also observed that in preceding AYs 2014-15 and AY 2013-14, in the scrutiny assessment proceedings carried out in those

years, the return of income has been accepted by the AO. For the A.Y. under consideration, the only reason the AO has cited for denying the exemption to the assessee that the application filed by the appellant before jurisdictional Commissioner of Income Tax (Exemp.), Kochi is yet to be decided by Commissioner of Income Tax (Exemp.), Kochi. In view of these facts on record, AO is directed to grant benefit of a recognized provident fund to the assessee, after the necessary approval has been granted by CIT(Exemption), Kochi. The Grounds of appeal no. 1,2 and 3 are treated as partly allowed.”

6. Aggrieved, the assessee is in appeal before the Tribunal. Learned AR submitted that the assessee has filed the application in Form – 40C for renewal of exemption and has been following up on the same. However, the CIT(Exemp) has not processed the application and therefore it is beyond the control of the assessee. The learned AR submitted that the assessee is a fund which has been in existence since 1967 and therefore the exemption cannot be denied merely for the reason that the approval from CIT(Exemp) is not given. Learned AR also submitted that the CIT(Exemp) has acknowledged the fact that for the preceding Assessment Years, the AO has accepted the return of income and only for the Assessment Year under consideration, it is denied on the ground that the application filed is yet to be processed. The learned AR relied on the decision of the jurisdictional High Court in the case of CIT Vs. English Indian Clay Ltd [2018] 89 taxmann.com 134 (Kerala) where it is held that the assessee cannot be denied the benefit merely for reason of the delay at the hands of the Commissioner.

7. With regard to disallowance of expenditure towards redemption of loss, the learned AR submitted that these grounds are not

adjudicated by the CIT(A) and therefore prayed for a direction. The learned DR relied on the order of the CIT(A).

8. We heard the rival submissions and perused the material on record. We notice that the CIT(A) while giving direction to the AO has acknowledged the fact that the exemption is denied merely for the reason that the approval by the CIT(Exemp) is yet to be given and accordingly the CIT(A) directed the AO to grant benefits after necessary approvals are being granted. We notice that the Rajasthan High Court in the case of PCIT vs Rajasthan State Seed Corporation Ltd., [2016] 386 ITR 267 (Rajasthan) has considered a similar issued with respect to recognition of Gratuity Fund and held that –

“7. In so far as disallowance of claim of Rs. 1,92,82,605 is concerned, admittedly, the assessee-respondent has claimed to have applied for according approval of the Group Gratuity Scheme to the concerned Commissioner on March 31, 1981. Once the assessee files an application for approval of the scheme, it was for the Commissioner to have taken recourse of disposing of the said application either to approve or to reject the same. The same having not been done for the last more than almost 25 years, the assessee could not have been blamed for the same. There is no denial by the Assessing Officer that application for approval has not been filed by the assessee on March 31, 1981. Even the Assessing Officer admits that the application for approval was submitted on March 31, 1981 and both the appellate authorities have come to a definite finding of fact that once an application has been moved for approval and having not been rejected then the claim could not have been disallowed or the claim could not have been rejected merely because the Commissioner did not accord approval of the same. The assessee cannot be made to suffer for inaction of the Revenue, admittedly the respondent-assessee is a Government of Rajasthan Undertaking or even otherwise the Commissioner ought not to have slept over the application for approval

for more than 25 years. The appellate authorities are well justified in coming to the said conclusion. Needless to mention that a finding has been given by the Tribunal that the amounts are being disallowed by the learned Assessing Officer from year to year at least from the assessment year 1996-97 i.e. almost 20 years but is being allowed regularly in appeal therefore, for this reason also we reject the claim of the Revenue. The Assessing Officer ought not to have made a repeated addition merely for this purpose and a litigation of this nature ought not to have come before this court as appeals all throughout is being allowed year after year. On the one hand the Revenue does not decide the application for approval and the amount is being disallowed by the Assessing Officer from year to year which is not at all justified. The Revenue is well advised not to make repetitive additions/disallowance for this purpose and expose its weakness before the courts as on the one hand application for according approval has not been granted and for inaction of the Commissioner amounts are disallowed and to incur wasteful public money either way as at least the respondent has also to incur public money to defend its case being a Government of Rajasthan Undertaking in filing repetitive appeals though succeeding year after year. Merely because the tax effect is more than what is prescribed in the Circulars be it old or the latest being in December 2015 is no ground to file such appeals, we though were inclined to levy cost on the Revenue but stopped ourselves in doing the same to make it clear to the Revenue to be more careful in future that such kind of litigation deserves to be avoided as the courts are choked with such frivolous litigation and is not able to concentrate on other important issues.”

9. In assessee's case it is an admitted fact that the assessee has made the application in Form – 40C for renewal of exemption on 31.7.2015 and the same has not been actioned by the Revenue. The assessee is granted exemption by the Government of Kerala under the PF Act and that the assessee is maintaining the records and PF funds

of the members as per the provisions of the EPF and MP Act. The fact that the assessee has complied with the conditions prescribed in clause 4 of Part A of the Fourth Schedule of the Act to retain the recognition under the Act is acknowledged by the AO. The CIT(A) has also admitted these facts and that in earlier years the impugned addition is not made by the revenue. Under these circumstances, in our view, the assessee cannot be made to suffer with the being taxed at maximum marginal rate. Accordingly, we direct the AO to allow exemption to the assessee.

10. With regard to expenditure redemption loss, we notice that the CIT(A) did not adjudicate the issue though the grounds were raised before him by the assessee. We, therefore, remit the issue back to the CIT(A) with a direction to examine the relevant details and decide in accordance with law.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(PADMAVATHY S)
Accountant Member

Bangalore,
Dated: 13.12.2022.
/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.