

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
Ms. PADMAVATHY S., ACCOUNTANT MEMBER**

ITA No.660 /Coch/2022
Assessment Year : 2013-14

Vajra Rubber Products Pvt. Ltd., XII/371A Pyngode, Konathukunnu Irinjalakuda, Trichur – 680 123. <b>PAN : AAACV 7836L</b>	Vs.	The Assistant Commissioner of Income Tax, Circle 1(1), Thrissur.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Preetha Shenoy, CA
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR

Date of hearing	:	02.03.2023
Date of Pronouncement	:	08.03.2023

**ORDER**

*Per Padmavathy S, Accountant Member:*

This appeal is against the order of the CIT(A), NFAC dated 22.12.2021 for AY 2013-14.

2. The ground raised by the assessee reads as follows:-

“1) On the facts and in the circumstances of the case and in law the appeal u/s 250 of the I.T. Act the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre is not justified in disallowing group gratuity scheme on the contention that approval has not been obtained from Commissioner of Income Tax for the LIC Group Gratuity Scheme.

On these and such other grounds that may be put forth the time of hearing. It is requested that order of Commissioner of Income Tax (Appeals), National Faceless Appeal be set aside and the demand may be deleted.”

3. The assessee is a company incorporated on 16.10.1989 engaged in the business of manufacturing of rubber. The assessee filed the return of income for AY 2013-14 declaring a total income of Rs.3,12,74,020 on 29.10.2013. The AO during the course of assessment noticed that the assessee has claimed a sum of Rs.35,02,694 as Group Gratuity Insurance. The AO disallowed the said sum for the reason that the LIC Group Gratuity Scheme is not approved by the CIT and therefore the contributions to the unapproved scheme is not an allowable expenditure. In this regard, the AO relied on the decision of Cochin Bench in the case of Dinesh Textiles Ltd. v. ITO, ITA No.167/Coch/2013 dated 22.11.2013. The assessee submitted before the CIT(A) that the application for approval of Group Gratuity Scheme has been made on 15.3.2012 but no order was passed by the CIT. The CIT(A) did not accept the submissions of the assessee by holding that unless the payment is made to approved gratuity fund, deduction is not available and that section 40A(7) specifically prohibits the provision in respect of payment of gratuity to employees unless by way of contribution to an approved gratuity fund.

4. The Id. AR reiterated the submissions made before the lower authorities. The Id AR further submitted that the assessee has been following up with the Commissioner with regard to the status of application for approval and that no response has been received. It is

therefore submitted that the assessee has no control over the funds of the trust and the amount is remitted to the Group Gratuity Scheme. Accordingly, the Id AR submitted that the deduction cannot be denied.

5. We have considered the rival submissions and perused the material on record. We notice that the Rajasthan High Court in the case of *CIT v. Jaipur Thar Gramin Bank [2016] 388 ITR 228 (Raj)* has considered the issue of allowability of contribution towards gratuity fund where the assessee has made application before the competent authorities and has held that –

9. On perusal of the above, it appears that hearing on the subject was going on in the aforesaid case and with reference to certain queries raised by the competent authority, two of the officers of the assessee company namely K.C. Gupta and Mrs. Ruchi Bhargava were deputed to discuss on the subject and this letter also contained some information sought by the competent authority. The claim of the learned counsel for the Revenue that the said letter was not received on 4.9.2000 but then admittedly we notice that there is a seal of Joint Commissioner of Income Tax, Special Range-1<sup>st</sup>, Jaipur, with date of receipt being 4.9.2000, but learned counsel contends that this letter on information was not found on records. We fail to understand the submission of the learned counsel for the Revenue. It was for the Revenue to have taken remedial measures in case the said letter was not available on record, which bears certainly seal of the receipt clerk with date bearing 4.9.2000. Merely denying that this letter is not on records, in our view, is not proper particularly when hearing was going on and two officers of assessee appeared in person for discussion and placed additional material before the Joint Commissioner of Income Tax, in furtherance of the earlier proceedings going on, on the same subject. It was for the Revenue to put its affairs in order rather than denying/disallowing a just and reasonable claim. The doubt raised by the learned counsel for Revenue is contrary to the material on record. Be that as it may, the

assessee is sponsored by UCO Bank, a Govt. of India Undertaking and duly complied with the conditions laid down for approval under Section 36(1)(v). At-least the AO when this factum was brought to his notice that the assessee has filed copy of the trust-deed, application to the competent authority on 4.9.2000 then even the said letter could have been forwarded to the concerned Commissioner who ought to have taken recourse of either rejecting or approving the Gratuity Scheme created by the assessee. 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. In assessee's case the application for approval was made long back and on perusal of records it is noticed that the assessee has sent reminders to the revenue with regard to the pending approval. The assessee has entered into a Group Gratuity Scheme with LIC and has made contributions to the same. Given these facts in our considered view the above decision of the Hon'ble Rajasthan High Court is clearly applicable in assessee's case.

7. Besides the above, the Hon'ble Karnataka High Court in the case of *Chief Commissioner (Admn.) & Anr. v. Karnataka Electricity*

*Board 197 ITR 48 (Karn.) and ADIT Vs. Karnataka State Warehousing Corporation 125 ITR 136 (Karn.)* has also taken a view that actual payment to gratuity fund of employees is allowable as deduction u/s.37(1) of the Act. In view of the aforesaid decisions, we are of the view that the deduction claimed by the Assessee should be allowed. We direct accordingly and allow the appeal of the Assessee.

8. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 8<sup>th</sup> day of March, 2023.

Sd/-

( GEORGE GEORGE K )  
JUDICIAL MEMBER

Sd/-

( PADMAVATHY S )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 8<sup>th</sup> March, 2023.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar,  
ITAT, Bangalore/Cochin.