

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.24/Bang/2023
Assessment Year: 2017-18

Vineet Sethi F.No.2-B, Langford Groov Apartments, 25, Langford Garden Road, Bangalore North Bangalore 560 025 Karnataka PAN NO : AMAPS8007K	Vs.	ITO Ward-6(2)(4) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri G. Sathyanarayana, A.R.
Respondent by	:	Smt. Priyadarshini Besaganni, D.R.

Date of Hearing	:	14.03.2023
Date of Pronouncement	:	14.03.2023

ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC dated 10.1.2023 for the assessment year 2017-18.

2. The assessee has received provident fund of an amount of Rs.35,02,307/-, which has been reflected in Form No.26AS which shows the deduction of TDS of Rs.3,50,231/-. The breakup of that amount is as follows:-

1. Own contribution	-	Rs.16,43,894/-
2. Employer contribution	-	Rs.15,96,983/-
3. Interest thereon	-	<u>Rs. 2,61,430/-</u>
Total	-	<u>Rs.35,02,307/-</u>

2.1 The assessee has offered an amount of Rs.15,96,983/- towards receipt of employer contribution and an amount of Rs.2,61,430/- towards receipt of interest in his return of income as “income from other sources”. However, assessee has not offered assessee’s own contribution of Rs.16,43,894/- to income tax by claiming exemption u/s 10(12) of the Income-tax Act,1961 [‘the Act’ for short]. However, the AO while processing the return u/s 143(1) of the Act brought to tax the amount of Rs.16,43,894/- on the reason that it is not exempted u/s 10(12) of the Act. Against this assessee went in appeal before Id. CIT(A) challenging the disallowance of deduction claimed at Rs.15,96,983/-.

2.2 The Id. CIT(A) observed that assessee has not fulfilled the condition laid down in Rule 8 of Part-A of the Fourth Schedule. Accordingly, he confirmed the order and intimation issued u/s 143(1) of the Act. Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. The contention of Id. A.R. is that the assessee has worked in M/s. TBM Consultants Pvt. Ltd. from 1st October, 2011 to 15th February, 2016 covering 4 years 5 months and 15 days. The assessee’s employment has ben terminated as the company has closed its business. To support this claim, the assessee has furnished the data sheet of Ministry of Corporate Affairs (MCA), wherein the assessee’s name has been struck off which shows that the company in last Annual General Meeting was held on 29.9.2018 for relating to the year ended on 31.3.2018, thereafter no AGM was held. Further, it was submitted that assessee has been terminated

from service due to reason beyond his control, as such the assessee entitled for exemption u/s 10(12) of the Act.

3.1 In our opinion, the argument of the assessee's counsel is totally misconceived. The assessee has been terminated vide letter issued by TBM Consultants India Pvt. Ltd. dated 23.2.2016 due to misconduct of the assessee, wherein it was alleged that assessee has been indulging in activities, which are prejudicial to the interest of the employer company and assessee was promoting and carrying out his own personal business activities, which business activities were in competition to the employer company by using website namely www.vineetsethi.com and being so it cannot be said that assessee's termination was beyond the assessee's control. Further, exemption is available to the assessee to the extent covered in Rule 8 of Part-A of the Fourth Schedule which reads as follows:-

*“As per rule 8 of part A of the fourth schedule, accumulated balance payable to an employee covered in a **Recognized Provident Fund** shall be exempted only under any of the following cases-*

- *The employee has provided continuous service, with his employer, for a period of 5 years or more.*
- *In case the service of the employee is terminated before the period of 5 years, the reason for termination should be any of the following-*
 - *Termination of service due to Employee's ill-health;*
or
 - *Termination of service by the contraction; or*
 - *Termination of service due to discontinuation of employer's business; or*
 - *Termination of service due to any reason which is beyond the control of the employee.*
 - *In case of cessation of employment, the employee takes employment with any other employer, then, the accumulated balance (due and payable) to the employee is transferred to his individual account in any Recognized Provident Fund managed by such other employer.”*

3.2 In our opinion, termination of employee cannot be said that it is beyond the control of the assessee. Therefore, the exemption u/s 10(12) of the Act is not available to the assessee and even the closure of business cannot be said that the business of the assessee has been closed in the assessment year under consideration. The company was in existence up to financial year ending on 31.3.2018 and its last AGM was held on 29.9.2018. These facts are also not supports the case of assessee. Being so, we do not find any infirmity in the order of the lower authorities and same is confirmed. This appeal of assessee is dismissed.

4. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 14th Mar, 2023.

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

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 14th Mar, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.