# आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
# IN THE INCOME TAX APPELLATE TRIBUNAL
# PUNE BENCHES "B" :: PUNE

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**
**AND**
**DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.177/PUN/2022**
**निर्धारण वर्ष / Assessment Year :2016-17**

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| Parag Milk Foods Ltd.,<br>Awasari Phata,Village Manchar,<br>Tal - Ambegaon,<br>Dist-Pune – 411503.<br><br>PAN: AABCP 0425 G | Vs | The Assistant Commissioner of Income Tax, Circle-4, Pune. |
| Assessee/ Appellant | | Respondent /Revenue |

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|---|---|
| Assessee by | Shri Suhas Bora – AR |
| Revenue by | Shri M.G.Jasnani – DR |
| Date of hearing | 24/04/2023 |
| Date of pronouncement | 21/06/2023 |

## आदेश/ ORDER

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Assessee is directed against the order of ld.Commissioner of Income Tax (Appeal)[ld.CIT(A)], Pune-11 dated 04.02.2022 emanating from assessment order under section 143(3) of the Act dated 26.12.2018 for A.Y.2016-17. The Assessee has raised the following grounds of appeal:

> *"1. The learned CIT(A) has erred in confirming the action of the assessing officer of making an addition of Rs.1,15,71,588/- on account of disallowance of deduction U/Sec.80IA of the Act on the ground that the assessee has not complied with the conditions which are necessary to claim deduction U/Sec.80IA of the Act and failed to furnish any concrete evidence to prove that the*

*undertaking has generated power during the year under consideration disregarding the submissions given by the appellant.*

*2. The learned CIT(A) has further erred in confirming the action of the assessing officer of disallowing the expenditure of Rs.53,19,945/- on account of premium paid to LIC P&GS (Gratuity Scheme) and claimed as deduction U/Sec.40A(7) of the Act on the ground that the assessee could not furnish supporting documents to prove that the gratuity scheme was approved by CIT/CCIT without appreciating the submissions given by the appellant company.*

*3. The learned CIT(A) while confirming the addition of Rs.53,19,945/- has failed to consider the following important facts :*

a. *That policy from LIC of India under GGCA Scheme (Group Gratuity Cash Accumulation Scheme) was taken in favour of the Company.*
b. *That the company has made payments to the LIC towards group gratuity scheme directly in approved schemes.*
c. *That the assessee has no control over the funds contributed to LIC towards the gratuity.*
d. *That the gratuity payment is received directly from the LIC of India as per the scheme which is paid to the employee on happening of the event i.e. retirement or death or resignation.*

*4. The learned CIT(A) has further erred while confirming addition of Rs.53,19,945/- on account of disallowance of payment made to LIC towards group gratuity by not appreciating the following:*

a. *A separate trust was created for the purpose of gratuity*
b. *Appellant company had also filed an application before the Hon'ble Commission of Income Tax-II, Pune for approval of the said Gratuity scheme.*
c. *Even though the gratuity fund/trust is not an approved fund/trust the payments are made directly to LIC, thus there is a constructive and substantial compliance of the provisions of law.*
d. *The appellant company is following the same practice for many years and the gratuity payment is made to the employees immediately after retirement and the same is claimed from LIC.*
e. *On happening of the event, the assessee company is receiving the gratuity payment from the LIC which is being paid to the employee concerned and no further deduction is being claimed by the assessee as expenditure.*
f. *There is no double claim of expenditure by the Company.*
g. *The assessee company has created a Trust for employee's*

*gratuity, since the approval of the same is pending from the Hon'ble CIT the assessee company has been contributing the sums to the LIC of India under Master proposal for group scheme.*

h. *The assessee company has ascertained the liability on actuarial basis and contributed the sums to the LIC of India.*
i. *As the payment was made to the approved schemes of the LIC, the payment made to the LIC under gratuity scheme is completely under the control and management of the LIC of India.*
j. *The assessee has no control on utilization of the funds thus there is no mis- utilization of the funds by the company or by the Directors of the company, thus there is there is a constructive compliance of the provisions of law.*

*5. The expenditure claimed by the assessee company under group gratuity scheme to LIC of India was allowed in the earlier assessment proceedings for the assessment years prior to 2015-16 and since there is no change in facts, the claim is allowable on the principles of consistency.*

*6. The learned CIT(A) has further failed to consider the contention of the assesse which was made without prejudice to the above contention that the said amount be allowed U/Sec.37 of The Income Tax Act, 1961 as the same is not in the nature of capital expenditure or personal expenditure of the assessee, but expended wholly and exclusively for the purposes of the business or profession the premium paid to LIC under Group Gratuity scheme exclusively for the employees of the company is an expenditure incurred wholly and exclusively for the purpose of business of the assessee company and therefore will be allowed U/Sec.37 of The Act.*

*7. The learned CIT(A) and AO has erred in charging interest U/Sec.234B of the Act on assessed Income without considering the provisions of law that interest U/Sec.234B of the Act is leviable on the tax on the total income as declared in returned income.*

*8. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."*

**Brief facts of the case :**

2. The assessee company had filed Return of Income(RoI) for A.Y. 2016-17 on 30.11.2016. Assessee is in the business of

procurement of Milk and Manufacture of various milk products like Cheese, Butter etc., manufacturing facilities are located in Manchar (Pune District) and Palamaner(Chittor District). Assessee has claimed deduction under section 80IA(4)(iv) for the first time in A.Y. 2016-17. The Assessing Officer(AO) disallowed the claim of assessee's 80IA(4)(iv), for the reasons discussed in the assessment order. The ld.CIT(A) confirmed the same. The ld.CIT(A) has held as under :

> *"8.1 I have examined the facts of the case and submissions made by the appellant. A perusal of provisions of sec. 80IA(4) of the Act suggests that there are a number of conditions which are required to be fulfilled, in order to be eligible for deduction under the said section. As per the appellant, this is the first year of the claim, therefore, it is necessary to examine as to whether the appellant is fulfilling all the conditions as prescribed u/s 80IA(4) of the Act.*
>
> *8.2 One of the mandatory conditions for claiming deduction u/s 80IA(4) of the Act is that the machinery used should be new and should have not been used earlier for any other purposes. Considering this, the AO requested the appellant to file the copies of purchase invoices for turbine, boiler, pump, generator, etc, however, in spite of repeated opportunities the appellant has not filed the same. The appellant has filed only the copy of ledger extract which is not sufficient to substantiate the year of purchase as well as to establish that the Plant and Machinery used in the power generation was new. Accordingly, this mandatory condition is not fulfilled by the appellant.*
>
> *8.3 As per submission dated 13/01/2020 (Para1.8), the appellant has stated that it had commenced the generation of electricity in earlier years. Similar claim was made before the AO as well, as reproduced at page 4 of the assessment order. However, neither the date of commencement of generation of power is stated nor the proof of generation of electricity in earlier years have been furnished. Moreover, in column 8 of Form 10CCB dated 30/11/2016, the Auditor has mentioned the date of commencement of operation as 01/04/2015 i.e. on the first date of previous year*

*corresponding to Assessment Year under consideration. Therefore, the submission of the appellant and Auditor's Report are contradictory to each other. The date of commencement of power generation is important as the provisions of the Act put restrictions on the period for which the deduction u/s 80IA(4) can be claimed. So, this condition is not fulfilled by the appellant.*

*8.4 The claim of the appellant is that it is not mandatory to keep separate books of accounts for the undertaking in order to claim deduction u/s 80IA(4) of the Act. In this connection, it may be mentioned that section 80IA(7) of the Act clearly provides that no deduction shall be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant. Thus, the condition of maintaining separate accounts for the undertaking is mandatory. Though, there are some decisions as relied upon by the appellant wherein it is held that this condition is not mandatory. However, those decisions are given in the specific facts of those cases wherein the judicial bodies noted that in those cases, the assessee is able to demonstrate that profits of the undertaking can be correctly computed from the accounts maintained by it. The facts of the cases relied upon by the appellant are different from the facts of present case. For example in the case of* Gujarat Gurdian Ltd(supra), *the said company was recording revenue from generation of electricity in its account which was on the basis of certificate issued by Gujarat Energy Development Authority/Gujarat Electricity Board. On the basis of these certificates, revenues were recorded in the books which was certified by the auditor. In fact, Gujarat Electricity Board issued separate credit note for power generated by the assessee. On the basis of these records the Hon. ITAT held that the assessee is able to demonstrate that accounts for undertaking were maintained. The ITAT also noticed that the company has maintained separate P/L Account as well as balance sheets, for each wind power project for which auditor had also issued a certificate. ITAT also noted that both revenue and expenses were recorded in the books of accounts of both the wind mill units which are duly supported by credit notes in respect of revenue, invoices in respect of direct expenses and working of allocation of indirect expenses and all these documents are verifiable. Considering these facts the Hon. ITAT allowed the deduction.*

*8.5 Thus, the facts of the appellant's case are entirely different than the facts of the case of* M/s Gujarat Guardian (supra). *Similarly, in the case of* Micro Instruments (supra), *Hon. High Court observed that in earlier years, after examining the accounts kept by the assessee, the deduction u/s 80IB was allowed. The Hon. Court also*

*noticed that the undertakings were separately registered with sales tax/excise authorities. Considering these as well as other facts of that case, the Hon. High Court held that the AO cannot be allowed to reopen an issue which has been settled in earlier assessment years. However, as explained earlier in this order, none of these conditions are fulfilled in the present case and also, this is the first year of claim of deduction u/s 80IA(4), therefore the ratio laid down by Hon. Punjab and Haryana High Court shall not be of any help to the appellant.*

*8.6* ***Similarly, in the case of Ranbaxy Laboratories (supra),*** *separate accounts for eligible undertakings were maintained in ERP System and separate P/L Account as well as balance sheets for these undertakings, were filed before AO and DRP respectively. It was also an argument of Ranbaxy that deduction has been allowed in earlier years and it is not open to the department to re-open settled issue, if there are no changes in the facts. The facts of the appellant's case are entirely different wherein no kind of account has been maintained for power generation units and no P/L Account or Balance Sheet has been filed. Moreover, this is the first year of the claim of deduction u/s 80IA(4) of the Act.*

*8.7 Thus, the facts of the cases relied upon by the appellant are entirely different and in those cases separate accounts in some form or other were maintained for the undertaking claiming deduction however, in the present case this is not so. Therefore, the case law relied upon shall be of no help to the appellant.*

*8.8 Another argument of the appellant is that there is no bar on grant of deduction u/s 80IA(4) on captive power generation unit. This contention of the appellant has been examined. There have been certain case laws where the courts have allowed deduction on captive power generation unit, however, in all such cases the appellant was able to show that all other conditions as prescribed in sec. 80IA are being fulfilled. In the present case the deduction has not been disallowed merely for the reason that it was a captive power generation unit. However, the deduction was disallowed for various reasons as discussed in detail by the AO in his order. The AO has stated that the primary condition for allowing deduction to an assessee is that the profit of the assessee should include the profits of undertaking for which deduction is being claimed. For this, the revenues for eligible undertaking should be recorded in its account. Unless such revenues are recognized, the disallowance on notional basis as claimed by the appellant is not allowable. The intention of sec. 80IA(4) is clear that the assessee is required to maintain the 'undertaking'as a separate identifiable unit both physically as well as in terms of accounting. This is not so in the*

*present case and the so called power generation unit is not separately identifiable in the books of accounts maintained by the appellant. Thus, the case laws relied upon by the appellant shall not be of any help to him and this argument of the appellant is rejected.*

*8.9 The appellant has relied upon the certificate issued by Industries, Energy & Labour Department as well as the certificate issued by Directorate of Steam Boiler Department, in support of its claim of deduction. Both these certificates pertain to F.Y 2009-10 and these certificates only indicate that a boiler and turbine was installed in the premise of the assessee. These certificates, in no way suggest that the appellant was generating so much of units of electricity or rather any electricity during the year under consideration, as claimed by the appellant. There is no certificate from MSEB certifying the number of electricity units generated during the year. Therefore, these certificates in no manner justifies the appellant's claim for deduction u/s 80IA(4) of the Act.*

*9. In view of the above discussion as well as the reasons given by the AO, the disallowance of deduction u/s 80IA(4) of the Act is upheld and the addition of Rs. 1,15,71,588/- is hereby, confirmed. The ground no. 2 raised by the appellant is* ***DISMISSED.****"*

4. Aggrieved by the order of the ld.CIT(A), assessee filed appeal before this Tribunal.

**Submission of ld.Authorised Representative :**

5. The ld.Authorised Representative(ld.AR) filed a paper book containing 94 pages. The paper book contained copy of Income Tax Return filed by the assessee, Audit Report, Balance Sheet, Profit and Loss Account, copy of Master Policy of LIC, copy of submission made by the assessee before the AO and ld.CIT(A).

5.1 The ld.Authorised Representative(ld.AR) submitted that assessee has fulfilled all the conditions of eligibility to claim

deduction under section 80IA(4)(iv). Assessee has started a power generation unit in its Manchar Plant(Pune District). The said power generated is utilized for its manufacturing activity, thus it is a captive power generation. Assessee has purchased a Boiler for the same.The ld.AR relied on the following case laws :

> *"i) Hon'ble ITAT Mumbai Bench in the case of DCIT, Mumbai vs. Deepak Fertilizers & Petrochemicals Corporation Ltd. [ITA No.2116/Mum/2013, Order dated 30.01.2015].*
>
> *ii) Hon'ble ITAT Delhi Bench in the case of Gujarat Guardian Ltd. vs. DCIT, New Delhi [ITA No.1106 & 973/Del/2015, Order dated 16.08.2018].*
>
> *iii) Hon'ble ITAT Chennai Bench in the case of Tamilnadu Newsprint and Papers Ltd. vs. ACIT, Chennai [ITA No.328 to 331/Mds/2011, Order dated 13.05.2011]."*

5.2 With reference to disallowance made by the AO of premium paid to LIC, ld.AR submitted that assessee has already applied to ld.CIT for approval of Gratuity Fund. Ld.AR took us through the copy of master policy. Ld.AR alternatively pleaded that the said expenditure is allowable under section 37 as it was wholly and exclusively for the purpose of business of assessee.

6. On the other hand, the ld.Departmental Representative(ld.DR) relied on the orders of Lower Authorities.

**Findings and Analysis :**

7. We have heard both the parties and perused the records. In this case the assessee has claimed deduction u/s.80IA(4)(iv) of the Act. The relevant section is reproduced here as under :

> *"80-IA. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.*
> *……..*
> *(3) This section applies to an undertaking referred to in clause (ii) or clause (iv) of sub-section (4) which fulfils all the following conditions, namely:—*
> *(i) it is not formed by splitting up, or the reconstruction, of a business already in existence :*
> *Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;*
> *(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose:*
> *Provided that nothing contained in this sub-section shall apply in the case of transfer, either in whole or in part, of machinery or plant previously used by a State Electricity Board referred to in clause (7) of section 2 of the Electricity Act, 2003 (36 of 2003), whether or not such transfer is in pursuance of the splitting up or reconstruction or reorganisation of the Board under Part XIII of that Act.*
> *Explanation 1.—For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely :—*
> *(a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;*
> *(b) such machinery or plant is imported into India from any country outside India; and*

*(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the assessee.*

*Explanation 2.—Where in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.*

*(4) This section applies to—*

*(i) …….*

*(ii) …….*

*(iii) ……..*

*(iv) an undertaking which,—*

***(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, [2017];***

*(b) …….*

*(c) ……..*

*(5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.*

*(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant. (emphasis supplied).”*

8. The assessee had to satisfy all the relevant conditions mentioned in the section 80IA to become eligible for deduction u/s 80IA(4)(iv) of the Act.

8.1 One of the important condition of Section 80IA(4) is that the undertaking has been set up in any part of India for generation and distribution of Power within the specified dates. Another is that the eligible enterprises has not used plant and machinery previously used for any purpose.

9. In order to verify, the AO had asked the assessee to file details of all plant and machinery of the "eligible undertaking" which had claimed deduction u/s 80IA. The assessee failed to file the bills and other evidences of purchase of Machinery. Assessee failed to file the details before ld.CIT(A) also. Even before us the Assessee has not filed list of Machinery claimed to be used in the business of Power generation. Assessee failed to file Bills of these machinery to establish that these machineries were not used previously for any purpose. We specifically asked the Ld.AR but he could not reply. The only thing Assessee claimed that Assessee had submitted some document related to the Purchase of boiler. The assessee claimed that these Machinery were purchased over a long period between 01/04/1993 to 31/03/2017, however other than the mere claim the

assessee has not filed any bills to demonstrate the purchase. It is highly unlikely that the Machinery purchased in 1993 was kept idle till 2017. Assessee claimed that assessee had stared Power generation in March 2017, however no document has been filed by the assessee to establish the same.

9.1 Thus, the Assessee has failed to establish that it had started Power generation.

9.2 In these facts and circumstances, it is factually clear that the assessee had failed to establish by documentary evidence that Machinery were purchased for the business of Power generation and these Machinery were not previously used for any other purpose. The onus is on assessee to prove the same.

10. The Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs.Dilip Kumar & Company69 GST 239 (SC) has held as under:

> Quote , *"Exemption notification should be interpretedstrictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification."* Unquote.

11. In the case under consideration as discussed in earlier paragraphs the assessee failed to prove that it fulfils the conditions

mentioned u/s 80IA(4) of the Act. The burden was on assessee to prove the same as held by the Hon'ble Supreme Court.

11.1 Therefore, we agree with the AO and CIT(A) that assessee is not eligible for deduction u/s 80IA(4) of the Act. Accordingly, the ground number 1 of the assessee is dismissed.

11.2 The ld.AR had relied on following case laws:

> *"i) Hon'ble ITAT Mumbai Bench in the case of DCIT, Mumbai vs. Deepak Fertilizers & Petrochemicals Corporation Ltd. [ITA No.2116/Mum/2013, Order dated 30.01.2015].*
>
> *ii) Hon'ble ITAT Delhi Bench in the case of Gujarat Guardian Ltd. vs. DCIT, New Delhi [ITA No.1106 & 973/Del/2015, Order dated 16.08.2018].*
>
> *iii) Hon'ble ITAT Chennai Bench in the case of Tamilnadu Newsprint and Papers Ltd. vs. ACIT, Chennai [ITA No.328 to 331/Mds/2011, Order dated 13.05.2011]."*

11.2.1 All these case laws are distinguishable on facts. In the case of Deepak Fertilizers & Petrochemicals Corporation Ltd., (supra) the issue was that AO had held that notional profit arises from captive power plant and hence, it is not eligible for deduction. Thus, Deepak Fertilizers & Petrochemicals Corporation Ltd., (supra) is distinguishable on facts.

11.2.2 In the case of Gujarat GuardainLtd.,(supra), the issue before the ITAT was whether separate books of accounts have been maintained. In para 10 of the said ITAT order,

ITAT has observed that ITAT verified the Profit and Loss Account, Balance Sheet of the Wind Power Project and held that the accounts were correct. Thus, the issue in the case of Gujarat Guardian Ltd., is factually distinguishable and hence, the decision is not applicable.

11.2.3 In the case of Tamilnadu Newsprint and Paper Ltd., the issue before ITAT was whether the unit which is set up in the same premises is eligible for deduction! In that case, the Assessing Officer had agreed that there was generation of electricity. Therefore, the case of Tamilnadu Newsprint & Paper Ltd., is distinguishable on facts.

11.3 Thus, all these case laws are distinguishable on facts with reference to the facts of the present case.

**Payment for gratuity of Rs.53,19,945/- :**

12. The AO has disallowed Rs.53,19,945/- paid for Premium to LIC P & GS Gratuity Scheme only on one ground that the assessee failed to submit document to prove that the Gratuity Scheme is approved by CIT/CCIT. In this case as mentioned by the AO in the assessment order, the Assessee has taken a policy from LIC of India under GGCA Scheme. The assessee submitted copy of the policy to

the AO. Assessee claimed that Assessee has created separate trust for the purpose of gratuity. Assessee also claimed that Assessee has filed an application for Approval before Commissioner of Income Tax -II Pune. The assessee claimed that it does not have any control on the on the said contribution made towards premium. It is completely under the control of LIC. The Assessee relied on the decision of ITAT Kolkata in the case of Andaman & Nicobar State Corporation Bank Ltd Vs. DCIT, ITA No.364/Kol/2020 date of order 11/03/2022, ITAT Pune in the case of Cranedge India Pvt. Ltd Vs. Addl.CIT ITA 2275/Pune/2014. The relevant part of the ITAT Pune decision is reproduced here as under :

> *Quote, "9. We have heard the rival contentions and perused the record. The issue which arises by way of ground of appeal No.1 is the payment of gratuity to a fund formulated by the assessee for the benefit of its employees. The assessee claims that it had paid sum of Rs.18,79,516/- to LIC on account of gratuity fund. The assessee had applied for recognition of the said gratuity fund before the Commissioner of Income Tax, which has not been approved till date. The Assessing Officer and the CIT(A) thus, invoked the provisions of section 36(1)(v) of the Act to disallow the said claim of assessee as the amount was not paid to an approved gratuity fund. The case of assessee before us on the other hand, is that even otherwise, the said amount is to be allowed in the hands of assessee under section 37(1) of the Act. The learned Authorized Representative for the assessee in this regard, has placed reliance on the ratio laid down by the Hyderabad Bench of Tribunal in Capital IQ Information System (India) P. Ltd. Vs. Addl. CIT*

*(supra). From the perusal of said decision, we find that reference is made to the decision of Hon'ble Bombay High Court in Tata Iron & Steel Co. Ltd. Vs. D.V. Bapat, ITO (1975) 101 ITR 292 (Bom) and the judgment of Hon'ble Supreme Court in Metal Box Company of India Ltd. Vs. The Workmen (1969) 73 ITR 53 (SC), wherein it has been held that the amount paid towards unapproved gratuity fund can be deducted under section 37(1) of the Act, though not under section 36(1)(v) of the Act. Following the ratio laid down by the jurisdictional High Court, we hold that the amount which has been paid by the assessee towards an unapproved gratuity fund is duly allowable as deduction under section 37(1) of the Act though the assessee is not entitled to claim the deduction under section 36(1)(v) of the Act. Accordingly, the ground of appeal No.1 raised by the assessee is allowed. The ground of appeal No.2 raised by the assessee is not pressed and hence, the same is dismissed as not pressed. The grounds of appeal raised by the assessee are thus, partly allowed. " Unquote.*

13. The facts are identical in the case of the assessee. Therefore, respectfully following the decision of ITAT Pune (supra),it is held that the amount of Rs.53,19,945/- is eligible for deduction u/s.37(1) of the Act. Accordingly ground number 6 of the Assessee is allowed.

14. Since the Assessee has not received the approval from the Commissioner of Income tax which is mandatory to claim deduction us/ 36(1)(v) of the Act, the Assessee is not eligible for deduction of

Rs.53,19,945/- u/s.36(1) of the Act. Accordingly, the Ground Numbers 2, 3, 4 and 5 are dismissed.

15. In the result, the Appeal of the Assessee is Partly Allowed.

Order pronounced in the open Court on 21st June, 2023.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(S.S.GODARA)** | **(DR. DIPAK P. RIPOTE)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

पुणे / Pune; दिनांक / Dated : 21st June, 2023/ *SGR**

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.