

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI  
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 1365/Mum/2023 (A.Y.2018-19)**

**TUV India Pvt. Ltd Employees  
Group Superannuation Scheme,  
M/s. Kalyaniwall & Mistry LLP,  
Esplanade House, 2<sup>nd</sup> Floor,  
29, Hazarimal Somani Marg,  
Fort, Mumbai-400 001  
PAN: AAATT9836D**

..... Appellant

Vs.

**DCIT CPC  
Bengaluru**

..... Respondent

Appellant by : Shri Nitesh Joshi  
Respondent by : Shri P. D. Chogule Ld. DR  
  
Date of hearing : 14/08/2023  
Date of pronouncement : 06/11/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC"), Delhi dated 24.02.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:-

*This appeal is against the order passed u/s. 250 by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi and relates to Assessment Year 2018-19.*

*1. The learned Assessing Officer (CPC) erred in denying and learned CIT (Appeals) erred in confirming denial of the exemption under section 10(25) (iii) of the Act to the Appellant.*

*2. The learned Assessing Officer (CPC) and learned CIT (Appeals) erred in denying exemption under section 10(25) (iii) of the Act and taxing the interest income of Rs. 1, 02, 69,190/- under the head "Profits & Gains of Business & Profession".*

*3. the learned Assessing Officer (CPC) erred in levying interest under section 234B amounting to Rs. 6, 16,860/- and learned CIT (Appeals) erred in confirming the same.*

*4. the learned Assessing Officer (CPC) erred in levying interest under section 234C amounting to Rs. 1, 73,066/- and learned CIT (Appeals) erred in confirming the same.*

*The Appellant craves leave to add to, amend, alter, modify or withdraw any or all the Grounds of Appeal before or at the time of hearing of the Appeal, as they may be advised from time to time.*

2. The brief facts of the case are that assessee is an employee's group superannuation scheme duly recognized under Schedule IV, Part-B of the Income Tax Act 1961. By virtue of this recognition under Schedule IV, Part-B, income of the assessee trust is exempted u/s. 10(25)(iii) of the Act. Although, the income of the assessee trust is unconditionally exempted, but as a matter of condition stipulated in the recognition letter, assessee is filing its return of income u/s. 139 of the Act. Assessee filed its return of income on 05.03.2019 (Revised Return, Original Return was filed on 23.08.2018) declared total income at Rs. 1,02,69,190/- which is actually exempt u/s.

10(25)(iii) of the Act being amount of interest accretion on the corpus lying with Life Insurance Corporation of India. We find this exemption was not claimed by the assessee while filed its return of income may be by not claiming the same as exempt under the appropriate column of the return filed or may be the return Form No. itself was not appropriate for such type of assessee. Return of the assessee was processed u/s. 143(1) based on the return filed by the assessee vide intimation dated 03.09.2019.

3. Before treating this amount of Rs. 1,02,69,190/- as taxable, CPC Bangalore sent an intimation to the appellant on 10.05.2019 informing the proposed adjustment and the same is admittedly received by the Appellant but it appears that no response was filed before the CPC therefore the AO CPC has made the addition of Rs. 1,02,69,190/- for the following reasons:-

*"In schedule BP, Row No A3c income/receipt credited to profit and loss account considered under other head of income- other source value is more than the SUM of row No 1(a) 1(b) 1(c) 1(d) and 3(a) in other source schedule"*

4. Assessee being aggrieved with this adjustment i.e. treating Rs. 1, 02, 69,190/- as income of the assessee chargeable to tax preferred an appeal before the Ld. CIT (A), who in turn confirmed the action of CPC Bangalore. Assessee being further aggrieved preferred this present appeal before us. We have gone through the intimation u/s. 143(1), Order of Ld. CIT (A) and submissions of the assessee alongwith grounds of appeal raised before us. We find that it is unchallenged fact that we find this exemption was not claimed by the assessee while filed its return of income may be by not claiming the same as exempt under the appropriate column of the return

filed vide copy of original return filed dated 23.08.2018 (vide page no. 70 to 126 of the paper book), but this mistake by the assessee has been rectified by filing a revised return dated 05.03.2019 in which assessee comply with the appropriate column i.e. Schedule E1 (vide page no. 127 to 183 of the paper book) and based on this, CPC Bangalore processed the return of the assessee after giving a show cause dated 10.05.2019 which was not responded by the assessee. It is also observed that intimation u/s. 143(1) issued by CPC Bangalore was based on return filed on 05.03.2019 i.e. revised return, but failed to consider Schedule E1 in which assessee claimed exemption u/s. 10(25)(iii) of the Act. Before the Ld. CIT (A), assessee was failed to substantiate its claim by filing copy of recognition certificate issued by the office of concerned Commissioner under Schedule IV, Part-B of Income Tax Act 1961, which declares income of the assessee as exempt u/s. 10(25)(iii) of the Act. In this regard, we have gone thorough page no. 195 to 198 of the paper book where assessee filed an RTI u/s. 6(1) of the Right to Information Act, 2005 seeking a copy of the approval issued by the concerned Commissioner under Schedule IV Part B of the Income Tax Act. In addition to this, we have gone through the letter issued by the ACIT (HQRs.), Technical-II, Mumbai requesting the assessee to amend /delete certain clauses in the original Trust Deed vide page no. 44 of the paper book, which establishes that assessee Trust is duly recognized with the office of the then Commissioner of Income Tax, although copy of approval is not there in the possession of the assessee that's why as mentioned (supra) assessee applied for the same through RTI.

5. The assessee company faced the similar situation in its gratuity trust i.e. TUV India Pvt. Ltd. Group Gratuity and Life Assurance Scheme. In this matter, we have gone through the order of Ld. CIT (A) dated 17<sup>th</sup> June 2022 for AY 2018-19 vide page no. 185 to 188 of the paper book in which on the identical facts vide para 5, Ld. CIT (A) allowed the appeal of the assessee against the intimation issued by the CPC Bangalore u/s. 143(1) of the Act. Relevant findings, we are reproducing herein below:-

*“5.1 The appellant in its grounds of appeal has basically contested the addition on account of denial of exemption u/s. 10(25)(iv) on the interest income earned from contributions in approved gratuity schemes order vide u/s 143(1) dated 31.05.2019.*

*5.2 The appellant has stated that it is a trust established for making provisions of gratuity benefits to the employees of M/s. TUV India Private Limited. The appellant has furnished the copy of order approved for its gratuity funds by Commissioner. The appellant has further stated that the Trust has been making payments under the said scheme year after year since 01.11.1991 and it is not the first year in which, such claim was made. It has been stated that these payments are duly recorded in the audited books of accounts and have always been accepted by the Assessing Authorities for exemption U / s 10( 25(iv) of the Act.*

*5.3 I have considered the facts of the case. The appellant has claimed interest income of Rs. 22, 37,172 as exempt in the EI Schedule of the return of income. Since nothing adverse has been noted for denial of the said exemption to the appellant, the AO is directed to allow the benefit of exemption U/s. 10(25) (iv) of the Act to the trust.*

*5.4 In view of the above, the grounds of appeal raised by the appellant are hereby allowed.”*

5. In view of this, we find that income of the assessee is exempted and not liable to tax, but matter before the CPC Bangalore and Ld. CIT (A) was not represented in a proper manner to substantiate its claim of exemption. Considering the facts above, we restore the matter back to the file of Ld. CIT (A) for fresh adjudication after giving a proper opportunity of being heard to the assessee by considering the revised return dated 05.03.2019 filed by the

assessee and assessee is directed to produce original recognition certificate alongwith various approvals issued by the office of concerned Commissioner in response to variations made by the assessee in original trust deed/copy of RTI application to substantiate its claim. In addition to this, assessee is directed to produce the corpus and interest ledger issued by LIC of India. In these terms, grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 6<sup>th</sup> day of November, 2023.

Sd/-

(KULDIP SINGH)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 06/11/2023

*Sr. PS (Dhananjay)*

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai