

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

**Before Shri Waseem Ahmed, Accountant Member &
Shri Soundararajan K, Judicial Member**

ITA No.401/Coch/2023 : Asst.Year2014-2015

The Deputy Commissioner of Income-tax, Circle 1(1) Trivandrum.	v.	State Bank of Travencore Employees Medical Benefit Scheme, PPG Section, Head Office, Poojappura Thiruvananthapuram 695 012 PAN : AABAS1263R
(Appellant)		(Respondent)

Appellant by : Smt.Girly Albert, Sr.DR
Respondent by : --- None ---

Date of Hearing :24.09.2024	Date of Pronouncement : 27.09.2024
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ORDER

Per Bench :

This is an appeal filed by the Revenue challenging the order of the NFAC, Delhi dated 21.03.2023 in respect of the assessment year 2014-2015.

2. Delay of 02 days is condoned by considering the Revenue's condonation petition explaining the delay(s) and the appeal is admitted for adjudication.

3. When the case was called, none appeared on behalf of the assessee. Therefore, we proceed to dispose of this appeal *ex parte qua* the assessee, after hearing the learned Departmental Representative.

4. Brief facts of the case are that the assessee received deposits from the employees of the bank and also received corpus funds from the bank and out of the interest received from the said amount through the banks, the assessee had paid medical claims made by the retired employees of the bank. Its claim was rejected by the Assessing Officer on the ground that the claims paid to the retired employees were not to be expended wholly and exclusively for the purpose of making or earning the income as stipulated under the provisions of sub-section (iii) of sec.57 of the Act. The assessee challenged the said order before the CIT(A) and contended that the order of the AO is not correct and it is also against the order of the Hon'ble Supreme Court in the case of CIT v. Rajendra Prasad Moody reported in (1978) 115 ITR 519 (SC) and also the assessee relied on the order of the learned CIT(A) in respect of the assessment year 2013-2014 in which the claim was allowed. The ld.CIT(A) had considered the issue in detail and allowed the appeal. As against the said order of the CIT(A), the Revenue has filed the present appeal with the following grounds of appeal:-

“1. The order of the learned CIT (A), NFAC in so far as the points mentioned below are concerned is opposed to law on the facts and in the circumstances of the case.

2. The learned Commissioner of Income Tax (Appeals) ought to have noted that the decision on entitlement of deduction u/s 57 (iii) of Income Tax Act, 1961 is against the provisions of the section. The Section 57(iii) clearly states that the expenditure has to be incurred wholly and exclusively for the purpose of making or earning such income.

3. *The learned Commissioner of Income Tax (Appeals) ought to have noted that in the instant case, assessee is in receipt of interest income whereas expenditure claimed is 'claims paid' which is medical expenses claim of the members and this is not an expenditure for earning interest income.*

4. *The learned Commissioner of Income Tax (Appeals) ought to have noted that assessee will be in receipt of the interest income as long as the deposit exists and which is irrespective of whether they incurred expenditure towards 'claims paid or not.*

5. *The learned Commissioner of Income Tax (Appeals) ought to have noted that the case laws relied on are not applicable in the instant case as the facts and circumstances of the case are completely different. The claim expenses are not incurred for earning the income, in fact the claim expense is only subsequent.*

4. *For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Income Tax (Appeals) on the above points may be set aside and that of the Assessing Officer restored.”*

5. At the time of hearing, the learned Departmental Representative relied on the order of the AO and contended that the assessee is not entitled for deduction u/s.57(iii) of the Act, since the expenditure has not incurred wholly and exclusively for the purpose of making or earning such income. The learned DR further submitted that the assessee has received the interest income whereas towards the expenditure claimed it shows the same as claims paid which is the medical expenses claimed by the members, and therefore, this is not an expenditure for earning the interest income.

6. We have perused the material available on record. On going through the order of the ld.CIT(A), the ld.CIT(A) in paragraph 7.2 of his order had gave the following findings:-

“7.2 The only ground of appeal is in respect of the claim of deduction u/s 57(iii) of the Act. An identical appeal came up with a similar set of facts in the case of the same appellant for AY 2013-14 wherein the appellant is held to be eligible for claim of deduction u/s.57(iii) of the Act. Respectfully following the precedent, the Ground of Appeal is allowed for the AY under consideration too.”

7. We also find that as against the appeal order passed in respect of assessment year 2013-2014, the department had not taken up the matter for further appeal before any higher authorities, and therefore, the said order becomes final. Further, we have seen that, the assessee is doing the welfare measures to the ex-employees of the assessee-bank, who were in real need of the funds for taking care of their medical expenses, and therefore, the bank itself had contributed the corpus fund and the staff of the bank also contributed a fixed amount from their salary in order to avail the benefit after their retirement. We do not find that the activity done by the assessee is somewhat not authenticated by the provisions of the Act and in fact this issue was already covered by the judgment of the Hon'ble Supreme Court, cited supra, and also the very same appeal authority had decided the appeal in favour of the assessee in respect of the earlier assessment year 2013-2014, which was also accepted by the department.

8. In these circumstances, we are not inclined to take any contrary decision in respect of the present assessment year 2014-2015, and therefore, the appeal by the Revenue is dismissed.

9. In the result, the appeal by the Revenue is dismissed.

Order pronounced on this 27th day of September, 2024.

Sd/-
(Waseem Ahmed)
ACCOUNTANT MEMBER

Sd/-
(Soundararajan K)
JUDICIAL MEMBER

Cochin ; Dated : 27th September, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT Concerned.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin