IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri P.Madhavi Devi, Judicial Member
& Shri S. Rifaur Rahman, Accountant Member

ITA No.936/Hyd/2015
(Assessment year: 2011-12)

M/s. Deccan Grameena Bank (presently Telangana Grameena Bank) Hyderabad PAN: AAAAD 3893 M (Appellant)	Vs	Dy. Commissioner of Income Tax, Circle 9(1) Hyderabad (Respondent)

ITA No.889/Hyd/2015
(A.Y 2011-12)

Dy. Commissioner of Income Tax, Circle 9(1) Hyderabad (Appellant)	Vs	M/s. Deccan Grameena Bank (presently Telangana Grameena Bank) Hyderabad PAN: AAAAD 3893 M (Respondent)

For Assessee : Shri T. Umakanth
For Revenue : Shri R.B. Naik, DR

Date of Hearing : 05.5.2016
Date of Pronouncement : 03.8.2016

O R D E R

Per Smt. P. Madhavi Devi, J.M.

Both are cross appeals for the A.Y 2011-12.

ITA No.936/Hyd/2015 – Assessee's Appeal

2. In this appeal, we find that the only grievance of the assessee is against the order of the CIT (A) confirming the disallowance of the claim of "Provision for Leave Encashment",

even though the provision was based on actuarian valuation and the payment has also been made during the A.Y 2010-11 and 2011-12 before the due date as applicable for furnishing return of the income under sub-section (1) to section 139 of the I.T. Act.

3. Brief facts of the case are that the assessee is a Regional Rural Bank promoted by the State Bank Group and is engaged in the activity of banking. It had come into existence on 24.03.2006 due to amalgamation of four regional rural banks in public interest. The assessee filed its return of income for the A.Y 2011-12 on 28.09.2011 declaring an income of Rs.58,57,38,328. Subsequently, a revised return was filed on 18.08.2012 declaring a loss of Rs.40,01,93,427. During the assessment proceedings u/s 143(3) of the I.T. Act, the AO called for various information and verified the details filed by the assessee. She found that the assessee has debited an amount of Rs.1,56,26,423 to the P&L a/c under the head “provisions and contingencies” towards “provision for leave encashment”. According to the AO, as per the IT Act, 1961, only specific provisions are allowable as deductions that too on fulfilmnt of laid down condition. She therefore, held that the provision for leave encashment cannot be allowed and accordingly disallowed the same and brought it to tax. Aggrieved, assessee preferred an appeal before the CIT (A), who, after verifying the working given by the assessee agreed that it appears to be an ascertained liability, but confirmed the said disallowance by considering the provision of section 43B(f) and following the decision of the Hon'ble Kerala High Court in the case of South India Bank Ltd v. CIT (45 Taxmann.com 428) which in turn has considered the stay granted by the Apex Court

of the decision of the Hon'ble Calcutta High Court in the case of Excide Industries (Supra) to confirm the disallowance. Against this confirmation of the disallowance, the assessee is in appeal before us.

4. The learned Counsel for the assessee, while reiterating the submissions made before the authorities below, submitted that the provision for leave encashment is made on the basis of actuarial valuation and therefore, it is not a contingent provision. It was also submitted that the payment was made during the A.Y 2010-11 and 2011-12 before the respective due dates as applicable for furnishing the returns of income u/s 139(1) of the I.T. Act and therefore, it is clear that it is an ascertained liability and need to be allowed as a deduction. He placed reliance upon the decision of the Hon'ble Supreme Court in the case of Bharat Earth Movers vs. CIT, 245 ITR 428. He also submitted that the decision of the Hon'ble Kerala High Court in the case of South India Bank Ltd (supra) is not applicable to the facts of the case before us. Thus, according to him, the provision for leave encashment made on actuarial valuation, is an allowable deduction.

5. The learned DR however, supported the orders of the authorities below.

6. Having regard to the rival contentions and the material on record, we find that the assessee’s contention of making the provision for actuarial valuation and also payment of leave encashment during the A.Y 2010-11 and 2011-12 has not been

verified by any of the authorities below. The disallowance has been made on the basis of the Hon'ble Kerala High Court decision in the case of South Indian Bank (Supra). We find that vide the Finance Act of 2001, clause (f) was inserted in Section 43B of the Act w.e.f. 01.04.2002. The same was challenged in the case of Exide Industries and the Division Bench of the Hon'ble Calcutta High Court held the same to be ultravires the Act in the absence of disclosure of the objects and being inconsistent with the basic intent of Section 43B. Thereafter, the department has filed an SLP against the decision of the Hon'ble Calcutta High Court and while admitting the SLP, the Hon'ble Supreme Court, stayed the judgment of the Hon'ble Calcutta High Court until further orders and further observed that the assessees, during the pendency of the Civil Appeal, would pay tax as if Section 43B(f) is on the Statute Book, but at the same time, it would be entitled to make claim in its return of income. Keeping all these developments in view, the Coordinate Bench of this Tribunal at Kolkata in the case of BLA Industries in ITA.No.1434/Kol/2012 vide orders dated 16.01.2015 has restored similar issue to the file of the A.O. with a direction to await the final decision of the Hon'ble Supreme Court on the issue and then to decide the issue accordingly. Therefore, respectfully following the same, this issue in the case of the assessee herein is also remanded to the file of the A.O. with similar directions. Ground No.4 of the assessee is accordingly treated as allowed for statistical purposes.

Assessee's appeal is accordingly treated as allowed for statistical purposes.

ITA No.889/Hyd/2015 – Revenue's Appeal

7. As regards the Revenue's appeal, Grounds 1 & 7 are general in nature and as regards Grounds 2 & 3, the brief facts are as follows. During the assessment proceedings u/s 143(3) for the relevant A.Y, the AO observed that the assessee had filed a revised return of income on 18.08.2012 in which the assessee claimed deduction of Rs.96,51,25,000 from the profits as depreciation on investments considered as stock-in-trade. The AO observed that there was no such claim in the original return of income or in the books of accounts and that the assessee claimed depreciation of Rs.2,57,30,374 only, in both the original return of income and also in the books of accounts. Thus, according to her, when there is no change in the claim of depreciation in the returns of income, there is no basis for the assessee to claim additional depreciation at the belated stage and that too after finalization of accounts. Therefore, assessee was asked to substantiate its claim during the course of assessment proceedings. Assessee submitted a letter dated 16.12.2013 stating that the Banks invest in securities for the purpose of trade, irrespective of the period of holding such securities and as per the Banking Act, 1932, the Banks have to keep the securities under the head 'investment', but that does not mean that they are investments. It was submitted that the securities are always treated as stock-in-trade but not as permanent investment as is shown in other companies. It was submitted that since the investment is treated as 'stock-in-trade', the fall in value of the securities from opening balance to the closing balance is claimed as depreciation and is nowhere concerned with the depreciation on fixed assets. It was submitted that, inadvertently, this claim

was not made at the time of filing of the original return and therefore was made by filing a revised return. The AO, was however, not convinced with the contention of the assessee and held that the assessee has not produced the working of how the depreciation has been arrived at except stating that it is the difference between the opening and closing balances of the securities. After going through 'Schedule-8 i.e. investments' of the annual report, she observed that in fact there is no decrease in the value of the securities, but there is only an increase in the securities, and nowhere in the annual report or the audit reports or in the books of accounts, is there a mention of the so-called depreciation on investments treated as stock-in-trade of Rs.96,51,25,000/-. In view of the same, the AO disallowed the claim of depreciation and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A), who allowed the same by following the decision of the ITAT in the case of State Bank of Hyderabad vs. DCIT in ITA No.1232/Hyd/2013 and also the decision of the Hon'ble Kerala High Court in the case of CIT vs. Nedungadi Bank Ltd (264 ITR 545) and also Tribunal's order in the assessee's own case for the A.Y 2010-11 in ITA No.1742/Hyd/2014 dated 25.03.2015 wherein the assessee's contention that the government securities are held as "stock-in-trade" and also that the difference between the opening and closing values of the securities has to be allowed as depreciation has been accepted. Against the relief granted by the CIT (A), the Revenue is in appeal before us.

8. The learned DR, while supporting the order of the AO, submitted that the banks purchase securities along with interest

and when they sell the securities, the interest income derived on the securities is not credited to the P&L a/c and the income is not offered to tax. He submitted when the securities are sold by the assessee, they are sold at the face value of the securities plus the interest thereon and therefore, there is only appreciation of the asset and there is no depreciation. Thus, according to him, there is no cause for decreasing the value of the securities which has been termed as depreciation by the Banks. Thus, according to him, the same is not allowable.

9. The learned Counsel for the assessee submitted that similar issue had come up for consideration before the Hon'ble Kerala High Court in the case of Nedungadi Bank, reported in 264 ITR 545 wherein it was held that the securities purchased to meet statutory liquidity requirement are treated as stock-in-trade of business and the notional loss on account of revaluation of securities is deductible from the business income. He also placed reliance upon the decision of jurisdictional High Court in the case of SBH reported in 151 ITR 703 where, after taking note of the provisions of section 24 of the Banking Regulations Act requiring every banking company in India to maintain, either in cash or in the shape of gold or in the shape of unencumbered securities, it was held that any income arising from such securities is closely connected with the banking business and is business income. Thus, according to him, govt. securities purchased by the assessee to maintain the liquidity as per section 24 of the Banking Regulations Act, have to be treated as stock-in-trade and the notional loss on the revaluation of the assets is to be allowed as depreciation. He also placed reliance

upon the decision of the Coordinate Benches of this Tribunal in the assessee's own case for the earlier A.Ys which have also been upheld by the Hon'ble jurisdictional High Court.

10. Having regard to the rival contentions and the material on record, we find that the first decision on such transaction is of the jurisdictional High Court in the case of SBH (cited Supra) wherein after taking note of section 24 of the Banking Regulations Act, the Hon'ble High Court considered at length the nature of the investment in Govt. Securities and the nature of the asset and has held that the income from such an asset is not capital gain but is business income. The Hon'ble Kerala High Court has therefore, in the case of Nedungadi Bank (Supra) has dealt with the very same issue as before us and after considering the various judicial precedents on the issues involved therein has held as under:

> *"Here, it must be noted that the assessing authority had in fact reopened the assessment on the basis of the decision of the Supreme Court in Vijaya Bank Ltd. v, Commissioner of Income Tax (Addl.) ((1991) 187 ITR 541). In that case, the question which arose for consideration was as to whether a sum of Rs. 58,568/- representing interest accrued on securities taken by the assessee bank from the Jayalakshmi Bank Ltd. and another sum of Rs. 11,630/- representing interest accrued upto the date of purchase in the case of securities purchased by the assessee-bank from the open market are admissible as deduction under the provisions of Sections 19, 20 and 37 of the Act. In that context, the Supreme Court relied on a decision of the Court of Appeal CIT v. Pitcher ((1949) 31 TC 314, 332 (CA)) where it was observed that outlay on purchase of an income bearing asset is in the nature of capital asset. The Supreme Court observed in Vijaya Bank's case that the price paid for the securities was determined with reference to their actual value as well as the interest which had accrued on them till date of purchase, that whatever was the consideration which prompted the assessee to purchase the securities, the price paid for them was in the*

nature of a capital outlay and no part of it can be set off as expenditure against income accruing on those securities. Here, it must be noted that the Supreme Court has not at all considered the question with regard to the character of securities from which interest income is earned. No contention is seen taken by any of the parties that the securities involved in the said case represented stock-in-trade. Hence the decision rendered in the said case cannot be taken as an authority for the position that the securities held by the assessee in the present case in compliance with the provisions of the Banking Regulation Act is to be held as a capital investment. As we have already noted, this Court and the Supreme Court have clearly taken the view that the Government securities acquired by the assessee Bank in compliance with the provisions of the Banking Regulation Act has to be treated as stock-in-trade of the business of the Bank. In fact, the Central Board of Direct Taxes in the Circular extracted above has taken the very same view which, according to us, is consistent with the view taken in the decisions of the Court and of the Supreme Court discussed above. Here, it must be noted that till the decision of the Supreme Court in Vijaya Bank's case (187 ITR 541) the assessing authority has been taking the consistent view that the assessees are entitled to depreciation on account of the notional loss suffered by them on revaluation of the securities. In fact, in all the reassessment cases, the assessing authority had originally granted deduction by way of depreciation of the notional loss incurred by the assessee and the only reason for denying the said relief to the assessee, is the decision of the Supreme Court in Vijaya Bank's case. Vijaya Bank's case, as we have already noted, does not lay down any clear proposition that the securities held by a bank cannot be considered as stock-in-trade of the business of the Bank.

For all these reasons, we are of the view that the Income Tax Appellate Tribunal has rightly held that the securities held by the assessee bank in all these cases are the stock-in-trade of the business of the assessee banks and the notional loss suffered on account of the revaluation of the said securities at the close of the year is an allowable deduction in the computation of the profits of the appellant. This disposes of the first two questions mentioned in para 10 above".

11. Respectfully following the above, the CIT (A) has granted relief to the assessee and therefore, we see no reason to interfere with the same. Accordingly, this ground raised by the Revenue is dismissed.

12. As regards Ground No.4, we find that it is against the order of the CIT (A) allowing the claim of provisions for bad and doubtful debt, despite the fact that section 36(2)(v) mandates that the provisions can be allowed only when the amount is credited to the bad and doubtful debt a/c in the books of the assessee. The brief facts are as under. The assessee had claimed a deduction of Rs.4,90,11,393 in the computation of income towards provision for bad and doubtful debt u/s 36(1)(viia) of the Act. On perusal of the return of income and the financial statements, the AO observed that the assessee has not made any provision for bad and doubtful debts in its books of account and further that both in the original return of income and in the revised return of income, the provisions for bad and doubtful debts has been mentioned as 'Nil'. He observed that section 36(2) specifies certain conditions to be fulfilled for eligibility to claim deduction u/s 36(1) of the Act and as per proviso to sub section 4 of section 36(1) in the case of a Bank to which clause 7(a) applies, the amount of deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision of bad and doubtful account made under clause (viia) of the Act. He also observed that the deduction allowable under clause 7 is subject to the provisions of section 36(2) and clause 5 of sub-section 2 of section 36 provides that no deduction shall be allowed unless the bank has debited the amount of such debt or part of the debt in that previous year to the provision for bad and doubtful debts a/c made under the clause. Since the assessee admitted that it has not made any provisions in its books of accounts towards

the provisions of rural bad and doubtful debts, but has wrongly claimed Rs.4,19,11,393 as deduction, the AO disallowed the same and added it to the income of the assessee. Aggrieved, the assessee preferred an appeal before the CIT (A) who allowed the same by following the decision of the ITAT in assessee's own case for the A.Y 2010-11 in ITA No.1742 of 2014 dated 25.03.2015. The learned DR supported the order of the AO, while the learned Counsel for the assessee supported the order of the CIT (A).

13. Having regard to the rival contentions and the material on record, we find that similar issue had arisen in the case of A.P. Grameen Bank in ITA Nos.713 & 714/Hyd/2015 for the A.Ys 2007-08 & 2008-09 and this Tribunal vide order dated 14.06.2016 has held that the deduction u/s 36(1)(vii)(a) can be allowed only to the extent the provisions for bad and doubtful debt has been made in the books of accounts. To come to this conclusion, the Bench has followed the decision of the Hon'ble High Court of Punjab & Haryana in the case of State Bank of Patiala reported in 272 ITR 54. Further, the Coordinate Bench of this Tribunal in the case of CIT vs. Andhra Bank in ITA No.715 of 2012 for the A.Y 2007-08 (to which one of us the JM is the signatory) has followed the decision of the State Bank of Patiala and has dismissed the assessee's appeal. For the sake of ready reference, the relevant portion of the order of this Tribunal in ITA No.610/Hyd/2013, dated 12.08.2015 is reproduced hereunder:

> *"6. On a reference to the provisions of section 36(l)(viia) of the Act, it is very much clear that for claiming deduction under the said provision, assessee has to create a provision for bad and doubtful debts in its books of account. Therefore, contention of Id. AR that there is no*

need for making any provision for bad and doubtful debts for claiming deduction u/s 36(1)(viia) is not acceptable. The Hon 'ble P & H High Court in case of State Bank of Patiala Vs. CIT (supra) while examining the provisions of section 36(l)(viia) held that for claiming deduction under the said provision, assessee bank has to make a provision for bad and doubtful debts in its books of account and deduction u/s 36(l)(viia) in respect of rural advances can only be allowed to the extent of the provision made. The coordinate bench in assessee's own case for AY 2010-11 in ITA No. 51/Hyd/2015 dated 10/04/2015, while dealing with identical issue, has held as under:

> "It is observed that the assessee in the present case, being eligible bank, is entitled to claim deduction as per the main provision contained in clause (a) of S.36(1) (viia), in respect of any provision for bad and doubtful debts to the extent of an amount not exceeding 7.5% of the total income 'computed before making any deduction under S.36(1) (viia) and Chapter VIA' and an amount not exceeding 10% of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner. A perusal of the impugned order of the learned ClT(A) however, shows that it was stated by the assessee before the learned ClT(A) that no provision was made towards average rural advances. If it is so, it is not clear as to what is the basis on which the provision of Rs.22.40 crores (Rs.5.38 crores in respect of urban advances and Rs. 17.02 crores in respect of rural advances) was made by the assessee during the year under consideration. Moreover, all these facts and figures were furnished by the assessee before the learned ClT(A) for the first time and the Assessing Officer therefore, did not have any opportunity to verify the same. The claim of the assessee of having adjusted the amount of Rs.22.24 crores towards bad debts written off during the year under consideration against the opening balance of the provision of Rs.40.13 crores was also made by the assessee for the first time before the learned CIT(A), and the Assessing Officer did not have any opportunity to verify the same. Having regard to all these facts and circumstances of the case, we are of the view that it would be fair and proper and in the interests of justice to restore the issue relating to the assessee's claim for deduction under S.36(1) (viia) to the file of the Assessing Officer for

> deciding the same afresh, in accordance with the provision of S.36(1)(viia) after giving proper and sufficient opportunity of hearing to the assessee and after verifying all the relevant facts and figures. We order accordingly. This appeal of the Revenue is accordingly treated as allowed for statistical purposes."

14. In the case before us, since it is admitted that the assessee has not made any provisions for bad and doubtful debts, the same is not allowable u/s 36(1)(vii)(a) of the Act. The Revenue's ground of appeal is accordingly allowed.

15. As regards Ground No.5, the brief facts are that the assessee had claimed an amount of Rs.1,91,04,804 as broken period interest paid on purchase of securities. The AO verified the details of the "broken period interest" furnished by the assessee vide letter dated 16.12.2013. The assessee justified the claim stating that to maintain Statutory Liquidity Ratio (SLR), Banks have to purchase or sell government securities on many occasions and for this purpose, the assessee has to purchase the securities in the intervening period i.e. after its commencement, from the open market. It was submitted in case of such securities, the purchase price will include not only the traded value but also the interest for the period starting from the commencement of the date of the security up to the date of purchase. It was submitted that the proportionate interest pertaining to the above intervening period is known as broken period interest and therefore, the purchase value of the securities purchased by the Bank include interest accrued till the date of purchase and therefore has to be allowed as revenue

expenditure. AO however, by placing the reliance on the decision of the Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT, 187 ITR 541 has disallowed the claim by holding that the investment in government securities is capital outlay and therefore, the "broken period interest" also is in the nature of capital expenditure. On appeal, the CIT (A) allowed the same by following the decision of the Tribunal in the assessee's own case for A.Y 2010-11 wherein the "investments in securities" were considered as stock-in-trade. Against the relief granted, the Revenue is in appeal before us.

16. The learned DR relied upon the assessment order, while the learned Counsel for the assessee supported the order of the CIT (A) and also various precedents on the issue.

17. Having regard to the rival contentions and the material on record, we find that the CIT (A) has followed the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case for the A.Y 2010-11 to allow the assessee's claim. For the sake of ready reference, the relevant para is reproduced hereunder:

> *"6.2 I have gone through the assessment order, written submissions of the appellant and case laws relied thereon. I find that a similar issue was decided by the Hon'ble Jurisdictional ITAT in the case of the appellant for the Assessment Year 2010-11 vide ITA No.1742/Hyd/2014 dated 25th March, 2015. The relevant portion of the order is as under:*
>
> "13. The Id CIT (A) perused the submissions of the assessee and the order of the AO. The CIT (A) held as follows:
>
> "As could be seen from the facts of the case, the interest claimed on purchase of security were held as stock in trade by the

> appellant bank, and the AO has relied on the decision of Supreme Court in the case of Vijaya Bank Ltd Vs. CIT (supra), wherein the investments in securities were considered as capital investments and as such the interest on such acquisition was treated as disallowable expenses. However, in this case, the investments in securities were treated as stock in trade, which was not disputed by the AO, either. Further, vide the decisions by various High Courts and Supreme Court, subsequent to the decision of Vijaya Bank case (supra), have held that interest for broken period should be treated as part of purchase price and distinguished the decision of Apex Court in the case of Vijaya Bank, where no distinction was made with regard to the character of securities. In the case of AP Grameena Vikas Bank, the Hon 'ble ITAT, Hyderabad, vide its order dt. 13.03.2014 in ITA No. 610jHyd.j2013, has upheld such claims by bank".
>
> 14. Respectfully following the order of the Hon'ble ITAT, in the case of A.P Grameena Vikas Bank, the learned CIT (A) was of the considered opinion that the broken period interest on acquisition of securities held as stock in trade, is much allowable expense and as such the disallowance of Rs.373,12,444/- made by the AO was held to be unsustainable by the CIT (A). This ground of appeal is treated as allowed by the CIT (A)".

Further, while adjudicating the grounds 2 & 3 above, by following the judgment of the Hon'ble Kerala High Court in the case of Nedungadi Bank (Supra), we have held the Govt. Securities purchased by the assessee in compliance with the regulations of the Banking Regulation Act as "stock-in-trade". Therefore, the "broken period interest" on such securities is also business expenditure. Since the CIT (A) has followed the decision in the assessee's own case, we do not find any reason to interfere with the same. The Revenue Ground No.5 is accordingly rejected.

18. The last issue in this appeal is Ground No.6 which is against the order of the CIT (A) allowing the provision of payment

made to SBI Life Cap assurance, even though the said scheme does not appear to have been recognized under the Income Tax Act and though the payment is in violation of section 40A(7) because it is not incurred on actual payment to any of the employees during the year. During the appellate proceedings before the CIT (A), the assessee submitted that it has paid an amount of Rs.1,45,78,018 to SBI Life Policy towards Group Gratuity Fund, but the same was wrongly shown in insurance account. The CIT (A) perused the details furnished by the assessee and held that this amount has been paid to SBI Life Insurance towards SBI Life Cap Assured Gratuity Scheme and therefore, is an allowable expenditure. Against the relief granted by the CIT (A), the Revenue is in appeal before us.

19. Having regard to the rival contentions, we find that the CIT (A) has verified the details of the provisions made for gratuity and found that the payment is towards the amount paid to the SBI Life Policy towards group gratuity. Similar issue had arisen before us in the case of A.P. Grameena Vikas Bank for the A.Y 2008-09 in ITA No.713 & 714/Hyd/2015 and the Coordinate Bench in its decision to which both of us are signatories has held as under:

> *"5.1 Hence, we find that in the earlier year, disallowance was deleted by following the decision in the case of Sree Kamakhya Tea Co.(P) Ltd. (supra). Now, coming to the facts of the case for the relevant assessment year, the ground on which A.O. has disallowed the claim of the assessee is that the payment is not routed through the approved gratuity fund as is evident from the recitals in the show cause notice dated 03.01.2014 reproduced by the A. O. in*

para 3.1 of his order. According to the A. 0, the requirement of clause (b) of section 40A(7) to allow the deduction of payment of gratuity fund is that the contribution should be to an approved gratuity fund, which in turn is empowered to utilize it to contribute to the group gratuity scheme entered into with the LIC of India or any other insurer as defined in clause (28BB) of section 2 of the LT. Act. In the case before us, SBI Life is the other insurer as defined in clause (28BB) of section 2 of the LT. Act and the assessee admittedly has made the payment directly to SBI Life which is registered with IRDA. Admittedly, the assessee obtained the approval of the concerned authority for the gratuity fund w.e.f. 21.03.2011 vide orders dated 23.06.2014. Thus, for the relevant assessment year, the gratuity fund of the assessee was not an approved gratuity fund. The assessee had made payment to SBI Life directly and SBI Life has also accepted the same. Whether assessee can make the contribution to group gratuity scheme directly is the question before us. We find that similar question had arisen before the Hon'ble Apex Court in the case of CIT vs. My s. Textool Co. Ltd., in Civil Appeal No.447 of 2003 and the Hon'ble Court vide its decision dated 09.09.2009 has held as under :

> *"This appeal, by special leave is directed against the judgment, dated 4th February, 2002, rendered by the High Court of Judicature at Madras, in Tax Case No. 267 of 1989. By the impugned judgment, the High court has answered the question of law, referred to it by the Income Tax Appellate Tribunal, Madras Bench (for short, "the Tribunal') under Section 256(1) of the Income Tax Act, 1961, (for short, "the Act') at the instance of the Revenue. The question of law, so referred, was as follows:*
>
> *" ... Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in allowing the deduction of Rs.55,84,754/- being the payment made by the assessee company directly to Life Insurance Corporation towards Group Gratuity Fund under Section 36 (1)V) of the Income Tax Act, 1961?"*

Material facts relevant for the purpose of the present appeal may be stated thus:

For the assessment year, 1983-84, for which the relevant previous year ended on 30th April, 1982, the assessee claimed a deduction of Rs.92,06,978/- as contribution/ provision towards the approved gratuity fund. As per the breakup of the said amount, an amount of Rs. 5, 84, 754/- was paid as annual premium to the Life Insurance Corporation ("LIC" for short); a sum of Rs. 50,00,000/ - was paid to the LIC as initial contribution in the group Life Assurance Scheme framed by the LIC for the benefit of the employees of the assessee and the remaining amount of Rs. 36,22,224/-was shown as provision for initial contribution. It is common ground that assessee company's gratuity fund, viz., the Textool Company Ltd. Employees Group Gratuity Fund was approved by the Commissioner of Income Tax, Coimbatore, w.e.f 25th February, 1983. While completing assessment, the Assessing Officer allowed a deduction of Rs.36,22,224/-under Section 40A(7) of the Act. However, deduction for the balance amount was disallowed on the ground that payment towards the gratuity fund was made by the assessee directly to the LIC and not to an approved gratuity fund and, therefore, it was not allowable under Section 36(l)(v) of the Act.

Being aggrieved, the assessee preferred appeal to the Commissioner of Income Tax (Appeals). The Commissioner observed that the initial payment of Rs. 50, 00, 000/ - and the annual premium of Rs. 5, 57, 943/ - was made by the assessee directly to the LIC instead of as a contribution towards the approved gratuity fund; the LIC had accepted the said payment on behalf of the Group Life Assurance Scheme for the exclusive benefit of the employees of the assessee under the policy issued by it. Upon perusal of the original Master policy issued by the LIC, the Commissioner recorded his satisfaction that the initial contribution as well as annual premium had been credited by the LIC to the Group Life Assurance

Scheme on behalf of the Textool Company Ltd. Employees Group Gratuity Fund only, meaning thereby that the insurance policy had been taken in the name of the approved gratuity fund only; this fund was shown as the payee in the policy; vide its letter dated 20th November, 1985) addressed to the LA. C: the assessee had confirmed that in the subsequent assessment years, they had contributed funds to the Employees Group Gratuity Fund and the trustees in turn had made payment to the LIC in respect of the Textool Co. Ltd.; Employees Group Gratuity Assurance Scheme under the said policy and it was only the initial payment and first annual premium had been made directly to the LIC against the said policy. The Commissioner was thus, convinced that by making payment of the amounts in question directly to the LIC, the assessee had not violated any of the conditions stipulated in Section 36(1)(v) of the Act. Accordingly, the Commissioner came to the conclusion that since, on the facts of the case, the objective of the fund was achieved, a narrow interpretation of the provision would be straining the language of Section 36(1)(v) of the Act so as to deny the deduction claimed by the assessee. Consequently, the Commissioner allowed the said amount of Rs.58,84, 754/- as deduction for the relevant assessment year.

Being dissatisfied with the view taken by the Commissioner, the Revenue took the matter in further appeal to the Tribunal. Relying on its earlier decision in the case of Janambikai Mills Ltd, the Tribunal dismissed the appeal.

As stated above, by the impugned order, the afore extracted question, referred at the instance of the revenue, has been answered by the High Court in favour of the assessee. While answering the question, the High Court has observed as follows:

"In our opinion, the Commissioner of Income Tax (Appeals) as well as the Tribunal have correctly held

that merely because the payments were made directly to the LIC, the company could not be denied the benefit under Section 36(1)(V) and the amount had to be credited in favour of the assessee. Both the Commissioner (appeals) as well as the Tribunal have correctly read the law and have correctly relied upon the aforementioned Supreme Court judgment. In our opinion, since the finding of fact is that all the payments made were only towards the Group Gratuity Fund, there would be no question of finding otherwise".

Learned counsel appearing on behalf of the Revenue has submitted before us that the provisions of Section 36(1)(v) of the Act have to be construed strictly and for claiming deduction, conditions laid down in Section 36(1)(v) of the Act must be fulfilled. It is urged that since during the relevant previous year the contribution by the assessee towards the gratuity fund was not in an approved gratuity fund the High Court was not justified in affirming the view taken by the Commissioner as also by the Tribunal while answering the reference in favour of the assessee. However, on a query by us as to whether the contribution made by the assessee in the approved gratuity fund credited by the LIC for the employees of the assessee and ultimately the entire amount deposited with the LIC came back to the fund created by the assessee for the benefit of its employees and approved by the Commissioner w.e.f 25th February, 1983, or not, learned counsel is not in a position to make a categorical statement in that behalf.

Having considered the matter in the light of the background facts, we are of the opinion that there is no merit in the appeal. True that a fiscal statute is to be construed strictly and nothing should be added or subtracted to the language employed in the Section, yet a strict construction of a provision does not rule out the application of the principles of reasonable construction to give effect to the purpose and intention of any particular provision of the Act. (See: Shri Sajjan Mills Ltd. vs. Commissioner of Income Tax, MP. & Anr. (1985) 156 ITR 585). From a bare reading of Section

36(1)(v) of the Act, it is manifest that the real intention behind the provision is that the employer should not have any control over the funds of the irrevocable trust created exclusively for the benefit of the employees. In the instant case, it is evident from the findings recorded by the Commissioner and affirmed by the Tribunal that the assessee had absolutely no control over the fund created by the LIe for the benefit of the employees of the assessee and further all the contribution made by the assessee in the said fund ultimately came back to the Textool Employees Gratuity Fund, approved by the Commissioner with effect from the following previous year. Thus, the conditions stipulated in Section 36(1)(v) of the Act were satisfied. Having regard to the facts found by the Commissioner and affirmed by the Tribunal, no fault can be found with the opinion expressed by the High court, warranting our interference.»

6. In our opinion, the assessee's case for the relevant assessment year is similar to the above case. Respectfully following the same, assessee's appeal is allowed".

20. Respectfully following the same, we do not find any reason to interfere with the order of the CIT (A). This ground of appeal is rejected.

21. In the result, assessee's appeal is treated as allowed for statistical purposes, while the Revenue's appeal is partly allowed.

Order pronounced in the Open Court on 3rd August, 2016.

Sd/-	Sd/-
(S.Rifaur Rahman)	**(P. Madhavi Devi)**
Accountant Member	**Judicial Member**

Hyderabad, dated 3rd August, 2016.

Vnodan/sps

Copy to:

1. *M/s. Murthy & Kanth, CAs, Flat No.113, Soverign Shelters, Lakadikapul, Hyderabad 500004*
2. *Dy. Commissioner of Income Tax, Circle 9(1), Hyderabad*
3. *CIT(A) –VII, Hyderabad*
4. *CIT –VII Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*

By Order