

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Dr.Arjun Lal Saini, AM]

I.T.A No. 103/Kol/2014

Assessment Year : 2006-07

I.T.O., Ward-31(1),
Kolkata

-vs.-

M/s. Bata India Ltd. Employees
Statutory Provident Fund, Kolkata
[PAN : AABTT 0817 H]

(Appellant)

(Respondent)

For the Appellant : Shri Rakesh Kr.Das, JCIT.Sr.DR
For the Respondent : Shri S.Jhajharia, AR

Date of Hearing : 08.08.2016.

Date of Pronouncement : 12.08.2016.

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the Revenue is against the order dated 01.11.2013 of CIT(A)-XIX Kolkata relating to AY 2006-07.

2. Grounds of appeal raised by the revenue read as follows :-

“Whether on the facts & circumstances of the case Ld. CIT(A)-XIX, Kolkata was justified in directing to allow the credit of TDS amounting to Rs.11,42,889/- when the TDS certificate filed along with the return of income was not for the relevant A.Y. 2006-07 and also not in the name of the assessee. “

3. The Assessee was created on 16th March 1939 with the aim of administering the provident fund contributions of both employer and employees of Bata Shoe Company Private Limited. The affairs of the fund were to be managed by the Trustees selected from both employees and employer side. The Assessee was exempted under section 17 of the Employees Provident Funds and Miscellaneous Provisions Act ,1952 vide exemption no-E-109(4) 1/789C , Dated-4th June 1957 issued by Provident

Commissioner, New Delhi. The Assessee was recognized under the Income Tax Act ,1961(Act) by Commissioner of Income Tax ,Calcutta vide Order Dated-19th Nov 1957 (Initial Recognition) and vide Order Dated 5th March 1975. Under Section 10(25)(ii) of the Act, total income of recognized employees provident fund was exempt from payment of income tax. As all income generated by a recognized employees provident fund was not chargeable to income tax, the Assessee was not required to file or submit any return of income under the Act. Where the entire income of assessee is exempt under section 10, the assessee will not be liable to tax audit under section 44AB of the Act also even though the gross receipts/turnover/sales exceeds the monetary limit prescribed u/s 44AB. The accounts of recognized provident fund should be maintained by the Trustees of the Fund so as to give an adequate and fair disclosure of the affairs of the fund. Being recognised under the Income Tax Act -1961, the trustees are responsible to ensure compliance of the conditions and principles given in the Rules 67 to 81 of Income Tax Rules ,1962 regarding Investment of Funds, Accounts etc. Neither The EPF & MP Act 1952 nor Income Tax Rules 1962 has prescribed any format for accounts and audit report, the annual accounts of recognized employees provident fund should be drawn up in accordance with generally accepted accounting principles. The annual accounts should give an adequate and fair disclosure. The balance sheet should disclose assets and liabilities and the income and expenditure account should enumerate various items of income and expenditure. The annual accounts should be drawn keeping in view the (a) Trust Deed (b) Rules of the Fund (c) Conditions imposed by Commissioner (d) Fourth Schedule to the Income Tax Act ,1961 (e) Part XII of the Income Tax Rule, 1962 (f) Instructions issued by the Board from time to time. As per Rule-74 of the Income Tax Rules,1962 “The accounts of a provident fund shall be prepared at intervals of not more than twelve months”. The Assessee is complying with the provisions of Rule-74 aforesaid by preparing accounts on Financial Year basis. Audited Accounts signed on 26th September 2006 for the financial year ended on 31st March 2006 along with schedules were filed before the AO.

4. As already stated the income of the Assessee was exempt u/s 10(25)(ii) of the Act and therefore there was no obligation on its part to file return of income. Nevertheless, the Assessee filed return of income for AY 2006-07 in order to claim refund of TDS erroneously deducted by financial institutions in which funds were invested. The return so filed was a belated return as it was filed beyond the time limit specified in Sec.139(1) of the Act for AY 2006-07. However, the Hon'ble Gauhati High Court in the case of in case of North Eastern Electric Power Corporation Employees Provident Fund Trust (NEEPCO EPF TRUST) Vs. Union of India by its judgment dated 16.12.2011, has held that belated filing of any recognised employees provident fund whose income is fully exempted u/s 10 (25)(ii) can be no ground for denying refund claimed in a return.

5. The facts with regard to claim for refund of tax deducted at source for which purpose the Assessee filed return of income are that the Assessee had purchased 83 bonds (Series -III) issued by M/s Maharashtra Patbandhare Vittiya Co. Ltd (here in after "M/s MPVCL"), on various dates from outside agency in secondary market which was originally allotted to other parties. Such bonds carries interest @9.5% P.A and Face Value Rs10,00,000/- per Bond. M/s MPVCL had issued such bonds on 16th April 2004 on which first interest period was from 16th April 2004 to 15th July 2005 i.e., covers a period of 455 days in two financial year, F.Y- 2004-05 from 16th April 2004 to 31st March 2005 for 350 days and F.Y- 2005-06 from 1st April 2005 to 15th July 2005 for 105 days. The bond issuer company M/s MPVCL had deducted and deposited Tax deducted at source (TDS) on accrued interest for the F.Y-2004-05 even though interest was not actually paid and issued TDS certificate in favour of deductee whose name was in bond holders register maintained by the issuer "M/s MPVCL" as at 31st March 2005. During F.Y-2005-06 when actual interest was paid in July 2005 on 9.5% bonds issued by " M/s MPVCL" , "M/s MPVCL" had deducted TDS of Rs.11,42,889/- on interest income of 60 bonds for the period from 16th April 2004 to 31st March 2005, as on 31st March 2005 bond holder was "M/s The C K P Cooperative Bank Ltd " as per their

record. Gross Interest Income –Rs. 88,81,849/-, TDS @20.91%-Rs.11,42,889/- was deducted/deposited by "M/s MPVCL". TDS Certificate dated 5th June 2005, for Rs.11,42,889/- was issued in favour of "M/s The C K P Cooperative Bank Ltd " whose name was in bond holder's register as on 31st March 2005 mentioning tds certificate for the period from 16th April 2004 to 31st March 2005. On suffering TDS Deduction, the Assessee drew attention of the issuer of bond" M/s MPVCL", then "M/s MPVCL" sent TDS Certificate issued in favour of "M/s The C K P Cooperative Bank Ltd "and confirmed vide letter dated 25th Aug 2005,dated 6th Sept 2005, dated 24th November 2005 that it was the Assessee which was entitled to claim refund of the TDS deducted of Rs.11,42,889/- in its return for the A.Y-2006-07 even though tds certificate was issued in favour of " The C K P Cooperative Bank Ltd". Thus getting confirmation from issuer of bond and deductor of TDS "M/s MPVCL" and on receipt of TDS Certificate, the Assessee claimed refund of TDS on its return filed for A.Y-2006-07. The Assessee also had deposited confirmation letter dated 10th Nov 2008 given by "The C K P Cooperative Bank Ltd " to the assessee on 15th " Feb 2010 stating the fact that no benefit was claimed by the Bank as the TDS certificate was not in their possession. ITO had issued another letter directly to" The C K P Co operative Bank ltd" and the bank also vide letter dated 25th June 2011 confirmed directly to the ITO that no benefit was claimed by the bank against TDS certificate of Rs.11,42,889/- issued by "M/s MPVCL" in their return for the assessment year 2005-06 and 2006-07.

6. The AO however Vide letter Ref No-ITO /W-31(1)/Kol/Demand/ 2011-12/793 dated-17th Feb 2012, ITO rejected refund application for the reasons that the Assessee's name was not found in the TDS certificate and the year mentioned in the TDS certificate was relevant to AY 2005-06 and not 2006-07.

7. On appeal by the Assessee, the CIT(A) allowed the claim of the assessee by observing as follows :-

“9. Having considered the AO's action and the submission of the appellant along with the surrounding facts and circumstances of the issue at hand, I find that the appellant cannot be denied the refund amounts under discussion as going by the merits of the case. It is pertinent to mention here that the AO, after a period of three years all of sudden rejected refund application on 17th Feb. 2012 after receiving confirmation from "M/s MPVCL" and from "The C K P Co operative Bank Ltd." without giving an opportunity to the appellant of being heard, hence there is breach of principles of natural justice. The Supreme Court in case of M. Chockalingam and M. Meyyappan v. CIT [1963J 48 ITR 34 (SC) has held that the action u/s 154 may be taken in favour of the taxpayer without any notice to him but if action has the effect of enhancing an assessment or reducing the refund, the AO must send a notice to the assessee and give him a reasonable opportunity of being heard. Here the AO has defaulted in not giving an opportunity to the appellant to put forth its explanation.

9.1. . Apart from the procedural aspect, even though TDS certificates mentioned AY 2005-06 but corresponding income was accounted for in the books of account in the AY 2006-07 as income accrued in such AY only. Sections 198 and 199 of the Act relating to TDS deal with the amount to be treated as income of the deductee and available for credit. Section 199 states that tax deducted and paid to govt. account shall be treated as payment of tax on behalf of the person from whose income deduction was made and credit shall be given to him for the amount so deducted on production of the certificate furnished u/s 203 in the assessment made under the Act for the AY for which such income is assessable. Sections 198 and 199 do not in any way change the year of assessability of income which depends upon the method of accounting regularly followed by the assessee.

9.2. Delhi High Court in case of Commissioner of Income Tax v. Malibu Estate [2007]164 Taxman 518 (De/h) has held that u/s 199 credit of TDS has to be given to the assessee in whose hands the income is finally held assessable even though TDS Certificates may not be in its name. Credit for TDS has to be given to the tax payer in whose hands the income is finally held assessable and that too in the year in which the corresponding income was assessable / taxed. In the instant case, the entire income starting from issue date i.e. from 16th April, 2004 to 31st March, 2006 was considered by "BIL ESPF" as assessable income for AY 2006-07, hence the appellant is entitled to tax credit- even though TDS certificate was issued in the name of "The C K P Cooperative Bank Ltd".

9.3. The Gauhati High Court (supra) held that "All income generated by a recognised employees provident fund, was not chargeable to income-tax u/s 10(25)(ii), it was not required to submit or file any return of income-tax, however, in order LO claim refund of TDS erroneously deducted by financial institutions in which fund were invested, petitioner-Trust filed returns, belated filling of return can be no ground for denying

refund. The High Court also held that revenue authorities could not take the shelter of technicalities to deny refund of the income-tax deductions made at source, which did not legitimately belong to them. The High Court further held that when there is no due from the assessee, revenue should not act like a small time trader interested in enriching itself unjustly at the expense of a citizen by denying refund of tax deducted which legitimately belongs to the assessee. The C K P Co operative Bank Ltd." had given two confirmations that the 110 tax credit was taken by them on the basis of TDS certificate issued by "M/s MPVCL."

9.4. In view of the various court judgments which are applicable in the appellant's case and also considering the factual position in the matter, the AO is directed to issue the impugned refund which is otherwise a legitimate claim of the appellant after following due procedure in this regard ."

8. Aggrieved by the order of CIT(A) the revenue has preferred the present appeal before the Tribunal.

9. We have heard the rival submissions. The Id. DR relied on the order of AO. The Id. Counsel for the assessee reiterated the submissions made before CIT(A) and relied on the order of CIT(A). After considering the rival submissions we are of the view that there is no merit in this appeal by the revenue. The facts with regard to the ownership of the bonds on which the interest accrued as that of the assessee is not in disputed. It is also not in dispute that the assessee was entitled to the interest on the bonds that were acquired by the assessee form M/s. C.K.P. Corporation Bank Ltd. It is only because of the fact that the assessee's name was not found in the registered bond holders that the TDS was issued in the name of the previous owner of the bond. All the above facts were not only confirmed by M/s. CKP Corporation Bank but also the company which issued the bonds namely M/s. MPVCL. In these circumstances there cannot be any doubt or dispute as to the person who is entitled to the interest income and the refund of TDS thereon in the event of non taxability of interest income in question. The fact remains that the assessee has offered the interest income to tax in the A.Y.2006-07 and in terms of section 199 of the Act the assessee was entitled to credit for tax deducted at source. The fact that the TDS certificate refers to assessment year 2005-06 is of no

consequence. The fact remains that the assessee has not claimed credit for TDS in any other assessment year. The tax deducted at source and paid to the Government is tax actually paid. In the present case the assessee satisfies all the conditions for grant of credit of TDS. In the given circumstances, we uphold the order of CIT(A) and dismiss the appeal of the revenue.

10. In the result the appeal by the revenue is dismissed.

Order pronounced in the Court on 12.08.2016.

Sd/-
[Dr.Arjun Lal Saini]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 12.08.2016.
[RG PS]

Copy of the order forwarded to:

1. M/s. Bata India Ltd. Employees Statutory Provident Fund, 6A, S.N.Banerjee Road, Kolkata-700013.
2. I.T.O., Ward-31(1),Kolkata.
3. CIT(A)-XIX, Kolkata , 4. CIT. XI, Kolkata.
5. CIT (DR) Kolkata Benches, Kolkata.

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By Order

Asstt.Registrar, ITAT, Kolkata Benches