

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCHES,
NEW DELHI - [SMC]

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER

ITA No. 3448/Del /2016
[Assessment Year: 2011-12]

M/s Voxiva India Pvt. Ltd
C-4/5, Safdarjung Development Area
New Delhi

Vs.

The I.T.O
Ward - 17(4)
New Delhi

PAN : AABCV 8220 B

[Appellant]

[Respondent]

Date of Hearing : 26.04.2017

Date of Pronouncement : 27.04.2017

Appellant by : Ms. Jyoti Narula, CA

Respondent by : Ms. Bedobani Chaudary, Sr. DR

ORDER

This appeal filed by the assessee is directed against the order of the CIT(A)-9, New Delhi, dated 04/03/2016 for A.Y 2011-12.

2. The assessee has raised the following grounds of appeal:

“1. That the Revenue has erred in law and on facts in disallowing the contribution made to the recognized Provident Fund amounting to Rs. 15,36,414/-.

2. *That the Revenue has erred in law and on facts in disallowing cash loss amounting to Rs. 18,28,459/-."*

3. As regards Ground No. 1, the brief facts of the case are that during the course of assessment proceedings, the A.O observed that the assessee has claimed an expenditure of Rs. 15,36,414/- as contribution towards Employee's Provident Fund. The assessee was specifically asked by the A.O to provide copy of approval by the CCIT/CIT vide question No. 14 to letter dated 10.10.2013 whether the provident fund is recognized by the Id. CIT.

4. The A.O was not satisfied with the explanation of the assessee and he disallowed the contribution made to the recognized Provident Fund amounting to Rs. 15,36,414/-.

5. The Id. counsel for the assessee relied upon the submissions made before the Id. CIT(A) and the decisions relied upon therein whereas the Id. DR. on the other hand, relied upon the orders of the authorities below.

6. I have heard the rival contentions and perused the facts of the case available on record. It was pointed out by the Id. AR that the meaning of Recognised Provident Fund in Section 2(38) of the Income-tax Act, 1961 is quoted as hereunder:

“Recognized provident fund means a provident fund which has been and continues to be recognized by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a scheme framed under the Employees Provident Funds Act, 1952 (19 of 1952)”

7. It was argued by the ld. counsel for the assessee that the from above explanation and sections quoted above it is evident that definition of ‘recognized provident fund’ is an inclusive definition and the second condition of a provident fund established under a scheme framed under the Employees’ Provident Funds Act, 1952 (19 of 1952) is independent from the first condition of recognition of the fund by the Chief Commissioner as lays down under section 2(38) of the Income Tax Act, 1961. Therefore, to claim deduction under section 38(1)(iv) of the Income Tax Act, 1931 scheme should either be framed under the Employees’ Provident Funds or should be approved by Commissioner under the Income Tax Act, 1961. The appellant has relied on the following case laws:-

b) (2009) 27 SOT 31 (DELHI) In the ITAT Delhi Bench ‘G’ Deputy Commissioner of Income Tax”, Central Circle-6, New Delhi v. Sahara India Employees Contributory Provident Fund.

b) ITA No.3107/Del/2010 In the Income Tax Appellate Tribunal Delhi Bench : H : New Delhi ACIT, Haldwani, Uttarakhand Vs Udham Singh Nagar Distt. Co- operative bank

8. From the definition of the 'Recognized Provident Fund' in Section 2(38) of the Act, it is evident that there are two independent limbs of the definition, i.e. firstly, the approval/recognition should be by the Principal CIT or Chief Commissioner or the Principal Commissioner or Commissioner in accordance with the I.T. Act and Rules. The second limb is that the Provident Fund should be established under a scheme framed under the Employees Provident Fund Act, 1952. These are two independent conditions and either of the condition has to be satisfied by the assessee. In the present case, the assessee has contributed to the Provident Fund established under a scheme framed under the Employees Provident Fund Act, 1952 and it has not taken any recognition from the I.T. department u/s 2(38) of the Act. In my view, the assessee satisfies the condition of contributing to Recognized Provident Fund as per section 2(38) of the Act. Reliance is placed on the decision of the Dy. CIT Vs. Sahara India Employees Contributory Provident Fund in ITA No. 1568/DEL/2007 dated 24.10.2008 and relevant para 11 is reproduced hereunder:

"11. A perusal of the definition given in section 2(38) as above shows that a provident fund which has been or continues to be // recognized by the Chief Commissioner or the Commissioner in accordance with the rules contained in Part A of the Fourth Schedule is said to be a "recognized provident fund" as per the first limb of the definition given in section 2(38). Further, as per the second limb of the definition, a recognized provident fund also includes a

provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952. The definition given in section 2(38) thus is an inclusive definition and as per the second limb of the said definition which is independent of the first limb, it includes a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952. It is pertinent to note here that the condition of recognition of the fund by the Chief Commissioner or Commissioner as stipulated in the first limb is consciously absent in the second limb which clearly depicts that such recognition is not a condition precedent for a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952 to be a "recognized provident fund" within the meaning of section 2(38), We, therefore, find no merit in the contention raised by the learned DR that such recognition by the Chief CIT or CIT is required even in case of a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952. In our opinion, a reading of the provisions of section 2(38) defining "recognized provident fund" especially the second limb thereof clearly shows that a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952 has to be regarded as a recognized provident fund irrespective of whether the same has been recognized by the Chief Commissioner or Commissioner or not as rightly held by the learned CIT(A). Since the provident fund of the assessee-trust in respect of other concerns was undisputedly established under a scheme framed under the Employees' Provident Fund Act, 1952, we are of the view that the same was a recognized provident fund within the meaning of section 2(38) even without recognition by the Chief CIT or CIT and any income received by the trustees on behalf of the said fund was exempt from tax as per clause (1) of sub-section (25) of section 10. In that view of the matter, we uphold the impugned order of the

learned CIT(A) deleting the addition of Rs. 32,84,310 made by the Assessing Officer to the total income of the assessee on account of income earned by the assessee from provident fund contributions from other concerns holding that the same was exempt under section 10(25) and dismiss this appeal filed by the revenue

9. This decision in the case of Sahara India Employees Contributory Provident Fund [supra] has been followed by the Division Bench of the ITAT Delhi in the case of Udham Singh Nagar Dist. Co-operative Bank Ltd in ITA No. 3107/DEL/2010 vide order dated 08.04.2013. The relevant part is reproduced hereinbelow:

“7. Section 2 (38) of the Act reads as follows:-

“(38) "recognized provident fund" means a provident fund which has been and continues to be recognized by the Chief Commissioner or Commissioner in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a scheme framed under the Employees' Provident Fund Act, 1952 (19 of 1952)”

8. Thus, the Section is very clear in that it defines a "recognized provident fund" to include a Provident Fund established under a Scheme framed under the Employees' Provident Fund Act, 1952. Now, obviously, the Assessing Officer erred in disallowing the claim of the assessee, inasmuch as in the assessment order, it was not even noted that the Trust of the assesseeBank was a Trust established under a Scheme framed under the Employees' Provident Fund Act, 1952.

9. *Once Section 2 (38) of the Act, as above, itself specifically provides a Provident Fund established under a Scheme framed under the Employees' Provident Fund Act, 1952 to be a recognized Provident fund there is no reason for the claim of the assessee to be denied and we find the Ld. CIT (A) to have correctly rectified the error committed by the Assessing Officer.”*

10. In the facts and circumstances of the case and the decisions relied upon hereinabove, the contribution made by the assessee is treated as contribution made to the recognized provident fund and accordingly deduction is allowable. Reliance placed by the Id. DR on the decision of the Hon'ble Delhi High Court in the case of Sony India [P] Ltd Vs. CIT reported in [2006] 285 ITR 213 [DEL] is on different facts where the issue before the Hon'ble High Court was not with respect to the two limbs of the decision u/s 2(38) of the Act and accordingly, this decision in the case of Sony India [P] Ltd Vs. CIT is not applicable in the present case. Thus Ground No. 1 of the assessee is allowed.

11. As regards Ground No. 2, the brief facts of the case are that during the course of assessment proceedings the A.O observed that the assessee has claimed cash loss of Rs. 18,28,459/-. The assessee company was asked to explain the same. After considering the reply filed by the assessee, the A.O observed that the company has discussed at length the objects of the company and the activities

undertaken by it. But nowhere it explains as to how this cash loss was suffered by it. It was also not explained as to how this loss took place which is an allowable one. Therefore, the A.O held that the explanation given by the assessee is untenable and cannot be accepted.

12. When the aggrieved assessee went in appeal before the Id. CIT(A), he held that he had no reason to see that the assessee had actually suffered loss on this account. In view of this the claim was disallowed and addition of Rs. 18,28,459/- was confirmed.

13. I have heard the rival contentions and perused the facts of the case. The Id. counsel for the assessee submitted before the Id. CIT(A) as well as before me that the books of accounts and vouchers of the assessee company were submitted to the assessing officer for his verification on three occasions i.e. 04.03.2014, 14.3.2014 and 30.03.2104. Copies of ledger accounts were also submitted for the reference of the assessing officer and the facts of the case of the assessing officer were discussed. As accepted by the assessing officer the nature of the business of the assessee company was also explained to the assessing officer. After going through the documents submitted to him the assessing officer has nowhere in his order concluded that the expenses incurred are not for the purposes for the business of the assessee company and, therefore, cannot be allowed as deduction. In other words he has accepted the fact that the

expenses incurred were for the ongoing business of the assessee company. The income tax return filed by the assessee company has been accepted in the past and in future years also. Copy of assessment orders for the assessment years 2007-08 and 2013 -14 were placed on record.

14. I am fully convinced with the arguments made by the ld. counsel for the assessee that there are no defects pointed out in the books of accounts and vouchers which were placed before the A.O and no addition on this account has been made in the past and also in the future years. In that view of the matter, the addition so made by the A.O is directed to be deleted and the order of the CIT(A) is reversed. Thus, Ground No. 2 of the assessee is allowed.

15. In the result, the appeal of the assessee is allowed.

The order is pronounced in the open court on 27.04.2017.

**Sd/-
[B.P. JAIN]
ACCOUNTANT MEMBER**

Dated: 27th April, 2017

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi