

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

Before Shri Duvvuru RL Reddy, Vice-President (KZ)

**I.T.A. No. 1159/KOL/2024
Assessment Year: 2015-2016**

***Mayurakshi Gramin Bank Employees
Provident Fund,.....Appellant
PBGB Regional, Suri Birbhum-731101,
West Bengal
[PAN:AABTM2580Q]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-3, Suri,
Aayakar Bhawan, Lalkuthipara,
Suri, Birbhum-731101, W.B.***

Appearances by:

*Shri S.K. Tulsian, Advocate and Ms. Lata Goyal, CA,
appeared on behalf of the assessee*

*Shri Subhro Das, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing: January 23, 2025

Date of pronouncing the order: January 31, 2025

O R D E R

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 23rd March, 2024 passed for Assessment Year 2015-16.

2. Brief facts of the case are that the assessee, Mayurakshi Gramin Bank Employees Provident Fund, is a Recognized Provident Fund under Rule 3, sub-clause (1) of Para 1 of the Fourth Schedules of the Income Tax Act, 1961. The said recognition of Provident Fund under Part A of Fourth Schedule was never withdrawn by the Income Tax Authorities.

3. The assessee filed its return of income on 31.10.2015 and claimed deduction under section 10(23AAA) of the Act on account of interest earned from investment of Rs.38,77,633/-. Deduction under section 10(23AAA) of the Act was first time disallowed in assessment year 2013-14. The said issue came up before the ITAT for assessment year 2013-14, wherein the assessee raised alternative plea of its correct taxable income for the first time and, therefore, the matter was restored back to the file of Id. Assessing Officer. The Id. Assessing Officer did not accept the plea of the assessee saying that the interest income was not the income of the assessee and assessed income at Rs.52,51,802/- vide assessment order dated 12.09.2021 under section 143(3) read with section 254.

4. So far as the impugned assessment year, i.e. assessment year 2015-16 is concerned, the Id. CIT(Appeals) dismissed the appeal by relying on the assessment order passed by the Id. Assessing Officer for the assessment year 2013-14.

5. On being aggrieved, the assessee preferred an appeal before the ITAT by raising six grounds. The assessee also filed a petition

to seek permission of the Tribunal to raise additional ground. Accordingly, the ld. Counsel for the assessee raised additional ground, which reads as under:-

“That the income of the assessee being recognized provident fund was unconditionally exempt u/s 10(25)(ii) of the Act and assessee fund is statutorily not required to file return of income u/s 139 of the Act, duly certified by CBDT vide Circular no. 4/2002 dated 16th July, 2002”.

6. I have heard both the sides. The assessee’s representative filed written submissions.

7. It was the submission of the ld. Counsel for the assessee that the income of the recognized Provident Fund is exempt as per Section 10(25) of the Act and also the assessee fund is statutorily not required to file return of income under section 139 of the Act as duly clarified by the CBDT vide Circular No. 4/2002 dated 16th July, 2002. Therefore, he pleaded to set aside the order passed by the ld. CIT(Appeals).

8. On the other hand, it was the submission of the ld. Departmental Representative that the assessee itself filed the return of income and claimed deduction under section 10(23AAA) of the Act on account of interest on investment. Therefore, after considering the return filed by the assessee, the revenue authorities have dismissed the contention of the assessee. He further submitted that ld. Counsel for the assessee has not raised additional ground before the ld. Assessing Officer as well as ld. CIT(Appeals). Therefore, he pleaded to uphold the orders passed by the revenue authorities.

9. I have perused the material available on record. So far as the additional ground is concerned, for the sake of convenience, we reproduce the section 10(25) of the Act, which reads as under:-

(i) interest on securities which are held by, or are the property of, any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies, and any capital gains of the fund arising from the sale, exchange or transfer of such securities;

(ii) any income received by the trustees on behalf of a recognised provident fund;

(iii) any income received by the trustees on behalf of an approved superannuation fund;

(iv) any income received by the trustees on behalf of an approved gratuity fund;

(v) any income received—

(a) by the Board of Trustees constituted under the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948 (46 of 1948), on behalf of the Deposit-linked Insurance Fund established under section 3G of that Act; or

(b) by the Board of Trustees constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), on behalf of the Deposit-linked Insurance Fund established under section 6C of that Act;

Further, the contention of the Id. Counsel for the assessee is that the assessee is a Recognized Provident Fund exempt from filing of the return under section 139 of the Act as per Circular issued by the CBDT Vide No. 04 of 2002 dated 16.07.2022.

10. I have also perused the CBDT Circular filed by the Id. Counsel for the assessee and the relevant portion of the CBDT Circular is reproduced as under:-

"2. This matter has been examined by the Board. It has been decided that in case of those funds or authorities or Boards or

bodies, by whatever name called, whose income is unconditionally exempt under section 10 of the Income-tax Act and who are statutorily not required to file return of income as per section 139 of the Income-tax Act, there would be no requirement for tax deduction at source since their income is anyway exempt under the Income-tax Act. The institutions whose income is unconditionally exempt under section 10 and who are statutorily not required to file return of income as per the provisions of section 139 are :

(i) 'local authority', as referred to in the Explanation to clause (20);

(ii) Regimental Fund or Non-public Fund established by the armed forces of the Union referred to in clause (23AA);

(iii) Fund, by whatever name called, set up by the Life Insurance Corporation of India on or after 1st August, 1996, or by any other insurer referred to in clause (23AAB);

(iv) Authority (whether known as the Khadi and Village Industries Board or by any other name) referred to in clause (23BB);

(v) Body or authority referred to in clause (23BBA);

(vi) SAARC Fund for Regional Projects set up by Colombo Declaration referred to in clause (23BBC);

(vii) Secretariat of the Asian Organisation of the Supreme Audit Institutions referred to in clause (23BBD) till assessment year 2003-2004;

(viii) Insurance Regulatory and Development Authority referred to in clause (23BBE);

(ix) Prime Minister's National Relief Fund referred to in sub-clause (i), Prime Minister's Fund (Promotion of Folk Art) referred to in sub-clause (ii), Prime Minister's Aid to Students Fund referred to in sub-clause (iii), National Foundation for Communal Harmony referred to in sub-clause (iiia), any university or other educational institution referred to in sub-clause (iiiab) and any hospital or other institution for the reception and treatment of persons as referred to in sub-clause (iiiac) of clause (23C);

(x) Credit Guarantee Fund Trust for Small Scale Industries referred to in clause (23EB) till assessment year 2006-2007;

(xi) Provident fund to which the Provident Funds Act, 1925 (19 of 1925) referred to in sub-clause (i), recognised provident fund referred to in sub-clause (ii), approved superannuation funds referred to in sub-clause (iii), approved gratuity fund referred to in sub-clause (iv) and funds referred to in sub-clause (v) of clause (25);

(xii) Employees State Insurance Fund referred to in clause (25A);

(xiii) Corporations referred to in clause (26BB);

(xiv) Boards referred to in clause (29A).

Therefore, after considering the CBDT Circular, the income of the assessee being a recognized provident fund is neither chargeable to tax nor is it required to file the return of income under section 139 of the Act, as per section 10(25)(ii) of the Act. The main contention of the assessee is that the income was mistakenly brought to tax by filing the return of income under section 139 of the Act.

11. I have also considered the CBDT Circular No. 18 of 2017 dated 29th May, 2017. As per the Circular, the exemption provided to the provident funds are still applicable in force till date/ Therefore, I have no hesitation to come to the conclusion that the income of the assessee was mistakenly brought to tax because the assessee has filed income tax return, even though it was not required as per law as pleaded by the ld. Counsel for the assessee. Therefore, after considering section 10(25)(ii) and CBDT Circular vide No. 4 of 2002 dated 16th July, 2002 and Circular No. 18 of 2017 dated 29th May, 2017, one thing is clear that

“Institution whose income is unconditionally exempt under section 10 of the Income Tax Act

and who are statutorily not required to file return of income as per provisions of section 139 of the Act or Provident Fund to which the Provident Funds Act, 1925 (19 of 1925) referred to in sub-clause (i), recognized provident fund referred to in sub-clause (ii), approved superannuation funds referred to in sub-clause (iii), approved gratuity fund referred to in sub-clause (iv) and funds referred to in clause (25A).

Hence, after considering the CBDT Circular No. 4 of 2002 and 18 of 2017 dated 16th July, 2002 and 29th May, 2017 respectively, I am of the firm view that merely because by filing of return of income is not a valid ground to deny exemption under section 10(25)(ii) of the Act. The assessee is statutorily not required to file return of income under section 139 of the Act and also income of the assessee being recognized provident fund was unconditionally exempt under section 10(25)(ii) of the Act. Thus, the additional ground raised by the assessee is allowed.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 31/01/2025.

Sd/-
(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 31st day of January, 2025

*Copies to :(1) Mayurakshi Gramin Bank Employees
Provident Fund,
PBGB Regional, Suri Birbhum-731101,
West Bengal*

*(2) Deputy Commissioner of Income Tax,
Circle-3, Suri,
Aayakar Bhawan, Lalkuthipara,
Suri, Birbhum-731101, W.B.*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) CIT - , Kolkata;

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.