

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. ITA No.131/2012
CIT v. M/s Jaipur Thar Gramin Bank

D.B. ITA No.36/2015
CIT v. M/s Jaipur Thar Gramin Bank

D.B. ITA No.69/2015
CIT v. M/s Jaipur Thar Gramin Bank

Date of order : 12th July 2016

Hon'ble Mr. Justice Ajay Rastogi
Hon'ble Mr. Justice J.K. Ranka

Mr. R.B. Mathur
Mr. Nikhil Simlote
Mr. Anuroop Singhi ... counsel for appellant

By the Court

1. These three appeals under Section 260-A of the Income Tax Act, 1961, are directed against the orders passed by the Income Tax Appellate Tribunal. It relates to assessment years 2007-08, 2008-09 and 2009-10, and since identical question has been raised, all the three appeals are being decided by this common order.
2. The only question raised by the Revenue is about the claim allowed of the Gratuity Scheme created by the assessee and allowed under Section 36(1)(v) of the Income Tax Act, 1961.
3. Brief facts noticed are that the respondent-assessee Bank is a cooperative society doing banking business and prior to that was

assessed as Jaipur Nagaur Anchalik Gramin Bank (sponsored by UCO Bank – a Govt. of India Undertaking).

4. The Assessing Officer, while examining the books of account and material on record, found that the assessee has claimed a deduction of Rs.1,18,00,000/-, Rs.1,23,93,264/-, and Rs.3,60,00,000/- respectively, towards payment by the assessee as an employer by way of contribution towards Gratuity fund created by it for the exclusive benefit of its employees under an irrevocable trust. It was claimed on behalf of the assessee that it filed an application to the Competent Authority for approving the Gratuity Scheme enclosing therein Scheme to be approved under Part 'C' of the Fourth Schedule to the Income Tax Act. The forwarding letter also contained creation of trust-deed and rules under Gratuity Scheme passed by the Life Insurance Corporation of India, though it was claimed that it was submitted before the Commissioner who is the Competent Authority, however, since no formal order was passed by the Competent Authority, the AO rejected the claim of the assessee.

5. The matter was assailed before the Commissioner of Income Tax (Appeals) and the assessee raised claim that the claim is allowable under Section 36(1)(v) of the Act as it had duly moved an application for approval of the Scheme and the amount was also deposited and for no fault of the assessee the claim cannot be disallowed. In the alternative, claim was made that the entire expenditure being in the

nature of business expenditure, deserves allowance under Section 37(1) of the Act. The CIT(A) accepted the alternative plea and thus deleted the addition.

6. On an appeal by the Revenue also resulted into dismissal of the appeal, however, the Tribunal having gone into the merits found that the claim of the assessee is also allowable under Section 36(1)(v) read with Section 40A(9) of the Act.

7. Learned counsel for the appellant contended that it was mandatory on the part of the assessee to have an approval of the Gratuity fund created under Section 36(1)(v) and the Act envisages that any contribution made in an approved Gratuity fund by the Commissioner enures for deduction and otherwise not and admittedly in the instant case there was no approval, therefore, the AO was well justified in disallowing the amount deposited in the Gratuity fund. He further contended that neither it is allowable under Section 36(1)(v) nor under Section 37(1) of the Act, as held by the Appellate Authorities, and condition to allow the said Gratuity fund is lacking, therefore, the order of the Tribunal is perverse. He further contended that even the so-called application which is claimed by the assessee to have been moved on 4.9.2000, was not found on the records and thus contended that substantial question of law arise out of the order of the Tribunal.

8. We have heard learned counsel for the Revenue and perused the order impugned. At the outset we may mention that time was granted

to the learned counsel for the Revenue to come out with the fact that no application was filed by the assessee on 4.9.2000 as there was a specific claim before learned AO himself that the application was filed along with supporting material. The Commissioner by an additional affidavit has placed on record the so-called letter dated 4.9.2000 and we notice on perusal of the said letter which is on the letter-head of Jaipur Nagaur Anchalik Gramin Bank (erstwhile assessee) bearing Ref. No. GB /M/ ACT /2000 / 374 dated 4.9.2000 which reads thus :-

“The Joint Commissioner of Income Tax,
Special Range,
Baba Sidhnath Bhawan,
C-95, Janpath,
Lal Kothi Scheme,
JAIPUR

Dear Sir,

Re: Gratuity scheme to be approved under Part-'C'
of the Fourth Schedule of Income Tax Act.

We request a reference to your letter on the subject cited above.

In compliance to the telephonic conversation on the subject we deputed Mr. K.C. Gupta and Mrs. Ruchi Bhargava Officers to office to discuss on the subject.

As desired we are appending below the necessary information for perusal and records :

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|---|------|
| 1. No. of employees being benefitted under the scheme | 662 |
| 2. Contribution from employer side | 100% |
| 3. Whether more than 90% employees are employed in India | Yes |
| 4. Whether all the benefits granted by the fund shall be payable in India | Yes |

We trust the informations shall be sufficient for your need.

Yours faithfully

sd/-
General Manager”

9. On perusal of the above, it appears that hearing on the subject

was going on in the aforesaid case and with reference to certain queries raised by the competent authority, two of the officers of the assessee company namely K.C. Gupta and Mrs. Ruchi Bhargava were deputed to discuss on the subject and this letter also contained some information sought by the competent authority. The claim of the learned counsel for the Revenue that the said letter was not received on 4.9.2000 but then admittedly we notice that there is a seal of Joint Commissioner of Income Tax, Special Range-1st, Jaipur, with date of receipt being 4.9.2000, but learned counsel contends that this letter on information was not found on records. We fail to understand the submission of the learned counsel for the Revenue. It was for the Revenue to have taken remedial measures in case the said letter was not available on record, which bears certainly seal of the receipt clerk with date bearing 4.9.2000. Merely denying that this letter is not on records, in our view, is not proper particularly when hearing was going on and two officers of assessee appeared in person for discussion and placed additional material before the Joint Commissioner of Income Tax, in furtherance of the earlier proceedings going on, on the same subject. It was for the Revenue to put its affairs in order rather than denying/disallowing a just and reasonable claim. The doubt raised by the learned counsel for Revenue is contrary to the material on record. Be that as it may, the assessee is sponsored by UCO Bank, a Govt. of India Undertaking and duly complied with the conditions laid down for approval under

Section 36(1)(v). At-least the AO when this factum was brought to his notice that the assessee has filed copy of the trust-deed, application to the competent authority on 4.9.2000 then even the said letter could have been forwarded to the concerned Commissioner who ought to have taken recourse of either rejecting or approving the Gratuity Scheme created by the assessee. The assessee cannot suffer for the inaction of the Revenue authorities and the AO ought not to have disallowed the claim merely because the Commissioner has not granted approval of the Gratuity Scheme. Once the assessee fulfills the condition laid down for approval having created a trust with the Life Insurance Corporation of India, and it is not the case of Revenue that assessee has not deposited money in terms of creation of the trust, therefore, in our view the Tribunal on such facts is well justified in holding that the claim is just, proper and allowable. A just and reasonable claim deserves to be allowed. We find that both the appellate authorities have found it allowable on the facts found and is essentially a finding of fact based on material and evidence on record. No substantial question of law can be said to emerge out of the order of the Tribunal, so as to call for interference of this Court. We also do not find any perversity in the order impugned. The appeals are dismissed.

(J.K. Ranka) J.

(Ajay Rastogi) J.