

Provident fund established under scheme framed under EPF Act does not require commissioners approval: ITAT

Summary – The Delhi ITAT in a recent case of Voxiva India (P.) Ltd., (the Assessee) held that where assessee had contributed to Provident Fund established under a scheme framed under Employees Provident Funds Act, 1952, even though it had not taken any recognition from Commissioner under section 2(38), its claim for deduction of contribution to fund was to be allowed

Where assessee's claim for cash less was duly supported by books of account and vouchers, it was to be allowed deduction for same under section 37(1)

Facts

- During the course of assessment proceedings, the Assessing Officer noted that the assessee had claimed certain expenditure as contribution towards Employee's Provident Fund. The assessee was specifically asked by the Assessing Officer to provide copy of approval by the CCIT/Commissioner *i.e.* whether the provident fund was recognized by the Commissioner.
- In view of assessee's failure to do so, the Assessing Officer disallowed the contribution made to the recognized Provident Fund.
- The Commissioner (Appeals) upheld the order of Assessing Officer.
- On second appeal :

Held

- The assessee's case was that it is evident from section 2(38) 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). Therefore, to claim deduction, scheme should either be framed under the Employees' Provident Funds Act, 1952 or should be approved by the Commissioner under the Act.
- From the definition of the 'Recognized Provident Fund' in section 2(38) it is evident that there are two independent limbs of the definition, *i.e.* firstly, the approval/recognition should be by the Principal Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner in accordance with the Act and Rules. The second limb is that the Provident Fund should be established under a scheme framed under the Employees Provident Funds 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 had contributed to the Provident Fund established under a scheme framed under the Employees Provident Funds Act, 1952 and it has not taken any recognition from

the department under section 2(38) of the Act. The assessee satisfies the condition of contributing to Recognized Provident Fund as per section 2(38) of the Act.

- In the facts and circumstances of the case, the contribution made by the assessee is treated as contribution made to the recognized provident fund and accordingly deduction is allowable.