IN THE HIGH COURT AT CALCUTTA

SPECIAL JURISDICTION (Income Tax)
(Original Side)

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
And
THE HON'BLE JUSTICE UDAY KUMAR

Reserved on : 07.08.2026.
Pronounced on : 21.08.2026

ITA 48 of 2026
With
GA 2 of 2026

Principal Commissioner of Income Tax 5 Kolkata

...Appellant

-VS-

Syama Prasad Mookherjee Port Kolkata.

....Respondent

Present:-

Mr. Soumen Bhattacharjee, Adv.
Ms. Shardhya Ghosh, Adv.

...for the appellant

Mr. Arvind P. Datar, Sr. Adv.
Mr. Sriram Venkatavaradan, Adv.
Mr. Rabindra Kumar Mitra, Adv.
Mr. Tamogna Saha, Adv.

..... for the Respondent

Rajarshi Bharadwaj, J:

1. The appellant has filed this appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), challenging the order dated

November 18, 2024 passed by the Learned Income Tax Appellate Tribunal (ITAT), Kolkata Bench "B", for the assessment year AY 2017-18, on the substantial questions of law formulated at the time of admission.

2. The facts in a nutshell are that the assessee-respondent, formerly known as the Kolkata Port Trust (KoPT), is an Artificial Juridical Person with a history of providing essential port services for nearly 150 years since its establishment in the year 1870. For the Assessment Year (AY) 2017-18, the assessee filed its original return of income on October 27, 2017, declaring Nil income after claiming a set-off of brought forward business loss to the extent of Rs. 47,61,12,252/- and claiming a carry forward of loss of Rs.122,41,79,063/-. This return was initially processed under the provisions of Section 143(1) of the Act. Subsequently, the case was selected for scrutiny under the Computer Assisted Scrutiny Selection (CASS) system, leading to the issuance of a notice under Section 143(2) on August 14, 2018. The assessment was completed by the Assessing Officer (AO) under Section 143(3) of the Act through an order dated December 12, 2019. In the said assessment order, the AO determined the total assessed income to be Rs.394,15,94,900/- after incorporating substantial additions and disallowances. These included, compensation billing of Rs.68,67,38,274/-, contribution to superannuation fund (u/s 37 read with Section 43B) of Rs.208,86,57,648/-, contribution to gratuity fund (u/s 37(1) read with Rule 87) of Rs.63,85,13,674/-, contribution to Calcutta Port Officers' Club (u/s 37) of Rs.36,15,023/-, provision of annuity (u/s 37(1)) of Rs.4,84,09,032/- and Loss adjusted and carried forward of Rs.47,61,12,252/-.

3. Aggrieved by these additions and disallowances, the assessee-respondent preferred an appeal before the Learned Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC) against the disallowances/additions. The Ld. CIT(A) allowed the assessee's appeal and deleted all of the contested disallowances and additions by placing reliance on various case laws. Dissatisfied with the decision of the Ld. CIT(A), the revenue preferred a second appeal before the Learned Income Tax Appellate Tribunal

(ITAT), Kolkata, solely on the following two issues i.e., contribution to superannuation fund of Rs.208,86,57,648/- and contribution to gratuity fund of Rs.53,85,13,674/- (originally assessed as Rs.63,85,13,674/-). The decision of the Ld. CIT(A) on the remaining issues was deemed acceptable to the Department and further appeal before the ITAT was not preferred on those grounds. The assessee also filed cross-objections before the ITAT.

4. The ITAT, following the legal principles established by the Hon'ble Calcutta High Court in the cases of ***PCIT v. Exide Industries Ltd (2023)*** and ***Eastern Equipment Sales Ltd.*** **or** ***CIT v. Eastern Equipment & Sales Limited*** reported in ***71 taxmann.com 226(Cal)***, confirmed the decision of the Ld. CIT(A) and deleted the additions. Regarding the superannuation and gratuity funds, the ITAT observed that the remitted amounts were intended to bridge the gap between actual contributions and actuarial valuations. The Tribunal held that such payments were neither initial contributions nor ordinary annual contributions, meaning the ceilings fixed under the respective rules did not apply. The revenue, thereafter, approached this Court under Section 260A of the Act, asserting that the ITAT was not justified in deleting the aforementioned disallowances.

5. Learned counsel appearing for the appellant raises the issue on the following substantial questions of law that have been admitted:

i. *Whether on the facts and in the circumstances of the case, the Hon'ble ITAT erred in upholding the order of the Ld. CIT(Appeals), NFAC, Delhi deleting the disallowance of Rs. 208,86,57,648/- made by the A.O. on account of contributions towards Superannuation Fund in excess of limit fixed under Rule 87 by considering it as an exceptional onetime payment and failing to consider that such excess contribution to meet shortfall in fund balance was a regular practice over past several years and as such was rightly considered by the A.O. as regular contribution?*

ii. *Whether on the facts and in the circumstances of the case, the Hon'ble ITAT erred in upholding the order of the Ld. CIT(Appeals), NFAC, Delhi by placing reliance on the decision of the Hon'ble Calcutta High Court in the case of Exide Industries reported in [2023] 146 taxmann.com 21 (Cal) and failing to appreciate that the facts of the instant case are different from that of Exide Industries as in the case of the assessee, the excess contribution to meet shortfall in fund balance was a regular practice over past several years and not a onetime exception which was the facts in case of Exide Industries?*

iii. *Whether on the facts and in the circumstances of the case, the Hon'ble ITAT erred in upholding the order of the Ld. CIT(Appeals), NFAC, Delhi deleting the disallowance of Rs. 63,85,13,674 made by the A.O. on account of contributions towards Gratuity Fund in excess of limit fixed under Rule 103 by considering it as an exceptional onetime payment and failing to consider that such excess contribution to meet shortfall in fund balance was a regular practice over past several years and as such was rightly considered by the A.O. as regular contribution?*

iv. *Whether the order of the Learned Tribunal is perverse, arbitrary, and contrary to the provisions of the Income Tax Act, 1961, and deserves to be set aside?*

6. We have heard the appellant-revenue and Learned Senior Counsel for the respondent-assessee at length. Since the issues involved are pure questions of law, this Court proceed to decide the appeal on merits.

7. First, the Assessing Officer (AO) disallowed Rs.208,86,57,648/- on account of contributions made to the Superannuation Fund in excess of the 27% ceiling fixed under Rule 87 of the Income-tax Rules, 1962. The assessee submitted that the contribution was necessitated to meet a severe deficit revealed by an actuarial valuation of the Superannuation Fund. For several preceding years, the assessee could not fully fund the required contribution due to a persistent procedural fund crunch. Consequently, the contribution in the financial year 2017-18 was an extraordinary ad hoc interim payment meant to cover both current and past year deficiencies, aligning the fund's assets with its real actuarial liabilities. The CIT(Appeals) and the ITAT correctly held that since these payments were ad hoc interim contributions made specifically to bridge the gap in actuarial valuation, they were neither ordinary annual contributions under Rule 87 nor initial contributions under Rule 88. The ITAT relied on the High Court decision in Exide Industries Ltd. (supra), which established that the statutory ceiling of Rule 87 does not apply to extraordinary contributions made to address actuarial deficits.

8. The revenue argued before this Court that the case of Exide Industries Ltd. (supra) is distinguishable because the assessee's practice of funding shortfalls was a regular, recurring method of operation over past years, rather than an exceptional one-time payment. This Court is unable to accept the revenue's contention. The legal nature of a contribution is defined by its purpose i.e., remedying an actuarial deficit and not by how many years the deficit takes to be fully addressed. A persistent deficit caused by past funding constraints cannot convert ad hoc gap-filling payments into ordinary annual contributions. To superimpose the Rule 87 ceiling on necessary, actuarially-backed funding of an approved fund would compromise the solvency of the fund and is contrary to the scheme of Section 36(1)(iv) of the Act. The ITAT committed no error in upholding the deletion of the disallowance. We answer substantial questions of law (1) and (2) in negative, i.e., against the appellant revenue and in favour of the respondent assessee. The deletion of the disallowance of Rs.208,86,57,648/- is hereby upheld.

9. Second, the ITAT's decision to uphold the deletion of the Rs.63,85,13,674/- disallowance related to the Gratuity Fund is legally sound and merits no interference. The primary contention of the revenue was that the contribution exceeded the 8.33% limit prescribed by Rule 103. However, a fundamental distinction must be made between ordinary annual contributions and payments made to bridge a gap in actuarial valuation. The assessee's contribution was specifically made to address a shortfall in actuarial valuation specifically to bridge the gap between actuarial liability and actual fund availability to ensure that the approved Gratuity Fund, which is maintained with the Life Insurance Corporation of India (LIC), remained capable of discharging its lawful obligations. As such, it does not fall under the restrictive definition of an ordinary annual contribution as contemplated by Rule 103.

10. Furthermore, Section 36(1)(v) of the Income Tax Act, which governs deductions for contributions to approved gratuity funds, does not per se impose the 8.33% restriction found in the Rules. Section 36(1)(v) allows deduction of any sum paid by the employer by way of contribution towards an approved gratuity fund created for the exclusive benefit of employees under an irrevocable trust, without imposing any 8.33% ceiling. As the assessee's Gratuity Fund remains an approved fund recognised by the Commissioner, the taxing authority must proceed on the basis that the fund satisfies all conditions for recognition unless that recognition is formally withdrawn. The ITAT correctly placed reliance on the High Court's precedent in ***Eastern Equipment & Sales Ltd.(supra)***, which supports the view that such contributions are fully allowable. As established in ***Eastern Equipment (supra)***, once the Commissioner accords approval, it is binding on the assessing authority and the AO is entirely devoid of power and jurisdiction to go behind the permission to find out whether the contribution is in conformity with the rules or in excess thereof. The AO simply cannot sit in judgment over the Commissioner's approval. Consequently, the revenue's contention that the excess was part of a regular practice does not assist its position, even assuming such a factual claim, the AO possesses no jurisdiction in assessment proceedings to disregard the approved status of the fund and to superimpose Rule 103 as a deduction-disallowance mechanism contrary to as held in ***Eastern Equipment (supra)***. Restricting the deduction to 8.33% when the statutory provision does not envisage such a cap especially for payments intended to maintain the solvency of the fund based on actuarial requirements would be contrary to the intent of the Act. Therefore, the ITAT correctly appreciated that the ceiling fixed under the rules does not apply to this specific type of contribution. We answer substantial question (3) in the negative, i.e., against the revenue and in favour of the assessee.

11. Regarding the overall validity of the ITAT order, herein being question no. 4, while the revenue disputes the findings on superannuation and gratuity, the order itself is not perverse or arbitrary in a legal sense. The ITAT reached its conclusions by placing reliance on jurisdictional high court precedents, such as ***Exide Industries (supra)*** and ***Eastern Equipment & Sales Ltd (supra)***.While the application of those precedents to the specific facts of the superannuation and gratuity issues may be contested, the ITAT's reliance on existing judicial interpretations ensures the order remains a reasoned legal document rather than an arbitrary one. We answer substantial question (4) in the negative, i.e., against the revenue and in favour of the assessee.

12. The findings of the Tribunal concerning the Gratuity Fund and the overall non-perversity of the order are upheld. Therefore, the appeal filed by the revenue against the impugned order dated November 18, 2024, passed by the Income Tax Appellate Tribunal relating to the Assessment Year 2018-2019 is devoid of any merits. Accordingly, we answer substantial questions (1), (2), (3) and (4) against the revenue and in favour of the assessee.

13. There shall be no order as to costs.

14. Urgent certified copy, if applied for, be supplied upon compliance with requisite formalities.

(RAJARSHI BHARADWAJ, J)

(UDAY KUMAR , J)

Kolkata
21.08.2026
PA(BS)