

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B" KOLKATA**

Before **Shri A.T.Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1208/Kol/2014 Assessment Year :2007-08

TIL Limited 1, Taratolla Road, Garden Reach, Kolkata-24 [PAN No.AABCT 0704 G]	V/s.	ACIT, Range-1, P-7, Choringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Saurabh Kedia, CA
प्रत्यर्थी की ओर से/By Respondent	Shri P.K. Mondal, ACIT-DR
सुनवाई की तारीख/Date of Hearing	31-01-2017
घोषणा की तारीख/Date of Pronouncement	08-02-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-I, Kolkata dated 28.02.2014. Assessment was framed by ACIT, Range-1, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.12.2009 for assessment year 2007-08.

Shri Saurabh Kedia, Ld. Authorized Representative appeared on behalf of assessee and Shri P.K.Mondal, Ld. Departmental Representative represented on behalf of Revenue.

2. Only issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance for ₹1,29,73,646/- on account of provision for leave encashment.

3. At the outset, it was observed that assessee has claimed expenses towards leave encashment for ₹ 1,29,73,646/- on accrual basis. Before us Ld. AR for the assessee submitted that the deduction on account of provision of leave encashment was claimed on the judgment of jurisdictional High Court in the case of *Exide Industries Ltd. vs. Union of India* (2007) 292 ITR 470 (Cal) and in this regard, Ld. AR frankly accepted that the judgment of Hon'ble jurisdictional High Court in the case of *Exide Industries Ltd.* (supra) has been stayed by the Hon'ble Apex Court vide order dated 08.05.2009 and the relevant extract is reproduced below:-

"Pending hearing and final disposal of the Civil Appeals, Department is restrained from recovering penalty and interest which has accrued till date. It is made clear that as far as the outstanding interest demand as of date is concerned, it would be open to the Department to recover that amount in case Civil Appeal of the Department is allowed.

We further make it clear that the assessee would, during the pendency of this Civil Appeal, pay tax as if section 43B(f) is on the Statue Book but at the same time it would be entitled to make a claim in its returns."

Further, Ld. AR for the assessee prayed that the matter can be restored back to the file of Assessing Officer for fresh adjudication in terms of decision of Hon'ble Apex Court. Ld. DR for the Revenue agreed to the submission of Ld. AR.

4. In view of the above proposition, we are inclined to restore the matter back to the file of AO with a direction to await for the decision of Hon'ble Apex

Court and decide accordingly. Hence, this ground of assessee is allowed for statistical purpose.

5. In the result, appeal filed by assessee stands allowed for statistical purpose.

Order pronounced in the open court 08/02/2017

Sd/-
(न्यायिक सदस्य)
(Aby.T.Varkey)
(Judicial Member)
Kolkata,

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

*Dkp, Sr.P.S

दिनांक:- 08/02/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-TIL Ltd., 1, Taratolla Road, Garden Reach, Kolkata-24
2. प्रत्यर्थी/Respondent-ACIT, Range-1, P-7, Chowringhee Square, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,
उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।