

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (D), KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]**

I.T.A. Nos.1341 & 1342/Kol/2018
Assessment Years: 2009-10 & 2011-12

M/s. S.R. Batliboi & Company LLP.....Appellant
*(A Limited Liability partnership with LLP
Identity No. AAB-4294) successor to M/s.
S.R. Batlibai & Company effective 1st April
2013,22, Camac Street,
Kolkata – 700 016.
[PAN: ACHFS 9180 N]*

ACIT, Circle 54.....Respondent
Kolkata.

I.T.A. No.1343/Kol/2018
Assessment Year: 2011-12

M/s. S.R. Batliboi & Associates LLP.....Appellant
*(A Limited Liability partnership with LLP
Identity No. AAB-4295) successor to M/s.
S.R. Batlibai & Company effective 1st April
2013,22, Camac Street,
Kolkata – 700 016.
[PAN: ACHFS 9118 A]*

DCIT, Circle 54 (currently Circle 22).....Respondent
Kolkata.

Appearances by:

*Shri Debabrata Ghosh, FCA appearing on behalf of the Assessee.
Shri Shankar Halder, Sr(DR), JCIT, appearing on behalf of the Revenue.*

Date of concluding the hearing : February 07, 2019

Date of pronouncing the order : February 15, 2019

ORDER

Per P.M. Jagtap, Vice President

These three appeals filed by the assessee are directed against three separate orders passed by the Ld. CIT(A) and since some common and interlinked issues are involved therein, the same have been heard together and are being disposed of by a single consolidated order.

2. First we take up the assessee's appeals being ITA No. 1342/Kol/2018 and 1343/Kol/2018 which are directed against the

orders of the Ld. CIT(A) – 6, Kolkata dated 28.03.2018 and 19.04.2018 respectively.

3. The solitary common issue involved in both these appeals relates to the disallowance made by the AO and confirmed by the Ld. CIT(A) on account of provision made by the assessee for leave encashment.

4. At the time of hearing, the learned representatives of both the sides have agreed that a similar issue was involved in the case of one of the assessees namely M/s. SRB & Associates LLP for A.Y. 2007-08 and vide its order passed in ITA No. 498/Kol/2015, the same was decided by the Tribunal as under:

“4. After hearing rival submissions and going through the facts and circumstances of the case and the order of the Tribunal cited supra, we find that the issue is dealt by the Coordinate bench of this Tribunal as under:

“3. At the outset, ld. senior counsel for the assessee submitted that in all these three appeals, the issue relates to allowability of provision for leave encashment in terms of sub-section (f) of section 43B of the Income Tax Act. The assessee had advanced its claim relying on the decision of the Hon’ble Kolkata High Court in the case of M/s. Exide Industries Ltd. reported in 292 ITR 470. However, the Assessing Officer did not accept the assessee’s claim observing that Department has preferred a Special Leave Petition before the Hon’ble Supreme Court and stay of the order of the Hon’ble Kolkata High Court was granted by the Hon’ble Apex Court. Ld. senior counsel submitted that under identical circumstances, Tribunal has restored the matter to the file of Assessing Officer to decide the issue in accordance with the decision of the Hon’ble Apex Court in the case of DCIT, Circle-8, Kolkata –vs.- M/s. Ernst & Young Pvt. Ltd. in ITA No. 1787/Kol./2008. He, therefore, submitted that the matter may be restored back to the file of Assessing Officer.

4. Learned Departmental Representative did not raise any objection.

5. We have considered the submissions of both the parties and have perused the records of the case. We find that Tribunal on identical issue in

ITA No. 1787/Kol./2008 in the case of M/s. Ernst & Young Pvt. Ltd. has observed at para 12 in page 6 as under :-

“12. Ground No. 5 of the revenue’s appeal is against the relief allowed by the CIT(A.) in respect of provision for leave encashment which was deleted by the CIT(A.) following the decision of the Hon’ble jurisdictional High Court in the case of M/s. Exide Industries Ltd. (supra). It was pointed out by the Id. DR that the Hon’ble Apex Court in”SLP (Civil) 22889 of 2008 has stayed the operation of the decision of the Hon’ble jurisdictional High Court. In view of the above, we set aside the orders of the authorities below on this point and restore the matter back to the file of the AO with the direction that he will readjudicate this issue as per decision of the Hon’ble Apex Court in the case of M/s. Exide Industries Ltd. (supra)”.

Respectfully following the same we set aside the orders of authorities below on this point and restore the matter back to the file of Assessing Officer for adjudication as per the decision of the Hon’ble Apex Court in the case of M/s. Exide Industries Ltd.(supra).

In view of the above and respectfully following the same, we set aside the orders of the authorities below and restore the matter back to the file of Assessing Officer for adjudication as per the decision of Hon’ble Apex Court in the case of M/s. Exide Industries Ltd. (Supra). This ground of appeal of assessee is allowed for statistical purposes.”

5. As the issue involved in the present appeals as well as all the material facts relevant thereto are similar to the case of M/s. SRB & Associates LLP, we respectfully follow the order of the Tribunal passed in the said case and restore the matter to the file of the AO for fresh adjudication as per the same direction as given in the case of M/s. SRB & Associates LLP. Both these appeals of the assessee are accordingly treated as allowed for statistical purpose.

6. Now we shall take up the appeal of the assessee being ITA No. 1341/Kol/2018 which is directed against the order of the Ld. CIT(A) – 6, Kolkata dated 27.03.2018. The grounds raised by the assessee in this appeal read as under:

“1. The learned Commissioner of Income Tax (Appeals) – 6 [‘CIT(A)’ for short] has erred on facts and in law in upholding the addition of a sum of Rs. 88,27,020/- being the provision made for leave encashment in earlier assessment years which was reversed and credited to P & L A/c in the current assessment year even though the provision when made in earlier years was not allowed as a deduction and as a result the same amount has been taxed twice.

2. While directing the assessing officer to allow further credit of FTC as claimed in the additional ground, the learned CIT(A) has erred on facts and in law in mentioning the figure is Rs. 26,581/- instead of the correct amount of Rs. 2,88,095/- claimed.”

7. As agreed by the learned representatives of both the sides, a similar issue as raised in ground no 1 of this appeal was involved in the case of M/s. SRB & Associates LLP and the Tribunal vide its order dated January 2, 2017 passed in ITA No. 596/Kol/2018 decided the same vide paragraph no 3 as under:

“As regards the appeal of the assessee for A.Y. 2014-15, it is observed that the solitary issue involved therein relating to the addition of Rs. 10,49,870/- made by the Assessing Officer and confirmed by the ld. CIT(A) on protective basis on account of provision made in A.Y. 2013-14 for leave encashment and reversed during A.Y. 2014-15 is consequential to the issue involved in the appeal of the assessee for A.Y. 2013-14, inasmuch as, if the assessee finally gets a deduction on account of provision for leave encashment made in A.Y. 2013-14, the said provision to the extent reversed during A.Y. 2014-15 will be liable to the taxed in A.Y. 2014-15 and vice-versa. Since the issue involved in the assessee’s case for A.Y. 2013-14 relating to deduction on account of provision for leave encashment has been restored by us to the file of the Assessing Officer, we also restore the issue involved in A.Y. 2014-15 relating to the addition made on account of reversal of provision for leave encashment on protective basis to the file of the Assessing Officer for deciding the same afresh depending on the final outcome of the issue relating to the deduction on account of provision for leave encashment as involved in A.Y. 2013-14. The appeal of the assessee for A.Y. 2014-15 is accordingly treated as allowed for statistical purposes.”

8. As the issue involved in the present case as well as all the material facts relevant therein are similar to the case of M/s. SRB & Associates LLP for A.Y. 2014-15, we respectfully follow the order of the Tribunal passed in the said case and restore the issue to the file of the AO for deciding the same afresh depending on the final outcome of the issue relating to deduction on account of provision for leave encashment as involved in A.Y. 2008-09. Ground No. 1 of the appeal of the assessee is accordingly treated as allowed for statistical purpose.

9. As regards the issue involved in Ground No. 2, the limited relief sought by the learned counsel for the assessee is that there being a mistake on the part of the Ld. CIT(A) in mentioning the correct amount, the AO may be directed to verify the correct amount and allow credit to the assessee accordingly. We accordingly direct the Assessing Officer to verify the correct amount from the relevant record and allow credit to the assessee accordingly. Ground No. 2 of the assessee's appeal is treated as allowed for statistical purpose.

10. In the result, all the three appeals of the assessee are treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 15th February, 2019.

Sd/-
(A. T. Varkey)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 15/02/2019
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. S.R. Batliboi & Co. LLP / S.R. Batliboi & Associates LLP., Kolkata.
2. ACIT, Circle 54 / DCIT, Circle – 54 (currently circle – 22), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata