

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

BEFORE SHRI S.S.GODARA, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA Nos.167 & 168/Kol/2019

(निर्धारणवर्ष / Assessment Years: 2014-15 & 2015-16)

M/s S.R.B.C. & Co. LLP (a Limited Liability Partnership with LLP Identity no. AAB-4318) 22, Camac Street, 3rd Floor, Block-B, Kolkata	Vs.	DCIT, Circle-22, Kolkata.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACHFS 9117 R		
(Appellant)	..	(Respondent)

Appellant by : Shri Debabrata Ghosh, Advocate

Respondent by : Smt. Ranu Biswas, Addl. CIT

सुनवाईकीतारीख/ Date of Hearing : 31/10/2019

घोषणाकीतारीख/Date of Pronouncement : 13 /11/2019

आदेश / O R D E R

Per Bench:

The captioned two appeals filed by the assessee , pertaining to assessment years 2014-15 & 2015-16 respectively, are directed against the separate orders passed by the Commissioner of Income Tax (Appeal)-6, Kolkata in appeal no. CIT(A)-6/Kol/10180/2016-17 and Appeal no. CIT(A)-6/KOI/10163/2017-18, which in turn arise out of separate assessment orders passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act').

2. Since these appeals filed by the assessee for different assessment years, common and identical issues are involved therefore, these have been clubbed and

heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. The assessee's appeal in ITA No. 167/Kol/2018 for A.Y. 2014-15 is taken as lead case. The grounds of appeal raised by the assessee are as follows:

1. The learned Commissioner of Income Tax (Appeals)-6 [CIT(A) for Short] has erred on facts and in law in upholding the disallowance of a sum of Rs. 31,69,373/- being the provision made for leave encashment in the current assessment year on the basis of actuarial valuation.

2. The order of the learned CIT(A) to the extent indicated above is contrary to the facts, law and the principles of natural justice.

3. The appellant craves leave to add, alter, amend and/or modify any of the grounds of appeal at or before the hearing of the appeal.

4. At the outset itself, the Ld. Counsel brought to our notice that the similar issue had come up before this Tribunal in M/s. S. R. Batliboi & Co. vs. DCIT, ITA No. 1598/Kol/2011 for AY 2007-08 wherein the Tribunal vide para 4 has held 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.

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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 ld. 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. In view of the aforesaid decision of the coordinate bench on a similar issue, we set aside the order of the Ld. CIT(A) and restore the matter back to the file of the AO for adjudication and Assessing Officer to await the final outcome of the Hon’ble Apex Court in SLP (Civil) 22889 of 2008 in M/s. Exide Industries Ltd. case and decide this issue as per the decision of Hon’ble Apex court in M/s. Exide Industries Ltd., supra. Thus, this ground of appeal of assessee is allowed for statistical purposes.

6. In the result, both the appeals of assessee are allowed for statistical purposes.

Order pronounced in the Court on 13.11.2019

Sd/-
(S.S.GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 13 /11/2019

(SB, Sr.PS)

Copy of the order forwarded to:

1. M/s S.R.B C & Co. LLP
2. DCIT, Circle-22, Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches