

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

BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.170/Kol/2019

(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s S.R. Batliboi & Co. LLP (a Limited Liability Partnership with LLP Identity no. AAB-4294) 22, Camac Street, 3rd Floor, Block-B, Kolkata	Vs.	DCIT, Circle-22, Kolkata.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACHFS 9180 N		
(Appellant)	..	(Respondent)

Appellant by : None

Respondent by : Shri Supriyo Pal, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 16/12/2019

घोषणाकीतारीख/Date of Pronouncement : 31/12/2019

आदेश / O R D E R

Per Dr. A.L. Saini, AM:

The captioned appeal filed by the assessee , pertaining to assessment year 2015-16, is directed against the order passed by the Commissioner of Income Tax (Appeal)-6, Kolkata, which in turn arise out of assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 22/12/2017.

2. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasion and Ld. Departmental Representative(DR), was present for the appellant Revenue. In the absence of any appearance by the assessee, the appeal is being disposed of *ex parte qua* the

assessee, after hearing Ld. DR for the Revenue on merits in terms of Rule 24 of the Income Tax Appellate, Tribunal, Rules, 1963.

3. At the outset itself, we note that the issue under consideration is covered by the judgment of the Co-ordinate Bench in the case of S. R. Batliboi & Associate Co. in 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. 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."

4. We have heard the Id. D.R for the revenue and perused the materials available on record. We note that 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 AO 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.

5. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the Court on 31.12.2019

Sd/-
(A.T.VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

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

कोलकाता /Kolkata;

दिनांक/ Date: 31/12/2019

(SB, Sr.PS)

Copy of the order forwarded to:

1. M/s S.R. Batliboi & Associates 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

