

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "SMC", HYDERABAD**
(Through Virtual Hearing)

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

	ITA No.471/Hyd/2021		
	Assesment Year : 2018-19		
M/s. Trinity Cleantech Pvt. Ltd., Hyderabad. PAN: AAECT3792K	Vs.	Asst. Commissioner of Income Tax, Central Circle-3(2), Hyderabad.	
(Appellant)		(Respondent)	
	Assessee by	Sri P.Murali Mohan Rao, C.A.	
	Revenue by	Ms. P. Sumitha, DR	
	Date of hearing:	14/12/2021	
	Date of pronouncement:	03/02/2022	

ORDER

PER A. MOHAN ALANKAMONY, A.M:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-11, Hyderabad in appeal No.10217/2019-20, dated 21.09.2021 passed U/s. 143(3) r.w.s. 250(6) of the Act for the A.Y. 2018-19.

2. The assessee has raised 22 grounds in its appeal however Ground No.10 and its related grounds are not pressed by the Ld.AR at the time of hearing. Further though several other grounds are raised by the assessee, the crux of the issue is that the Ld.CIT(A) erred in upholding the order of the Ld.AO who had

made addition by disallowing the provision made for leave encashment as deduction, invoking the provisions of the section 43B of the Act.

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of manufacture of electric transformers filed its return of income on 27.10.2018 declaring loss of Rs.11,53,488/-. Thereafter the return was taken up for scrutiny and order was passed u/s.143(3) of the Act 28.12.2019 wherein the Ld.AO disallowed the claim of deduction towards provision made for leave encashment of Rs.1,48,134/- because the amount was not paid to the employee during the relevant assessment year. On appeal, the Ld.CIT(A) confirmed the order of Ld.AO as the claim of the assessee was in violation of section 43B of the Act.

4. AT the outset, the Ld.AR pointed out that the issue is covered in favour of the assessee by the decision of the Hon'ble Apex Court in the case Bharat Earth Movers Ltd. Vs. CIT reported in 245 ITR 428 (SC). The Ld. DR could not controvert to the submission of Ld.AR.

5. After hearing both the sides, I find merit in the argument of the Ld.AR. The Hon'ble Apex Court's decision cited herein above held the question framed "Whether, on the facts and in the circumstances of the case, the provision for meeting the liability

of encashment of earned leave by the employee is an admissible deduction ?” in favour of the assessee and against the revenue by observing as follows :

“ 6. So is the view taken in Calcutta Co. Ltd. Vs. Commissioner of Income-Tax, West Bengal (1959) 37 ITR 1 wherein this court has held that the liability on the assessee having been imported, the liability would be an accrued liability and would not convert into a conditional one merely because the liability was to be discharged at a future date. There may be some difficulty in the estimation thereof but that would not convert the accrued liability into a conditional one; it was always open to the tax authorities concerned to arrive at a proper estimate of the liability having regard to all the circumstances of the case.

Applying the above-said settled principles to the facts of the case at hand we are satisfied that provision made by the appellant company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by employees of the company, inclusive of the officers and the staff, subject to the ceiling on accumulation as applicable on the relevant date, is entitled to deduction out of the gross receipts for the accounting year during which the provision is made for the liability. The liability is not a contingent liability. The High Court was not right in taking the view to the contrary.”

Hence, I hereby remit the matter back to the file of Ld.AO with direction to adhere to the ratio laid down by Hon’ble Apex Court and pass appropriate order in accordance with the law and merit.

6. In the result appeal of the assessee is allowed for statistical purposes as indicated above.

Pronounced in the open Court on the 03rd Feb., 2022.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 03.02.2022.

* Reddy gp

Copy to:-

- 1) M/s. Trinity Cleantech Pvt. Ltd., C/o P. Murali & Co., 6-3-655/2/3, Somajiguda, Hyderabad-500 082
- 2) Asst. Commissioner of Income Tax, Central Circle-3(2), Hyderabad.
- 3) The CIT (A)-11, Hyderabad.
- 4) The Pr. CIT (Central), Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File