



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.103/CTK/2022

Assessment Year : 2011-12

Paradeep Phosphates Ltd., 5 th floor, Bayan Bhawan, J.N.Road, Kharvel Nagar, Bhubaneswar.	Vs.	Dy. CIT, Corporate Circle 1(2),Bhubaneswar.
PAN/GIR No.AABCP 3276 D		
(Appellant)	..	(Respondent)

ITA No.104/CTK/2022

Assessment Year : 2015-16

Paradeep Phosphates Ltd., 5 th floor, Bayan Bhawan, J.N.Road, Kharvel Nagar, Bhubaneswar.	Vs.	Pr. CIT, Bhubaneswar.
PAN/GIR No.AABCP 3276 D		
(Appellant)	..	(Respondent)

Assessee by : S/Shri B.K.Mohapatra/A.K.Sabat, CAs
Revenue by : Shri M.K.Gautam, CIT DR

Date of Hearing : 12 /01/2023

Date of Pronouncement : 12/01/2023

ORDER

Per Bench

ITA No.103/CTK/2021: AY- 2011-12

This is an appeal filed by the assessee against the order of the Id
CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 22.12.2021

in Appeal No. ITBA/NFAC/S/250/2021-22/1038018437(1) for the assessment year 2011-12.

2. S/Shri B.K.Mohapatra/A.K.Sabat, ARs appeared for the assessee and Shri M.K.Gautam, Id CIT DR appeared for the revenue.

3. It was submitted by Id AR that the only issue in assessee's appeal was against the action of the Id CIT(A) in upholding the action of the Assessing Officer in making the addition of the provisions for leave encashment u/s.43B(f) of the Act without allowing actual expenditure.

4. It was fairly agreed by both the sides that the issue was squarely covered by the decision of the Hon'ble Supreme Court in the case of UOI Vs. **Exide Industries** Ltd. 425 ITR 1 (SC), wherein, it has been held that the leave encashment is liable to be allowed on actual payment.

5. We have considered the rival submissions. As it is noticed that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Exide Industries Ltd (supra), the Assessing Officer is directed to grant the assessee the benefit of deduction of leave encashment on actual payment.

6. The assessee has also raised other grounds, which have not been argued, therefore, they are not being considered.

7. In the result, appeal of the assessee is partly allowed.

ITA No.104/CTK/2022: AY: 2015-16

8. This is an appeal filed by the assessee against the order of the Id Pr. CIT-1, Bhubaneswar dated 19.3.2020 in Appeal No. ITBA/COM/F/17/2019-20/1026766936(1) for the assessment year 2015-16.

9. It was submitted by Id AR that the only issue in the appeal was against the action of the Pr. CIT-1, Bhubaneswar in directing the Assessing Officer to bring to tax the provisions for leave encashment u/s.43B(f) of the Act. It was the submission that the pr. CIT has not given direction to allow the same on actual payments. It was the prayer that in view of the decision of the Hon'ble Supreme Court in the case of Exide Industries Ltd., (supra), the order of the Pr. CIT may be modified to direct the AO to consider the allowance on actual payment.

10. In reply, Id CIT DR submitted that admittedly, in view of the decision of the Hon'ble Supreme Court in the case of Exide Industries Ltd (supra), the leave encashment is liable to be allowed on actual payment. Further, it was the submission that the Tribunal could not modify the order of the Pr. CIT on issues, where show cause notice has not been issued.

11. We have considered the rival submissions. Admittedly, in the interest of justice, when the issue of leave encashment is to be considered, the allowability of the same on actual payment basis is also to be considered in view of the decision of the Hon'ble Supreme Court in the case

of Exide Industries Ltd (supra). Consequently, the Assessing Officer while giving effect to the order of the Pr. CIT, passed under section 263 of the Act, shall consider the allowability on actual payment basis.

12. In the result, appeal of the assessee is partly allowed.

Order dictated and pronounced in the open court on 12/01/2023.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 12/01/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Paradeep Phosphates Ltd.,
5th floor, Bayan Bhawan, J.N.Road, Kharvel
Nagar, Bhubaneswar
2. The Respondent: Dy. CIT, Corporate Circle
1(2),Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack