

आयकर अपीलीय अधिकरण
कोलकाता 'डी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष (कोलकाता क्षेत्र)
एवं

श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष

Before

**SHRI DUVVURU RL REDDY, VICE PRESIDENT (KZ)
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 53/KOL/2025
Assessment Year: 2017-18**

Universal Cables Limited <i>(Appellant)</i>	Vs.	A.C.I.T., Circle-6(1), Kolkata <i>(Respondent)</i>
PAN: AAACU3547P		

Appearances:

Assessee represented by : Akkal Dudhewala, FCA.

Department represented by : Sailen Samadder, Sr. D.R.

Date of concluding the hearing : 09-Apr-2025

Date of pronouncing the order : 12-June-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the ADDL/JCIT(A)- Prayagraj [hereinafter referred to as Ld. 'Addl/JCIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2017-18 dated 14.11.2024, which has been passed against the assessment order u/s 143(3) of the Act, dated 10.12.2019.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. (a) For that on the facts and in the circumstances of the case and in law, the Ld. Addl/Jt. CIT(A) grossly erred in denying the alternate claim for deduction of leave encashment on actual payment basis.

(b) For that on the facts and in the circumstances of the case and in law, the Ld. Addl/Jt. CIT(A) failed to appreciate that the provision for leave encashment which was claimed on accrual basis had been disallowed in earlier year/s and therefore the appellant was legally entitled to alternatively claim deduction for the leave encashment of Rs.44,51,267/- actually paid during the year in terms of Section 43B(f) of the Act.

2. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.”

3. Brief facts of the case are that the assessee is a domestic company and the return of income showing total income as 'NIL' was filed, which was selected for scrutiny and after considering the submission of the assessee, the assessment was made at the total income of ₹ 1,25,620/- vide order u/s 143(3) of the Act dated 10.12.2019. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who partly allowed the appeal vide order dated 14.11.2024. Aggrieved with the order of the Ld. CIT(A) the assessee has filed the appeal before this Tribunal.

4. Rival contentions were heard and the submissions made, paper book filed and the case laws relied upon have been examined. The only ground of appeal is regarding the addition of ₹ 44,51,267/- on account of leave encashment which was actually paid during the year and had been disallowed in the earlier years. The Assessing Officer (hereinafter referred to as Ld. 'AO') disallowed the same. Before the Ld. CIT(A), the

assessee raised this issue as an additional ground and submitted in this regard as under:

“4.1 follows: The additional grounds submitted during the appellate proceedings are as

The Appellant is making this legal claim pursuant to the judgment of the Hon'ble Supreme Court arising out of the decision in the case of Union of India vs M/s Exide Industries Ltd. reported in [2020] 425 ITR 1 (SC) wherein it has been held that the provision for leave encashment is allowable on payment basis only u/s 43B(f) of the IT Act, 1961.

The Appellant by this additional ground is claiming relief u/s 43B(f) of Rs. 44,51,267/- being the payment of leave encashment as the same was claimed but offered for tax in the year of provision during AY 2002-03 & 2004-05 and not to be claimed in the AY 2003-04 in view of the Supreme Court decision (supra).

The above additional grounds being legal grounds may kindly be admitted and adjudicated in view of the Supreme Court decision in the case of NTPC v CIT (1998) 229 ITR 383 (S.C), Jute Corporation of India Ltd. v. CIT (1991) 187 ITR 688 (SC). The powers of the appellate authority being co-terminus with that of the Assessing Officer, the claim of the Appellant may kindly be admitted and adjudicated.”

4.1. The Ld. CIT(A) has discussed the issue and in view of the decision of the Hon'ble Supreme Court in the case of **Goetze (India) Ltd. vs. Commissioner of Income-tax [2006] 157 Taxman 1 (SC)/[2006] 284 ITR 323 (SC)/[2006] 204 CTR 182 (SC)[24-03-2006]** and after considering the provision of section 119(2) of the Act, did not entertain the claim during the appellate proceedings and dismissed the additional ground of appeal. Before us it was submitted that the grounds of appeal raised by the assessee relate to the Ld. CIT(A)'s action of denying the assessee's claim for deduction of ₹ 44,51,267/- u/s 43B of the Act, being the amount of leave encashment debited and disallowed in the earlier years, which was actually paid during the year and was allowable u/s 43B of the Act. During the year under consideration, the assessee



company had paid leave encashment of ₹ 44,51,267/- pertaining to AYs 2002-03, 2003-04 & 2004-05 in the relevant FY 2016-17 relevant to A.Y. 2017-18. These payments of leave encashment pertained to the provision of leave encashment debited in the profit and loss account for earlier AYs 2002-03, 2003-04 & 2004-05 which was disallowed u/s 43B(f) of the Act in the returns of income for the respective assessment years but the same was claimed to be allowable on accrual basis before the appellate forums in view of the decision of Hon'ble jurisdictional Calcutta High Court in the case of **Exide Industries vs. Union of India (164 taxman 9)** dated 27.06.2007, wherein it was held that the provisions of Section 43B(f) of the Act was ultra vires and that the leave encashment was allowable on accrual basis. The said judgment of the Hon'ble Calcutta High Court had been stayed by the Hon'ble Supreme Court and therefore, the appellate authorities in AYs 2002-03, 2003-04 & 2004-05 had primarily directed the Ld. AO to allow/disallow the deduction claimed for provision of leave encashment depending upon the outcome of the pending appeal in the Hon'ble Supreme Court. However, as the assessee itself had raised the claim for allowability of the provisions for leave encashment in earlier years in appeal, therefore in order to maintain parity and avoid any double claim/s, the assessee did not claim the deduction for such provisions for leave encashment of ₹ 44,51,267/- pertaining to earlier AYs 2002-03, 2003-04 & 2004-05, but claimed the same during the year u/s 43B of the Act upon being actually paid in the return of income filed for AY 2017-18 on 30.10.2017. The assessee in this regard has relied upon the following decisions:

- i) **CIT Vs Britannia Industries Ltd (83 taxman.com 365) [Calcutta HC] affirming the decision of the Hon'ble ITAT, Kolkata in the case of Britannia Industries Ltd Vs DCIT in ITA No. 1410/Kol/2011,**
- ii) **PCIT Vs Shantinath Detergents (P.) Ltd. (151 taxaman.com 68) [Cal HC],**
- iii) **Universal Cables Ltd. Vs DCIT (ITA No. 1766/Kol/2016) [ITAT Kol] and**
- iv) **Birla Corporation Limited Vs DCIT (ITA No. 494 & 495/Kol/2020) [ITAT Kol].**

4.2. Further, it is submitted that in the case of **Goetze (India) Ltd.** (supra), it has been held that the power to admit the additional claim otherwise by way of a revised return is limited before the Ld. AO but not before the Ld. Appellate Authority. In this regard the assessee has submitted as under:

*“Following the above decision, the Hon'ble jurisdictional Calcutta High Court in the case of **PCIT vs. Shantinath Detergents (P.) Ltd (151 taxmann.com 68)** wherein the Hon'ble Court has held that the Hon'ble ITAT, being an appellate authority can admit additional grounds in relation to taxability of a sum already offered to tax in the return of income. Similar view has been expressed by the Delhi High Court in the case of **CIT vs. Jai Parabolic Springs Limited (306 ITR 42)** and Hon'ble Bombay High Court in the case of **CIT vs. Pruthvi Brokers & Shareholders Private Limited (252 CTR 151).**”*

5. We have considered the submission made. Since the leave encashment liability of ₹ 44,51,267/- was paid to the employees during the relevant AY 2017-18 which though pertained to the leave encashment provided for in the earlier AYs 2002-03, 2003-04 & 2004-05 but had been disallowed and taxes thereon have been paid by the assessee by filing the application under the Direct Tax Vivas se Vishwas



Scheme, 2024, for AYs 2002-03, 2003-04 & 2004-05, therefore, the impugned payment of ₹ 44,51,267/- is allowable in the relevant AY 2017-18 on the payment basis in terms of Section 43B(f) of the Act and the Ld. AO is directed to allow the same after the assessee files the evidence for payment of the same. The limitation as regards filing of the revised return to entertain the claim is for the Assessing Authority and not for the Appellate Authority as has been held in the case of **Goetze (India) Ltd.** (supra) which has also been reiterated by the Hon'ble Delhi High Court in the case of **Jai Parabolic Springs Limited** (supra). Hence, the Ground Nos. 1(a) and 1(b) of the appeal are allowed. Ground No. 2 is general in nature and does not require any separate adjudication.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 12th June, 2025.

Sd/-

[Duvvuru RL Reddy]

Vice President (KZ)

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 12.06.2025

Bidhan (P.S.)



Copy of the order forwarded to:

- 1. Universal Cables Limited, 9/1, Birla Building, Kolkata, West Bengal, 700001.**
- 2. A.C.I.T., Circle-6(1), Kolkata.**
3. ADDL/JCIT(A)-Prayagraj.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata