

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1685/Chny/2018

निर्धारण वर्ष /Assessment Year : 2014-15

The Deputy Commissioner of
Income Tax,
Corporate Circle 3(1),
Chennai - 600 034.

v. M/s Tamil Nadu Civil Supplies
Corporation Limited,
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

PAN : AABCT 0551 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Smt. C. Vatsala, CIT

प्रत्यर्थी की ओर से/Respondent by : Shri Y. Sridhar, CA &
Shri P. Selvamoorthy, CA

सुनवाई की तारीख/Date of Hearing : 09.01.2019

घोषणा की तारीख/Date of Pronouncement : 04.02.2019

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -11, Chennai, dated 23.02.2018 and pertains to assessment year 2014-15.

2. Smt. C. Vatsala, the Ld. Departmental Representative, submitted that the only issue arises for consideration is provision

made by the assessee for payment of leave salary. According to the Ld. D.R., as per the audit report filed under Section 44AB of the Income-tax Act, 1961 (in short 'the Act'), the assessee made a provision to the extent of ₹35,46,29,470/- for leave encashment as on 31.03.2014. According to the Ld. D.R., the assessee claims that only an amount of ₹16,64,72,150/- was paid during the year under consideration. The balance amount of ₹18,81,57,320/- was payable as on 31.03.2014. Therefore, according to the Ld. D.R., it is only a mere provision. According to the Ld. D.R., the provisions of Section 43B(f) of the Act, even though struck down by the Calcutta High Court, the same was stayed by the Apex Court. Therefore, according to the Ld. D.R., the Calcutta High Court's judgment is not in operation, hence the provisions of Section 43B(f) of the Act has to be followed. Placing reliance on the order of this Tribunal in ACIT v. Wardex Pharmaceuticals Ltd. in I.T.A. Nos.2146 & 2147/Mds/2014 dated 11.09.2015, the Ld. D.R. submitted that on identical situation, this Tribunal found that the provision for leave encashment cannot be allowed. A similar view was taken by the Kerala High Court in South Indian Bank Limited (45 Taxmann.com 428). According to the Ld. D.R., this is the only judgment available after the Apex Court stayed the judgment of Calcutta High Court in Exide Industries

Limited. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

3. On the contrary, Shri Y. Sridhar, the Ld. representative for the assessee, submitted that the assessee received subsidy for payment of leave encashment from the State Government. Therefore, according to the Ld. representative, taxing the leave encashment would amount to indirectly taxing the State Government, hence, there cannot be any levy of tax in respect of leave encashment. Moreover, according to the Ld. representative, another Division Bench of this Tribunal in ACIT v. Tamil Nadu Warehousing Corporation in I.T.A. No.924/Mds/2011 vide order dated 22.07.2011, allowed similar claim of the assessee. Therefore, according to the Ld. representative, the CIT(Appeals) has rightly allowed the claim of the assessee.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, Section 43B(f) of the Act was introduced by Finance Act, 2001 with effect from 01.04.2002. In view of Section 43B(f) of the Act, a provision for leave encashment cannot be allowed. While examining the constitution of validity of provisions of Section 43B(f)

of the Act, the Calcutta High Court in Exide Industries Limited (292 ITR 470), found that Section 43B(f) is unconstitutional and accordingly it was struck down. On appeal by the Revenue before the Apex Court, the Apex Court stayed the operation of judgment of Calcutta High Court. In view of the above, the judgment of Calcutta High Court is not in operation. In other words, the provisions of Section 43B(f) of the Act continues to be in statute book.

5. The Kerala High Court in South Indian Bank Limited (supra) examined the issue after the stay granted by the Apex Court, and found that the provisions of Section 43B(f) would be applicable. The Division Bench of this Tribunal has also examined this issue in Wardex Pharmaceuticals Ltd. (supra) and found that the provisions of Section 43B(f) of the Act has to be applied, therefore, the provision for leave encashment cannot be allowed. Whereas, another Division Bench of this Tribunal in Tamil Nadu Warehousing Corporation (supra) has found that provision for leave encashment has to be allowed. However, the provisions of Section 43B(f) of the Act was not brought to the notice of the Division Bench. Therefore, the earlier Bench had no occasion to consider the same. In view of the above, the order of the Division Bench of this Tribunal in Tamil

Nadu Warehousing Corporation (supra) may not be applicable to the facts of the case. Since the provision for leave encashment cannot be allowed in view of Section 43B(f) of the Act, this Tribunal is unable to uphold the order of the CIT(Appeals). Accordingly, order of the CIT(Appeals) is set aside and that of the Assessing Officer is restored.

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

Order pronounced in the court on 4th February, 2019 at Chennai.

sd/- (इंटूरी रामा राव) (Inturi Rama Rao) लेखा सदस्य/Accountant Member	sd/- (एन.आर.एस. गणेशन) (N.R.S. Ganesan) न्यायिक सदस्य/Judicial Member
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चेन्नई/Chennai,
दिनांक/Dated, the 4th February, 2019.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-11, Chennai
4. Principal CIT, Chennai-3, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.