

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member  
AND  
Shri S.Rifaur Rahman, Accountant Member**

**ITA No.732/Hyd/2018**  
(Assessment Year: 2014-15)

M/s. Vansun Erectors Private Limited, Secunderabad PAN: AABCV0428R (Appellant)	Vs	Income Tax Officer Ward 17(3) Hyderabad (Respondent)
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For Assessee :	Shri K.C. Devdas
For Revenue :	Shri Phani Raju, DR

Date of Hearing:	07.02.2019
Date of Pronouncement:	15.02.2019

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

This is assessee's appeal for the A.Y 2014-15 against the order of the CIT (A)-5, Hyderabad, dated 12.03.2018.

2. The assessee company filed its return of income for the A.Y 2014-15 on 30.11.2014 declaring income of Rs.21,76,780/-. During the scrutiny proceedings u/s 143(3) of the Act, from the balance sheet of the assessee company the AO observed that the service tax payable is shown at Rs.72,73,422/- and that it was not routed through the P&L A/c but it is shown as a liability in the balance sheet. The AO was of the opinion that since the service tax has not been paid, it is to be disallowed u/s 43B of the

Act. When the assessee was asked to show cause as to why the disallowance should not be made, the assessee submitted that the service tax has not been routed through the P&L A/c and not debited as expenditure hence it should not be disallowed u/s 43B of the Act. The AO however, was not convinced with the assessee's contentions and taking into consideration of the judgment of the Hon'ble Kolkata High Court in the case of CIT vs. Associated Pigments Ltd (71 Taxmann 244) held that the said amount is to be disallowed. Accordingly, he disallowed the said amount and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us.

3. The learned Counsel for the assessee submitted that the service tax has been collected by the assessee as an agent on behalf of the Govt. and therefore, it was excluded from the method of accounting and was treated as a liability in the balance sheet. He submitted that this is a widely accepted accounting standard and the method is being consistently followed by the assessee company and that it is also an accepted the method of accounting under the I.T. Act. He submitted that this issue is covered in favour of the assessee by the following decisions”

- i) *Hon'ble Delhi High Court in the case of CIT vs. Noble and Hewitt (I) Pvt. Ltd reported in (2008) 305 ITR 0324*
- ii) *Hon'ble Bombay High Court in the case of Pr.CIT-II Mumbai vs. Tops Security Ltd, reported in (2018) 258 Taxmann 161/97 taxmann.com 525 (Bombay).*
- iii) *ITAT Hyderabad Bench in the case of Envison Enterprise Solutions (P) Ltd vs. ITO in ITA No.315/Hyd/2016, dated 12<sup>th</sup> August, 2016.*

4. Thus, according to him, since the assessee has not claimed service tax as an expenditure, the same cannot be disallowed u/s 43B of the Act.

5. The learned DR, on the other hand, supported the orders of the authorities below and placed reliance upon the decision of the Coordinate Bench of the Tribunal at Bangalore in the case of M/s. Jain Christopher, Srikanth & Srikanth, C.As vs. DCIT, Circle 5(1) Bangalore in ITA No.855/Bang/2012 dated 12.04.2013.

6. Having regard to the rival contentions and the material on record, we find that the issue as to whether the service tax could be disallowed u/s 43B of the Act when the assessee has not received the same, came up for consideration before the Hon'ble Bombay High Court in the case of Pr.CIT-II Mumbai vs. Tops Security Ltd (Cited Supra) and the Hon'ble High Court at Para 10 of its order has held as under:

*“10. With the assistance of both sides, we have perused this judgment and we find that it dealt with an identical issue. This Court held that Section 43B does not contemplate liability to pay service tax before actual receipt of the funds in the account of the assessee. Hence the liability to pay service tax into the Treasury will arise only upon the assessee receiving the funds and not otherwise. Thus the consideration has to be actually received and thereupon the liability will arise”.*

7. Further, in the case of VIT vs. Noble and Hewitt (I) P Ltd (Supra), the Hon'ble Delhi High Court, after considering the

decision of the Kolkata High Court in the case of Chowringhee Sales Bureau vs. CIT (87 ITR 542 (S.C) held as under:

*“5. Learned Counsel for the revenue urges that the decision of the Calcutta High court in Chowringhee Sales Bureau (P.) Ltd. 's case (supra) covers the point in its favor. We are unable to agree. In that case it was held that the liability to pay sales tax arose the moment a sale or purchase was effected and if an assessee was maintaining accounts on the mercantile system it would be entitled to deduction of the estimated liability of sales tax, even though such sales tax had not been paid to the sales tax authorities. The question there concerned was the entitlement of the assessee to deduction under Sections 10(1) and 10(2)(xv) of the Indian Income Tax Act, 1922. The decision is clearly distinguishable in its application to the present case. Here we are concerned with an assessee who has not even claimed any deduction on the ground of service tax and has not debited the amount to its Profit & Loss Account. Moreover the provisions of Section 43B of the Act are quite clear in this regard. The decision of the Calcutta High Court in Chowringhee Sales Bureau (P) Ltd. s case (supra) was not in the context of the applicability of Section 43B of the Act.*

*6. In our opinion since the assessee did not debit the amount to the Profit & Loss Account as an expenditure nor did the assessee claim any deduction in respect of the amount and considering that the assessee is following the mercantile system of accounting, the question of disallowing the deduction not claimed would not arise”.*

8. We find that the Coordinate Bench of the Tribunal in the case of M/s. Jain Christopher, Srikanth & Srikanth, C.As (Supra) observed that though the service tax was collected, it was not paid and was shown as outstanding liability and in these circumstances, the Coordinate Bench held that it has to be disallowed u/s 43B of the Act. In the case before us, the assessee has not routed the service tax through the P&L A/c and has not claimed it as a deduction. Therefore, the decision of the Hon'ble Delhi High Court in the case of Noble & Hewitt (Cited Supra) would apply. Therefore, respectfully following the decisions of the Hon'ble Bombay and Delhi High Courts, we hold that the disallowance u/s 43B is not sustainable.

9. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 15<sup>th</sup> February, 2019.

**Sd/-**  
**(S.Rifaur Rahman)**  
**Accountant Member**

**Sd/-**  
**(P. Madhavi Devi)**  
**Judicial Member**

Hyderabad, dated 15<sup>th</sup> February, 2019.

***Vinodan/sps***

Copy to:

- 1 Vansun Erectors P Ltd, C/o Sekhar & Co. C.As, 133/4, R.P. Road, Secunderabad 500003
- 2 ITO Ward 17(3) Hyderabad
- 3 CIT (A)-5 Hyderabad
- 4 Pr. CIT – 5 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*