

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No-5649/Del/2016
(Assessment Year: 2012-13)**

**DCIT
Circle-7(2), Room NO. 403
C. R. Building, I. P. Estate
New Delhi**

VS

**Disha Security & Manpower
Pvt. Ltd.
77, Rao Harnath Marg,
Kapashera
New Delhi
PAN AABCD2407L**

**Revenue by
Assessee by**

**Sh. Abhishek Kumar, Sr. DR
Sh. Amar Jeet Singh, CA**

**Date of Hearing 15.05.2019
Date of Pronouncement 17.05.2019**

ORDER

PER K. NARSIMHA CHARY, J.M.

Challenging the order dated 22/08/2016 in Appeal No. 14/2015-16 passed by the Ld. Commissioner of Income Tax (Appeals)-3, New Delhi for A.Y. 2012-13, Revenue preferred this appeal.

2. Briefly stated relevant facts are that the assessee is engaged in manpower supply. For the Assessment Year 2012-13, they filed their return of income on 30.09.2012 declared an income of

Rs.36,31,523/- and revised the same on 20.07.2013 at an income of Rs. 36,35,500/-. During the course of assessment proceedings, after considering the details of service tax like challans etc furnished by the assessee, Ld. Assessing Officer found that an amount of Rs. 1,19,12,845/- towards service tax was deposited on 24/12/2012 after received the return of income and, therefore, while recording a fact that the assessee had debited such an amount to the profit and loss account, Ld. Assessing Officer added back to the income of the assessee and assessed their income at Rs.1,55,44,370/-.

3. In the appeal preferred by the assessee, Ld. Assessing Officer reappraised all the facts and observed that the assessee had not debited the amount of service tax in the books of account nor claimed it as deduction out of the taxable profit for the year under consideration and, therefore, the addition of Rs. 1,19,12,845/- was unsustainable and, therefore, deleted the same.

4. Revenue is therefore in this appeal before us stating that the Ld. Assessing Officer is justified in adding such amount u/s 43B of the Act to the income of the assessee since it represents the unpaid service tax and Ld.CIT(A) erred in deleting the addition basing on the Hon'ble Delhi High Court in the case of CIT Vs. Noble & Hewitt (I) Pvt. Ltd. 305 ITR 324.

5. It is the argument of the Ld. DR that inasmuch as the assessee deposited the service tax to the tune of Rs.1,19,12,845/-

on 24/12/2012 after filing of the return of income, the Ld. A.O is justified in adding it back to the income of the assessee u/s 43B of the Act. Ld. DR submitted that such an amount was debited to the profit and loss account.

6. Per contra, it is the argument of the Ld. AR that a sum of Rs. 2,65,16,755/- was payable towards service tax at the end of the year and out of this amount a sum of Rs.1,19,12,845/- was deposited on 24/12/2012 after the date of filing of the income tax return, but the balance was paid before the due date. He further submitted that service tax is not covered u/s 43B of the Act. Since, no deduction of the same was claimed out of profits of the assessee company and the matter is duly covered by the decision of the Hon'ble Delhi High Court in case of Nobel & Hewitt (I) Pvt. Ltd. supra 305 ITR 324 and a number of other cases, Ld. CIT(A) is justified in deleting the same.

7. We have heard gone through the record in the lights of the submissions made on either side. First of all, on a consideration of the profit and loss account a copy of which can be found at Page No. 9 of the paper book, we find that the assessee claimed expenses under four heads, namely, directcost, Employee Benefit Expense, Finance Cost and Depreciation and Amortization of expenses apart from other expenses vide Schedules 14 to 17 thereof, to be found at Page No. 15 of the paper book. This clearly shows that under none of these heads, the sales tax component is

shown. On the other hand, the balance sheet of the company at Page No. 8 of the paper book under the current liabilities show that the assessee had taken a sum of Rs.4,99,40,195/- under other current liabilities which are detailed in Note No. 6 which is under two heads namely, Duty and taxes and expenses payable. Vide Page No 18 of the Paper book, account of Duties and Taxes to the tune of of Rs.3,94,44,804/- was shown to have comprises of Rs. 2,65,16,755/- under the head service tax payable at 10.3%. These details could be found at Page Nos. 13 & 18 of the paper book.

8. It is, therefore, clear from reading of the balance sheet and profit and loss account that the assessee did not debit this amount of Rs.1,19,12,845/- to the profit and loss account but had directly taken it to the balance sheet under the head – “current liabilities” and sub head – “other current liabilities”.

9. We are, therefore, of the considered opinion that an error of fact had crept in the order of the assessment where the Ld. Assessing Officer noted that the assessee had debited the amount of service tax to the profit and loss account. On verification of the financials of the assessee, we agree with the finding of the Ld.CIT(A) that the assessee had not debited the amount of service tax in the books of account and nor did they claim any deduction out of the taxable profit for the year under consideration.

10. Ld.CIT(A) followed the binding precedent of the Hon’ble Jurisdictional High Court in the case of Noble and Hewitt (I) Pvt.

Ltd. (supra) which cannot be found fault with. In these circumstances, we are of the considered opinion that the grounds of appeal preferred by the Revenue are devoid of merits and appeal is liable to be dismissed. We, accordingly dismiss the appeal of the Revenue.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 17.05.2019

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 17.05.2019

R.N

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	15.05.2019
Date on which the typed draft is placed before the dictating Member	16.05.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	