

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'डी', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

श्री संदीप गोसाई, न्यायिक सदस्य एवं

श्री जी. मंजूनाथ, लेखा सदस्य, के समक्ष

**Before Shri SANDEEP GOSAIN, Judicial Member AND  
Shri G. MANJUNATHA, Accountant Member,**

**ITA No.1996/Mum/2018  
Assessment Year: 2013-14**

Mrs. Meeta Khanna Dave, B/21, Sunset Heights, 59 Pali Hill Road, Bandra (West), Mumbai-400020	<b>बनाम/ Vs.</b>	ACIT, Circle-16(1), Room No.439, Aayakar Bhavan, New Marine Lines, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
<b>P.A. No.AALPD5417D</b>		

निर्धारिती की ओर से / Assessee by	Shri Vijay Mehta
राजस्व की ओर से / Revenue by	Shri D.G. Pansari

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>30/04/2019</b>
<b>आदेश की तारीख / Date of Order:</b>	<b>24/05/2019</b>

**आदेश / ORDER**

Per G. Manjunatha (Accountant Member)

This appeal filed by the assessee is directed against order of the Ld. CIT(A)-4, Mumbai, dated 16/01/2018 and it pertains to AY. 2013-14. The assessee has raised following grounds of appeal:-

“ The Ld. CIT(A) was not justified in confirming:

1.The addition of an amount of Rs.48,31,822/- u/s 43B of the Income Tax Act. The Ld. CIT(A) has failed to appreciate that the said amount represents equivalent amount of CENVAT credit being Service Tax on the input service availed by the appellant.”

2. The brief, facts of the case are that the assessee is a proprietor of IBIS Production, engaged in the business of production of Advertising/commercial films, filed her return of income for AY 2013-14 on 23/09/2013, declaring total income at Rs.1,41,14,170/-. The case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter ‘the Act’) along with questionnaire were issued. In response to notices, the Authorized Representative of the assessee appeared from time to time and filed various details, as called for. During the course of assessment proceedings, the AO called upon the assessee to furnish the details of service tax collected and service tax paid. In response, the assessee has filed details of service tax collection along with service tax returns filed with Central Excise Department, as per which, the assessee has collected service tax amount of Rs.1,30,12,947/- on service charges received for the year as against which claimed credit for CENVAT paid on input service amounting to Rs.48 lakhs and the net amount of Rs.81.82 lakhs has been paid to the Department. The AO after considering relevant submissions held that although the assessee claimed to have availed CENVAT credit amounting to Rs.48 lakhs but failed to file any evidence regarding input services, therefore, disallowed service tax amounting to Rs.48,31,822/- u/s 43B of the Act. Similarly, the AO has made disallowances towards expenses incurred in relation to exempt income u/s 14A, disallowance of rent expenses and disallowance at out of business expenses.

3. Aggrieved by the assessment order, the assessee has preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has challenged the additions made by the AO towards disallowance of service tax u/s 43B, disallowance of business expenses, disallowance of rent expenses and disallowance of expenses incurred in relation to exempt income. The Ld. CIT(A), after considering the submissions, partly allowed the appeal filed by the assessee where he had partly sustained disallowance of out of business expenses, however, confirmed additions made by the AO towards disallowance of service tax liability u/s 43B of the Act. Aggrieved by the Ld. CIT(A)'s order, the assessee is in appeal before us.

4. The Ld. AR for the assessee submitted that the Ld. CIT(A) was erred in sustaining disallowance of service tax u/s 43B of the Act, without appreciating the fact that there is no discrepancies in service tax collection on service charges received by the assessee, CENVAT credit claimed on input services and net service tax payment to Central Excise Department. The AO has wrongly appreciated the fact without understanding the method of accounting followed by the assessee to account input service where the assessee has claimed credit for CENVAT available on input services. The assessee has filed complete details including service tax returns filed with the Department as per which there is no discrepancy in service tax collection as well as payments. In so far as, the CENVAT credit, the assessee has availed input services on which service tax has been paid to service provider and the service providers had paid service tax to department for which

the credit is available to the assessee against service tax payable to the Department. Therefore, the lower authorities were incorrect in apprising the facts of make additions and hence the additions made by the AO towards service tax liability u/s 43B should be deleted.

5. The Ld. DR on the other hand, strongly supported the order of the Ld. CIT(A).

6. We have heard both the parties and perused the materials available on record. The AO has disallowed CENVAT credit availed by the assessee against service tax payment on the ground that the assessee has failed to file any evidences to prove that CENVAT credit is rightly availed against serviced tax payable to the government. The assessee has filed various details including service tax returns filed for the year with Central Excise Department, as per which the assessee has collected service tax amounting to Rs.1,30,12,947/- . The assessee has availed input service on which she had paid CENVAT amounting to Rs.45,57,224/-. The difference amount of Rs.84,04,223/- has been paid to the Central Excise Department. These are undisputed facts. The AO as well as the Ld. CIT(A) have accepted that there is no difference in service tax collected for the year and service tax payment to the Department. The only dispute is with regard to CENVAT Credit availed by the assessee. The Ld. CIT(A) has confirmed the additions made by the AO towards service tax liability u/s 43B on wrong understanding of law that CENVAT credit availed against service tax payment is required to be paid to the Central Excise Department without appreciating the correct position of

law that the assessee is not required to pay CENVAT credit availed because such CENVAT credit has been directly paid by the service providers to the Government. Therefore, we are of the considered view that the AO has made addition towards service tax liability u/s 43B without understanding concept of accounting treatment of service tax on CENVAT credit. The Ld. CIT(A) simply confirmed the additions made by the AO even though the assessee has explained the concept of accounting treatment for CENVAT credit. Therefore, we direct the AO to delete the additions made towards service tax (CENVAT) u/s 43B of the Act.

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

Order pronounced in the open Court on 24/05/2019.

**Sd/-**

**Sd/-**

(Sandeep Gosain)

(G. Manjunatha)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक Dated : 24/05/2019

*Shekhar, P.S./नि.स.*

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITA.
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**