

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'E', NEW DELHI**

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2160/Del/2017 : Asstt. Year : 2011-12

Income Tax Officer, Ward-18(3), New Delhi	Vs	M/s NIIT Smartserv Ltd., 8, Balaji Estate, 1 st Floor, Guru Ravi Das Marg, Kalkaji, New Delhi-110019
(APPELLANT)		(RESPONDENT)
PAN No. AABCN4598E		

Assessee by : Sh. Gaurav Jain, Adv.

Revenue by : Ms. Rinku Singh, Sr. DR

Date of Hearing: 11.07.2019

Date of Pronouncement: 12.07.2019
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The Revenue has raised the following grounds:

"1. Whether in facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs.2,49,872/- in respect of 'service tax recoverable' by accepting the self - serving claim of the assessee during appellate proceedings without providing an opportunity to the Assessing Officer (the AO) of being heard and despite the fact that the assessee had not fulfilled the conditions laid down under rule 46A of Income Tax Rules (the Rule) and even when the facts of the case were not covered within the exceptions provided under Rules 46A of the Rule?

2. Whether in facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs.67,99,620/- made u/s 37(1) of the Income Tax Act, 1961 (the Act) in respect of expense incurred under the head ' Travelling/Conveyance and communication expenses' even when the assessee had not discharged its initial onus u/s 37(1) of the Act that expenditure was laid out or expended wholly and exclusively for the purpose of the business of the assessee? "

2. Ground No. 1 pertains to disallowance of service tax recoverable. During the year, the assessee has charged service tax amount by debiting the same to P&L account which could not be claimed as set off against the output service tax. The

said amount was not debited as expenditure earlier since the same was recorded as recoverable against output service tax liability. The assessing officer, however, in the assessment order for relevant assessment year, disallowed the claim of the appellant for the said amount of Rs. 2,49,872/- on the grounds that no evidence in respect of the same was submitted by the appellant during the course of assessment proceedings.

3. The Id. AR took us to the submissions filed before the Id. CIT(A) and also rationale of the decision taken by the Id. CIT(A), while the Id. DR argued that the amount cannot be allowed during the year as it was not incurred in the current year. The submission of the assessee on the record is as under:

"Pursuant to the introduction of Cenvat Credit Rules, 2004, the appellant started taking credit of service tax paid by it on input services. In such a scenario, the expense is booked by the net amount, i.e. net off service tax. The amount of service tax is to be booked in the service tax recoverable account and is adjusted through the liability of payment of service tax. The entries passed for the same are as under -

<i>Expenses</i>	<i>Dr</i>	<i>Rs. 100 [net of service tax]</i>
<i>Service tax recoverable</i>	<i>Dr</i>	<i>Rs. 10 [service tax paid on expense bills]</i>
<i>To Creditors A/c</i>	<i>Cr</i>	<i>Rs. 110 [Gross Bill amount]</i>

The expense was, therefore, booked net of service tax amount as the appellant was assuming that the appellant was entitled to avail this Cenvat credit. However, had the appellant known earlier that such credits would be denied at a later stage, the appellant may have booked all expenses gross of service tax and would have not taken any credit in the books of accounts. In such case, the following entries would have been passed:

<i>Expenses</i>	<i>Dr</i>	<i>Rs. 110 [Gross of service tax]</i>
<i>To Creditors A/c</i>	<i>Cr</i>	<i>Rs. 110 [Gross bill amount]</i>

From the above, it would be appreciated that the expenses which were claimed in profit & loss account were accounted for a lower amount to the extent of service tax recoverable. The service tax portion of Rs.2,49,872/- was availed by the

appellant as service tax recoverable for utilization towards output service tax. Therefore, the said amount of Rs.2,49,872/- was not included in expenses in profit & loss account and was accordingly accumulated/clubbed under service tax recoverable account in the balance sheet.

Subsequently, service tax audit of the appellant for the period October 2007 to March 2008 was conducted by the service tax department, wherein, vide order dated 16.06.2009, the Cenvat credit taken by the appellant on the following services was not allowed -

<i>S. No.</i>	<i>Nature of Input Service</i>
<i>1.</i>	<i>Service Tax Rate Difference</i>
<i>2.</i>	<i>Outdoor Catering Service</i>
<i>3.</i>	<i>Interior Decorator Service</i>
<i>4.</i>	<i>Photography Service</i>

Thus, it is only through the orders passed by the service tax department that the appellant came to know that the credit of service tax recoverable on the above stated services was not available to the appellant and hence could not be utilized towards payment of output service tax. Pursuant to such audit the appellant reconsidered it's claim of Cenvat credit for the subsequent year and ad suo motu written off the input credit amounting to Rs.2,49,872/-, claimed on such services, to its profit & loss account. Once that decision is reached and a claim to that effect is made, that year, in the respectful submission of the appellant, is the year in which such claim is admissible.

An analogy may also be drawn from the provisions of section 36(1)(vii) of the Act governing deduction of bad debts. The amended provisions of the said section as applicable from 1.4.1989 allow deduction in the year in which debt is written off in the books of accounts. The fact that the debt has become bad is left to the best judgment of the assessee and the deduction is allowable based on entries in the books of accounts writing off the debt. The Revenue authorities are not entitled to question the prudence / wisdom of the assessee in writing off the bad debt and making claim of deduction thereon.

Reference, in this regard, can also be made to the CBDT Circular No. 12 of 2016 on admissibility of claim of deduction of bad debt under section 36(1)(vii) of the Act, which states that the claim for any debt or part thereof shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of account of the assessee. Relevant extract of the circular is as under:

"3. The legislative intention behind the amendment was to eliminate litigation on the issue of the allowability of the bad debt by doing away with the requirement for the assessee to establish that the debt, has in fact, become irrecoverable. However, despite the amendment, disputes on the issue of allowability continue, mostly for the reason that the debt has not been established to be irrecoverable. The Hon'ble Supreme Court in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide judgment dated 9-2-2010, has stated that the position of law is well settled. "After 1-4-1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1) (vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of account of assessee."

4. In view of the above, claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of account of the assessee for that previous year and it fulfils the conditions stipulated in sub-section (2) of sub-section 36(2) of the Act."

Attention, in this regard, is further invited to the decisions of Supreme Court in the case of T.R.F. Ltd. vs. CIT: 323 ITR 397, wherein, the apex Court after analyzing the provisions of section 36(1)(vii) of the Act held that the claim of bad debts is allowable to the assessee if the same has been written as irrecoverable by the assessee and it is not necessary to establish that the debt has actually become bad. The relevant observations of the Court are as under:

"4. This position in law is well-settled. After 1-4-1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee..."

Drawing strength from the aforesaid, in the respectful submission of the appellant, it would be, therefore, appreciated that the entire amount of Rs.2,49,872/- representing the service tax portion of the expenses, the payment for which was already made to the service provider/creditors for the rendering of services to the appellant, has now been charged off by the appellant in the profit & loss account Is clearly eligible for deduction in The year under consideration."

4. We have gone through the submission of the assessee and unable to agree with the findings of the Assessing Officer that the disallowance was made as the assessee has not produced

any evidence. From the submission, we find that the service tax portion was availed by the assessee as service tax recoverable for utilization towards output service tax. This amount was not included in the P&L account and claimed earlier. Rather, take into balance sheet under the head 'service tax recoverable'. Since, it has been claimed for the first time in this year and hence is allowable. Appeal of the Revenue on this ground is dismissed.

5. Ground No. 2 pertains to disallowance of travelling & conveyance, and communication expenses of Rs.67,99,620/- u/s 37(1) of the Act. The facts on record reveals that the detail expenditure incurred by the assessee under this head was Rs.6.79 crores out of which the AO has disallowed 10% of adhoc basis on the grounds that some bills were not properly vouched and there could be possibility of personal expenses which cannot be ruled out.

6. The Id. DR relied on the order of the assessment and argued that in the absence of complete details 10% disallowance cannot be treated as unjustified. The Id. AR argued that the expenses are incurred towards conveyance, domestic travelling and foreign travelling of the Directors of company and the employees. The communication expenses are incurred in day to day business of the assessee. Since, all the employees are working for the company there is no possibility of incurring of personal expenditure or any element of expenditure personal in nature could be found out by the Assessing Officer. He argued that no expense of personal nature can be disallowed in corporate assessee. It was also argued that all the bills and

vouchers have been maintained properly for the expenditure incurred and duly audited.

7. Heard the arguments of both the parties and perused the material available on record.

8. Owing to the submission of Id. AR that no disallowance can be made in the hands of the corporate entity, and keeping in view the fact that the bills and vouchers have been duly prepared and audited as per the statute and keeping in view the judgments of Hon'ble High Court of Gujarat in the case of Sayaji Iron & Engineering Company Vs CIT 253 ITR 749, Shriram Pistons & Rings Ltd. 39 TTJ 132, Rattah Mechanical Works Ltd. Vs ITO, ITAT Chandigarh 87 Taxmann 288 and since, the Assessing Officer has not pointed out any specific item of personal or in admissible expenditure, in the absence of any evidence brought on record by the Revenue to prove that the expenditure incurred was in admissible, we hereby uphold the decision of the Id. CIT(A) on this ground.

9. In the result, the appeal of the Revenue on both the grounds is dismissed.

(Order pronounced in the open Court on 12.07.2019)

Sd/-

(Bhavnes Saini)
Judicial Member

Dated: 12/07/2019

Subodh

Copy forwarded to:

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

Sd/-

(B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR