



ITA No.5572/Mum/2018  
Patiyil Balakrishnan  
Assessment Year-2013-14

**आयकर अपीलीय अधिकरण “एक-सदस्य मजमल” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, MUMBAI**

**माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI C.N. PRASAD, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं./ I.T.A. No.5572/Mum/2018  
(निर्धारण वर्ष / Assessment Year:2013-14)

<b>Patiyil Balakrishnan</b> B-11, 1/4 Shiv Palm Beach Mumbai-400 706.	<b>बनाम/ Vs.</b>	<b>I.T.O., 28(2)(1)</b> Vashi, Mumbai-400 703
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAFPB-0334-F</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	None
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Akhtar H. Ansari- Ld. DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	14/11/2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	20/11/2019

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-26, Mumbai [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-26/IT-345/2015-16 dated 15/06/2018 qua* confirmation of certain additions.



ITA No.5572/Mum/2018  
Patiyil Balakrishnan  
Assessment Year-2013-14

2. None has appeared for assessee and no valid adjournment application is on record. Left with no option, we proceed with the matter ex-parte qua the assessee after perusal of material on record and after hearing the revenue.
3. Facts on record would reveal that the assessee being resident individual stated to be engaged as civil and mechanical contractor was assessed for year under consideration u/s 143(3) on 28/01/2016 wherein the income of the assessee was determined at Rs.23.50 Lacs after certain additions as against returned income of Rs.6.97 Lacs e-filed by the assessee on 25/11/2013. One of the disallowances of Rs.7.39 Lacs was u/s 43B, being duties and taxes debited to the Profit & Loss Account but not paid before due date of filing of return. Another disallowance of Rs.9.12 Lacs was on account of unsubstantiated salary & wages.
4. The learned first appellate authority deleted disallowance u/s 43B since the assessee had not debited the taxes and duties in the Profit & Loss Account. However, disallowance on account of salary and wages was not adjudicated in view of the fact that no such ground was taken before learned first appellate authority.
5. Upon perusal of grounds taken by the assessee before first appellate authority, we find that it was the contention of the assessee that since the income was offered under presumptive taxation, no disallowance u/s 28 to 37 would be warranted. The disallowance of salary, *prima facie*, is under Section 37(1). Therefore, we direct Ld. CIT(A) to adjudicate the issue of salary disallowance after affording reasonable opportunity of being heard to



ITA No.5572/Mum/2018  
Patiyil Balakrishnan  
Assessment Year-2013-14

the assessee. For the said purpose, the matter stand remitted back to the file of Ld. CIT(A).

6. Resultantly, the appeal stands allowed for statistical purposes in terms of our above order.

*Order pronounced in the open court on 20<sup>th</sup> November, 2019*

Sd/-

**(C.N. Prasad)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 20/11/2019

Sr.PS:- \*\*PP,SPS

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**