

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.185/Kol/2019

(निर्धारणवर्ष / Assessment Year: 2013-14)

DCIT, Circle-10(2), Kolkata	Vs.	M/s TSG Global Services Pvt. Ltd. AC/93/A, 2nd Floor, Prafulla Kanan East, VIP Road, Above Bank of Baroda, Kestopur, Kolkata-700101
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCT 8375 J		
(Appellant)	..	(Respondent)

Appellant by : Shri Supriyo Paul, JCIT

Respondent by :None

सुनवाईकीतारीख/ Date of Hearing : 27/02/2020

घोषणाकीतारीख/Date of Pronouncement : 08/07/2020

आदेश / O R D E R

Per Dr. A.L. Saini, AM:

The captioned appeal filed by the revenue, pertaining to assessment year 2013-14, is directed against the order passed by the Commissioner of Income Tax (Appeal)-4, Kolkata, in appeal no. 1403/CIT(A)-4/C-10(2)/15-16, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the "Act") dated 15/01/2016.

2. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasion and Ld. Departmental Representative(DR), was present for the appellant Revenue. In the absence of any appearance by the assessee, the appeal is being disposed of *ex parte qua* the

assessee, after hearing Ld. DR for the Revenue on merits in terms of Rule 24 of the Income Tax Appellate, Tribunal, Rules, 1963.

3. The grounds of appeal raised by the revenue are as follows:

1. *That on the facts and circumstances of the case, whether the Ld. CIT(A) was correct in deleting the disallowances of outstanding service tax liability of Rs. 1,89,52,413/- when the assessee had failed squarely during the course of scrutiny proceedings as well as the Remand stage to furnish the necessary documentary evidences in respect of payment of the service tax liability of Rs. 1,89,52,413/- within the due date of filling of return ? Whether the Ld. CIT(A) was correct in not considering the fact that the statutory liabilities needs to be paid within the due date of filling of return , failing which necessary disallowances is required to be made as per the provisions of the section 43B of the Act.*

2. *That the appellant craves to add, delete or modify any of the grounds of appeal before or at the time of hearing.*

4. Brief facts qua the issue are that on perusal of the audited accounts for the year ending on 31.03.2013 in the case of the assessee, it was noticed by Assessing Officer that as on 31.03.2013 service tax of Rs. 2,02,52,413/- was shown as payable. In course of scrutiny proceedings, the details were filed by the assessee with regard to discharge of outstanding liability of service tax. The perusal of the said details revealed that the assessee had paid only Rs. 13,00,000/- before the filing of return of income on 18.10.2013. Therefore, the balance liability of Rs. 1,89,52,413/- (2,02,52,413 -13,00,000) on account of service tax was required to be added back to the total income as per the provisions of Section 43B of the Act. In course of assessment proceeding, it was explained by the assessee that the liability of service tax did not come within the ambit of section 43B of the Act since the same was not routed through Profitand Loss Account and for this the assessee relied on various judicial pronouncements.

5. However, Assessing Officer was of the view that as per the provisions of clause (a) of section 43B read with proviso to section 43B, there is no ambiguity that any sum payable by the assessee by way of tax, duties, cess or fee, by whatever name called under any law shall be allowed as deduction only in the year in which such sum is paid by the assessee or if it is paid before the due date of filling of return

and evidence of such payment is furnished along with the Income Tax Return (ITR). In this context, the assessee was therefore, asked to explain vide a show cause notice dated 30.12.2015 that why the sum of Rs. 1,89,52,413/- on account of service tax payable should not be added back to its total income as per the provisions of section 43B of the I. T. Act, 1961.

6. In response to the said show cause notice, the assessee had filed a reply through its authorized representative on 06.01.2016. The assessee in its reply has emphasized on the fact that the expenditure on account of service tax was not routed through Profit & Loss Account and hence the provisions of Sec. 43 B are not applicable in its case.

7. However, Assessing Officer rejected the contention of the assessee and held that the provisions of Sec. 43B, clearly state that the liability incurred on account of service tax during the relevant previous year but not paid before the filing of ITR within the due date will be added back to the total income of the assessee. Moreover, it does not make any difference to the net profit of the assessee whether the receipts of service tax and its payment to the government authorities are routed through the Profit & Loss Account or not since the assessee follows the mercantile system of accounting. Hence the sum of Rs. 1,89,52,413/- on account of service tax payable was added back to the total income of the assessee.

8. Aggrieved by the order of the Assessing Officer the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by assessing officer, observing the followings:

“Ground No. 4 is regarding disallowance of service tax liability of Rs. 1,89,52,413/-. The A.O. has made the addition as the liability of service tax was not paid before the due date of filing of I.T. Return. The A/R emphasized that the service tax liability has not been taken through the P & L A/c. Therefore, disallowance u/s.43B can't be made. This is based on principle that since service tax receipts has not been routed through P & L A/c. Therefore, it does not form part of receipt and since it does not part of the trading receipt, therefore, disallowance u/s.43B could not have been made. In the remand report, the A.O. has emphasized that service tax liability has been paid in subsequent years and only part of the amount has been paid and some amount was waived by the

Service Tax Department. The law on this issue is very clear in CIT vs. Noble And Hewitt (I) (P) Ltd. 305 ITR 324 (Delhi) in ITA No.3848/Del/2012-AY- 2008-09 it was held that when the assessee has not debited the service tax in its profit & loss account and in this case no disallowance can be made u/s 43B of the IT Act. Therefore, the addition made is not sustainable and ground no.4 is also allowed. In subsequent years when the service tax liability has been settled at lesser amount the assessee is duty bound to offer the difference for taxation. The A.O. may verify the same and if the assessee has not offered the difference for taxation then bring the same to taxation by invoking section 148. The assessee is directed to provide the relevant information to the A.O.”

9. Aggrieved by the order of the Id. CIT(A) the revenue is in appeal before us.

10. We have heard Id. D.R. for the revenue and gone through the order of Id. CIT(A). We note that Id. CIT(A) has rightly held that since the assessee has not debited the service tax in its profits and loss account therefore no disallowance can be made u/s 43B of the Act. Since the Id. CIT(A) has already directed to the Assessing Officer stating that in subsequent years when the service tax liability has been settled at a lesser amount the assessee is duty bound to offer the difference for taxation, and the Id. CIT(A) directed the Assessing Officer to verify the same and if the assessee had not offered the difference for taxation then bring the same to taxation by invoking section 148 of the Act. We note that there is no infirmity in the direction given by the Id. CIT(A) therefore, we decline to interfere in the order passed by Id. CIT(A), his order on this issue, is hereby upheld and grounds of appeal raised by the revenue is dismissed.

11. Before parting, it is noted that the order is being pronounced after 90 days of hearing. However, taking note of the extraordinary situation in the light of the Covid-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JCB Limited in ITA No. 6264/Mum/2018 and ITA No. 6103/Mum/2018 for A.Y. 2013-14 order dated 14.05.2020.

12. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on 08.07.2020

Sd/-
(S.S.GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 08/07/2020

(SB, Sr.PS)

Copy of the order forwarded to:

1. DCIT, Circle-10(2), Kolkata
2. M/s TSG Global Services Pvt. Ltd.
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches