

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 102/MUM/2020
Assessment Year: 2013-14**

Asst. Commissioner of Income Tax - 32(1), Room No. 702, 7 th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051	Vs.	Shri Rajiv R. Ahuja, 301, Dora Rose, I C Colony, Main Road, Mandapeshwar, Borivali (W), Mumbai - 400103 PAN: AADPA6445J
(Appellant)		(Respondent)

Revenue by : Shri Bharat Andhle (DR)

Assessee by : None

Date of Hearing : 14/09/2021
Date of Pronouncement: 27/09/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the revenue against order dated 18.10.2019 of learned Commissioner of Income Tax (Appeals)-44, Mumbai for the assessment year 2013-14.

2. When the appeal was taken up for hearing, no one was present on behalf of the assessee. Accordingly, we proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and based on materials on record.

3. The dispute in the present appeal is confined to deletion of disallowance made under section 43B of the Income Tax Act, 1961 towards service tax liability.

4. Briefly the facts are, the assessee is an individual and engaged in the business of civil contractor. For the impugned assessment year, assessee filed his return of income on 30.09.2013, declaring total income of Rs. 2,76,71,110/-. In course of assessment proceedings, while verifying the tax audit report, the assessing officer (AO) noticed that the assessee has shown statutory liability of Rs. 6,84,13,241/- in the balance sheet. While verifying the break-up of such liability, he found that an amount of Rs. 2,51,49,263/- is towards service tax payable for financial year 2012-13. Being of the view that since the service tax liability was not paid prior to the due date of filing of return of income, the AO disallowed under section 43B of the Act. Assessee contested the aforesaid disallowance before the First Appellate Authority. After considering the submissions of the assessee, learned Commissioner (Appeals) deleted the disallowance.

5. We have heard learned Departmental Representative and perused the materials on record. It is observed from the impugned order of learned Commissioner (Appeals), while deciding the identical issue arising in assessee's own case in assessment year 2009-10, the Tribunal in ITA No. 1764/Mum/2014 dated 13.06.2017 has deleted the disallowance made under section 43B of the Act on account of non-payment of service tax liability. While doing so, the Tribunal observed that section 43B would not be applicable to service tax liability as service tax is collected on behalf of Government paid to

Government account. Therefore, the service provider is merely acting as the agent of the Government and is not entitled to deduction on account of service tax. It is observed, following the aforesaid decision in assessee's own case, learned Commissioner (Appeals) has also deleted similar disallowance in assessment year 2012-13. Facts being identical respectfully following the decision of the Tribunal in assessee's own case as referred to above, we uphold the order of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 27th September, 2021.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 27/09/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai