

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR DEDIA, ACCOUNTANT MEMBER**

ITA No.4895/Del/2018  
Assessment Year: 2014-15

M/s. Sumitomo Mitsui Construction Company Ltd., 201, 2 <sup>nd</sup> Floor, Plot No. D-1, Rasvilas, Saket District Centre, Saket, New Delhi	<b>Vs.</b>	ACIT (International Taxation), Circle-3(1)(2), New Delhi
<b>PAN :AADCM4483D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Shatanik Chakrabarty, Advocate
Respondent by	Sh. Sanjay Kumar, Sr.DR

Date of hearing	09.02.2022
Date of pronouncement	22.02.2022

**ORDER**

**PER SAKTIJIT DEY, JM:**

Captioned appeal by the assessee arises out of order dated 27.04.2018 of learned Commissioner of Income Tax (Appeals)-43, New Delhi, pertaining to the assessment year 2014-15. The grounds raised by the assessee are as under:

*The order of learned Commissioner of Income Tax (Appeals)-43, New Delhi ['CIT (A)'] is bad in law to the extent prejudicial to the interest of the Appellant and is liable to be quashed as:*

1. *The CIT(A) erred in facts and circumstances of the case and in law in not allowing the claim of the appellant for correction of amount of deduction and disallowance under section 43B of the Act which was made during the course of assessment proceedings before the Assessing officer ('AO').*
2. *Ld. CIT(A) erred in upholding incorrect disallowance of Rs. 153,89,254/- and failed to consider relevant material placed on record consequently, CIT(A) also erred in allowing only Rs. 37,13,814/- as deduction towards payment of opening statutory liability. CIT (A) erred in not allowing correction of inadvertent error in computation due to juxtaposition of claim and disallowance numbers arising under section 43B.*
3. *The CIT(A) erred in holding that the submission does not have any evidence or documents as annexures to substantiate the claim of assessee whereas the appellant duly attached extract of the tax audit report having the correct claim and neither further documents were demanded from the Appellant nor opportunity to furnish additional evidences were provided to the appellant by AO or CIT(A).*
4. *The CIT(A) failed to appreciate that the correct amount of deduction and disallowance were rightly mentioned in the Tax Audit report and therefore, amount of deduction and disallowance by the appellant in return of income filed was on account of inadvertent or bonafide mistake.*
5. *The CIT(A) has erred in law and facts in levying interest under section 234C of the Act*  
*All of the above grounds of appeal are without prejudice and notwithstanding each other.*

**2.** We have heard the parties and perused the materials on record. Briefly the facts are, the assessee is a non-resident company incorporated in Japan. As stated by the Assessing Officer, the assessee, basically, is a construction company jointly formed by the merger of Mitsui Construction Company Limited and Sumitomo Construction Company Limited.

**3.** Be that as it may, for the assessment year under dispute, the assessee filed its return of income on 01.12.2014 declaring total income of Rs.13,320/-. Subsequently, the assessee filed a

revised return of income declaring business income of Rs.48,90,540/- and income from royalty/Fees for Technical Services (FTS) amounting to Rs.26,50,44,898/-. Pertinently, in the revised return of income, the assessee itself claimed deduction of Rs.37,13,814/- under Section 43B of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), being the amount actually paid during the year. Whereas, he disallowed a sum of Rs.1,53,89,254/- under the said provision, as the amount was not paid on or before the due date of filing of return of income. In course of assessment proceeding, the assessee having discovered that it has erroneously disallowed the amount of Rs.1,53,89,254/- under Section 43B of the Act, as, the amount was actually paid before the due date of filing of return of income, whereas, it has claimed deduction of Rs.37,13,814/-, the amount actually required to be disallowed, filed a revised computation of income revising its claim of deduction under Section 43B of the Act. However, while completing the assessment under Section 143(3) of the Act vide order dated 21.12.2017, the Assessing Officer completely ignored the revised computation of income filed in course of assessment proceeding and proceeded to compute the income as per the revised return of income filed by the

Assessee. Though, the assessee filed an application under section 154 of the Act before the Assessing Officer seeking rectification of the assessment order, however, no action was taken. Being aggrieved, the assessee preferred an appeal before learned Commissioner (Appeals).

**4.** After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) observed that as per the materials available on record, the assessee has furnished evidence for deduction claimed of Rs.37,13,814/- under Section 43B of the Act. Thus, he held that the Assessing Officer has correctly allowed deduction of Rs.37,13,814/- under section 43B of the Act. As far as the claim of assessee in the revised computation filed in course of assessment proceeding, learned Commissioner (Appeals) observed that the assessee had not furnished any valid evidence to demonstrate that the actual allowable deduction under Section 43B was to the tune of Rs.1,53,89,254/-. Basis such observation, learned Commissioner (Appeals) rejected assessee's claim.

**5.** Before us, learned counsel for the assessee has vehemently argued that all evidences relating to the revised claim of deduction of Rs.1,53,89,254 was not only filed in course of

assessment proceeding, but was also furnished before the first appellate authority.

**6.** In response, learned Departmental Representative submitted, in case the evidences filed by the assessee have not been considered by the departmental authorities, the issue can be restored back to the Assessing Officer for re-examination.

**7.** Having considered rival submissions, we find, the fact that the assessee has made revised claim of deduction under Section 43B of the Act amounting to Rs. 1,53,89,254/- in course of assessment proceeding is not disputed. It is further observed, while the Assessing Officer has completely ignored the revised claim of the assessee, learned Commissioner (Appeals) has refused to entertain it on the ground that supporting evidences were not filed at any stage. Now, it is fairly well settled, though, before the Assessing Officer, the Assessee can make a revised claim only through a revised return of income filed under Section 139(5) of the Act, however, there is no such restriction before the appellate authority. Therefore, the revised claim made by the assessee can be entertained by the appellate authority, subject to, factual verification. In the facts of the present appeal, revised claim of the assessee qua deduction claimed under Section 43B of

the Act has been rejected by learned first appellate authority simply due to lack of supporting evidences. However, it is the contention of the assessee before us that supporting evidences, in fact, were filed both before the Assessing Officer and learned Commissioner (Appeals). Without entering into the controversy, whether the assessee has filed the supporting evidences qua its revised claim of deduction under Section 43B of the Act, we are inclined to restore this issue to the file of the Assessing Officer for examining the claim of deduction made by the assessee under Section 43B of the Act in the revised computation of income based on the evidences available on record.

**8.** Further, liberty is granted to the assessee to furnish any other evidence before the Assessing Officer in support of its revised claim of deduction under Section 43B of the Act. It is made clear, the Assessing Officer has to decide the revised claim of the assessee strictly in accordance with the evidences filed by the assessee. With the aforesaid observation, issues are restored back to the file of the Assessing Officer. Ground nos. 1 to 4 are allowed for statistical purposes.

**9.** Ground No. 5, being consequential in nature, does not require adjudication at this stage.

**10.** In the result, the appeal is allowed for statistical purposes.

***Order pronounced in the open court on 22<sup>nd</sup> February, 2022***

***Sd/-***  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 22<sup>nd</sup> February, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi