

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

BEFORE SHRI AMARJIT SINGH (JUDICIAL MEMBER)
AND
SHRI S.RIFAUR RAHMAN (ACCOUNTANT MEMBER)

I.T.A No.7715 & 7716/Mum/2019
(Assessment years : 2011-12 & 2013-13)

Infinity Optimal Solutions Pvt Ltd 305, 3 rd Floor, Morya Landmark I Off New Link Road, Andheri (W) Andheri, Mumbai-400 052 PAN : AABCI3407P	vs	Income-tax Officer ITO-6(3)(2) Aayakar Bhavan M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee represented by	Shri Hitesh Shah
Department represented by	Shri R.A. Dhyani, Sr.AR

Date of hearing	24/03/2022
Date of pronouncement	221/04/2022

O R D E R

Per: S.Rifaur Rahman (AM):

These appeals have been filed by the assessee against the independent orders both dated 02/09/2019 passed by the Commissioner of Income-tax (Appeals)-20, Mumbai for the assessment year 2011-12.

2. The assessee, in its appeals, has raised the following grounds of appeal:-

A.Y. 2011-12

1. *The Hon. CIT(A) as well as the Ld. A.O. erred in re-opening the assessment u/s. 148.*
2. *The Hon. CIT(A) as well as the Ld. A.O., were not justified in adding service tax amounting to Rs. 17,95,701/- that was shown as liability in balance sheet, u/s. 43B as the same was never claimed as Expenditure at any point of time.*
3. *The Hon. CIT(A) as well as the Ld. A.O. ought to have appreciated the fact that the Service Tax was compulsory required to be separately billed, collected and paid to the Government and hence it was always considered as Liability and was never considered as part of the income as per the system of accounting consistently followed by the appellant.*
4. *The Hon. CIT(A) as well as the Ld. A.O. also failed to appreciate the fact that the TDS was required to be deducted on the Gross amount including Service Tax as per the TDS provisions and the said TDS provisions cannot be applied to add back an amount u/s.43B which has never been claimed as an allowance.*
5. *The Hon. CIT(A) as well as the Ld. AO ought to have appreciated the fact that some of the Deductor had deducted the TDS in utter disregard of the CBDT Circular, which clearly stated that TDS is not required to be deducted on the amount of Service Tax, when it is separately shown in the Bill.”*

A.Y. 2013-14

- “1. *The Hon. CIT(A) as well as the Ld. A.O., were not justified in adding Service Tax amounting to Rs.44,94,008 that was shown as liability in balance sheet, U/S. 43B as the same was never claimed as Expenditure at any point of time.*
2. *The Hon. CIT(A) as well as the Ld. A.O. ought to have appreciated the fact that the Service Tax was compulsory required to be separately Billed, Collected and paid to the Government and hence it was always considered as Liability and was never considered as part of the income as per the system of accounting consistently followed by the appellant.*

3. *The Hon. CIT(A) as well as the Ld. A.O. failed to appreciate the fact that the TDS was required to be deducted on the Gross amount including Service Tax as per the TDS provisions and the said TDS provisions cannot be applied to add back an amount u/s.43B which has never been claimed as an allowance.*

4. *The Hon. CIT(A) as well as the Ld. A.O. failed to appreciate the fact that the TDS was required to be deducted on the Gross amount including Service Tax as per the TDS provisions and the said TDS provisions cannot be applied to add back an amount u/s.43B which has never been claimed as an allowance.*

5. *The Hon. CIT(A) as well as the Ld. AO ought to have appreciated the fact that some of the Deductor had deducted the TDS in utter disregard of the CBDT Circular, which clearly stated that TDS is not required to be deducted on the amount of Service Tax, when it is separately shown in the Bill.”*

3. The assessee, vide letter dated 10/03/2022 has sought to raise the following additional grounds of appeal:-

1) *The Ld. A.O. erred in making addition of Rs.17,95,701/- on account of Service tax instead of Rs. 16,65,5747-, which was the amount outstanding as per the Audited Balance Sheet.*

2) *The Ld. A.O. ought to have appreciated the fact that addition of outstanding amount of Rs.44,94,008/- as on 31/03/2013, was already made in Asst. year 2013-14 and hence the addition of Rs.17,95,701/- once again in Asst. year 2011-12, resulted into double addition.*

4. The learned AR of the assessee submitted that during the assessment proceedings for assessment year 2013-14, the assessing officer has made addition of Rs.44, 94,008/- on account of unpaid amount of Service Tax U/s. 43B. On that basis, the Ld. AO had also re-opened the assessment for Assessment year 2011-12 and had made addition of Rs.17,95,701/- on account of unpaid amount of Service Tax. He further submitted that the

assessee had preferred Appeal before the Ld. CIT(A), who confirmed the additions for both the assessment years 2013-14 and 2011-12. The Ld.AR prayed that the additional grounds of appeal raised may be admitted for adjudication as both the additional grounds go to the root of the matter. Heard the Ld.DR also.

5. For assessment year 2011-12, the assessee also challenged the reopening of the assessment. However, at the time of hearing this issue was not pressed before us. Hence, ground 1 of the assessee for A.Y. 2011-12 is rejected.

6. Upon hearing the parties, we deem it fit to admit the additional grounds for adjudication as both the additional grounds go to the root of the matter.

7. The brief facts of the case are that the assessee company is engaged in the business of development of sports and sportspersons in India and to ensure that persons associated with sports get their due place and respect in the society. Returns of income for the assessment years under consideration were filed on 28/09/2011 and 29/03/2013 consecutively declaring total income of Rs. Nil for both the assessment years. In the assessment proceedings for the assessment year 2011-12, the assessee was asked to furnish the details of sundry debtors. In response, assessee furnished a reconciliation. According to the assessing officer, the assessee was only able to reconcile the amount of sundry debtors to the extent of

Rs.1,76,63,816/- for the assessment year 2011-12. Further, since the assessee was claiming TDS on amount which is inclusive of service tax but the same is not routed through P&L account, this was not in accordance with the provisions of the Income-tax Act. He also observed that the assessee nor paid on or before the filing of return under section 139(1) of the Act. In this view of the matter, he disallowed the amount of Rs.44,94,008/- to the total income. On appeal, the Ld. CIT(A) confirmed the addition.

8. In respect of assessment year 2013-14, the facts are that as per the tax audit report in Form 3CD, an amount of Rs.44,94,008/- was shown as outstanding towards service-tax. The assessee explained that the assessee follow exclusive method of accounting and by doing so, component of service tax has been passed through P&L Account. The assessing officer stated that since the assessee is claiming TDS on amount which is inclusive of service tax but the same is not routed through the P&L account, this is not in accordance with the provisions of the Income-tax Act. The assessing officer observed, the assessee neither made payments during the year relevant to the assessment year 2013-14 nor paid on or before the filing of return under section 139(1) of the Act. In this view of the matter, he disallowed the amount of Rs.44,94,008/- to the total income for the assessment year 2013-14. On appeal, the Ld. CIT(A) confirmed the addition.

9. Thus, the assessee is in appeal before us for both the assessment years.

10. Heard rival submissions. We find that the issue in both the appeals stands squarely covered by the decision of the co-ordinate bench of the Tribunal (Jaipur Bench) in the case of M/s Power Liners vs ACIT in ITA No.194/JP/2017 order dated 08/01/2018 which has followed the judgement of the Hon'ble Bombay High Court in the case of CIT vs Knight Frank (India) Pvt Ltd 242 Taxman 313 (Bom) wherein it was held that the assessee had not claimed any deduction on account of the service tax payable in order to determine its taxable income, there can be no occasion to invoke section 43B of the Act. For better clarity, we quote below the findings of the co-ordinate bench:-

"6. Ground No.3 of the assessee's appeal is regarding disallowance made U/s 43B of the Act. The Id AR of the assessee has submitted that the Assessing Officer has made an addition on account of service tax U/s 43B of the Act. He has further submitted that the assessee has not made any claim of expenditure in to the P&L account or in computation of income on account of service tax payable, therefore, no disallowance is called for U/s 43B of the Act. In support of his contention, he has relied upon the decision of Hon'ble Bombay High court in the case of CIT Vs Knight Frank (India) Pvt. Ltd. 242 Taxman 313 (Bom) and submitted that the Hon'ble High Court has held that the assessee had not claimed any deduction on account of the service tax payable in order to determine its taxable income, there can no occasion to invoke Section 43B of the Act."

11. The facts and circumstances in the case before us are stated to be same as those of the case decided by the co-ordinate bench. Therefore, respectfully following the same, especially in the light of judgement of the Hon'ble jurisdictional High Court *in the case of CIT Vs Knight Frank (India)*

Pvt. Ltd. (Supra) we do not find any merit in the orders of the authorities below on this issue. Therefore, we set aside the orders of the authorities below and allow the grounds raised by the assessee.

12. In result, appeal for assessment year 2011-12 is partly allowed and appeal for assessment year 2013-14 is allowed.

Order pronounced in the open court on 22 April, 2022.

Sd/-

sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai, Dt : 22nd April, 2022

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR,
ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai