

**IN THE INCOME TAX APPELLATE TRIBUNAL "B"**  
**BENCH KOLKATA**

**Before Shri Manish Borad, Accountant Member  
and Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.447/Kol/2021**  
Assessment Year: 2018-19

**Debasish Chakraborty.....Appellant**  
Kanchansadhu Advocate,  
Vivekanandapark,  
P.O. Ramkrishna Mission,  
Dist- Pachim Burdwan  
[PAN:ABZPC5272E]

vs.

**CIT, Asansol.....Respondent**

**Appearances by:**

Shri Kanchan Sadhu, Advocate, appeared on behalf of the appellant.

Shri Surendra Kumar Mishra, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 17, 2022

Date of pronouncing the order : April 26, 2022

**ORDER**

**Per Manish Borad, Accountant Member:**

The captioned appeal at the instance of the assessee pertaining to Assessment Year 2018-19 is directed against the order of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] by order dated 26.08.2021 is arising out of the intimation u/s 143(1) of the Income Tax Act (hereinafter referred to as the 'Act') dated 26.04.2019.

2. A perusal of the grounds of appeal shows that they are very detailed and not in consonance with the Income Tax Rules. However, the sole grievance only relates to disallowance of sales tax (CGST and SGST) at Rs.1936970/- u/s 43B of the Act.

3. Brief facts of the case are that the assessee is an individual engaged in construction business. The income of Rs.17,96,480/- declared in the Income Tax return filed on 14.10.2018. Tax audit report u/s 44AB of the Act along with Form 3CD was filed and under column 26 of this report auditor has mentioned that CGST and SGST of

Rs.19,36,970/- has not been paid before the due date of filing Income Tax return u/s 139(1) of the Act. Based on this observation, Centralized Processing Centre while processing the return added the sum of Rs.19,36,970/- u/s 43B of the Act and assessed the income of Rs.37,33,450/-.

4. Aggrieved, assessee preferred appeal before the Id. CIT(A) and stated that the alleged sum of GST was not claimed as an expenditure in the profit and loss a/c and therefore, disallowance u/s 43B of the Act is not called for. Id. CIT(A) rejected this claim observing that the provision u/s 43B is made to ensure that the payment due to the Government should be paid in time and the appellant should not use the money due to the Government.

5. Aggrieved assessee is now in appeal before the Tribunal. The Id. counsel for the assessee reiterated the submissions made before the Id. CIT(A) and further placing reliance on the decision of this Tribunal in the case of *Kankani construction (P) Ltd. vs. CIT* in ITA No.2023/Kol/2017 dated 19.01.2018 and another decision of this Tribunal in the case of *DCIT vs. M/s TSG Global Services Pvt. Ltd.* in ITA No.185/Kol/2019 dated 08.07.2020 stated that provisions to section 43B of the Act come into force only when the assessee makes the claim of an expenditure under the heads mentioned under the provisions of section 43B of the Act but the said provision is not applicable on the alleged sum which was only part of liability but not claimed as an expenditure.

6. Per contra, the Id. Departmental Representative vehemently argued supporting the order of both the lower authorities.

7. We have heard the rival contentions and perused the records placed before us and carefully gone through the decisions relied by the Id. counsel for the assessee. The sole grievance raised in the instant appeal relates to the disallowance of CGST/SGST of Rs.19,36,970/- u/s 43B of the Act. The controversy in the instant appeal arise on account of the observation of the auditor made in Form 3CD in Point no.26 wherein it has mentioned that the CGST/SGST of Rs.19,36,470/- has not been paid before the due date of filing return of income and this observation was made in relation to the provisions of section 43B of the Act.

8. We note that provision of section 43B pertains to “certain deductions to be made only on actual payment”. The starting lines of section 43B reads “notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect to”. Thereafter under Clause (a) of section 43B which has been applied by Id. Assessing Officer to make the alleged additions read that “any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force”. So the primary condition for invocation of provision to section 43B is that assessee should have claimed certain deductions against the revenue/income while computing total income/net profit for the year. Clause (b) to (g) of section 43B of the Act provides for various other expenditures which can be claimed only on actual payment or can be claimed as an expenditure if paid before the due date of filing the return of income u/s 139(1) of the Act and if not paid till the due date filing of the return of income u/s 139(1) of the Act then they can be claimed only in the year when the payments are actually made.

9. In the instant case, the alleged disallowance relates to Goods and Services Tax. The assessee has consistently claimed that the said sum has not been claimed as an expenditure in the profit and loss a/c and the same is mentioned under the current liabilities head of the balance sheet as on 31.03.2018. This fact is verifiable from the audited profit and loss a/c and balance sheet. The assessee has not routed GST through its profit and loss a/c nor it has claimed as an expenditure on any purchases made during the year in its profit and loss a/c nor any expenditure has been claimed towards any excess GST paid during the year. The audited balance sheet shows that the alleged sum was a current liability which the assessee has to pay with the Government treasury in the due course as per the rules and regulations governing GST.

10. This observation of the Id. CIT(A) that provisions of section 43B is made to ensure that payment to the Government should be paid in time and the appellant “should not use the money due to Government” is devoid of merit as the issue in hand relates to computation of income earned by the assessee and claim of certain expenditures as enumerated in section 43B of the Act which can be claimed only on actual payment

basis. The liability to pay the outstanding GST and the process of recovery of such amount and other penal provisions for late payment of GST are governed by the respective rules and regulations provided under Goods and Services Tax Act.

11. We, therefore under the given facts and circumstances of the case and also respectfully following the consistent view taken by this Tribunal in the case of *Kankani construction (P) Ltd.* (supra) and *M/s TSG Global Services Pvt. Ltd.* (supra), are of the considered view that since the assessee has not claimed the alleged amount as an expenditure in the profit and loss a/c, no disallowance could be made u/s 43B of the Act. We accordingly reverse the findings of the Id. CIT(A), delete the disallowance u/s 43B of the Act at Rs.19,36,970/- and allow the grounds of appeal raised by the assessee.

12. In the result, the appeal of the assessee is allowed.

***Kolkata, the 26<sup>th</sup> April, 2022.***

Sd/-  
**[Sonjoy Sarma]**  
**Judicial Member**

Sd/-  
**[Manish Borad]**  
**Accountant Member**

Dated:26.04.2022.

RS

*Copy of the order forwarded to:*

1. Debasish Chakraborty
2. CIT, Asansol
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches