

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 542/Del/2017

Asstt. Year : 2010-11

ACIT, Circle-25(1), Room No. 192A C.R. Building, New Delhi.	Vs.	Tetra Tech India Ltd. 951, Agarwal Metro Heights, Netaji Subhash Place, Pitampura Delhi – 110 034 PAN AACT4415H
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Umesh Takyar, Sr. DR
Date of Hearing	07.04.2022
Date of pronouncement	31.05.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the Revenue is directed against the order dated 19.10.2016 of the Ld. Commissioner of Income Tax (Appeals) - 33, New Delhi ("**CIT(A)**") pertaining to the Assessment Year ("**AY**") 2010-11.

2. The Revenue has taken following solitary ground:-

1. *"On the facts and in the circumstances of the case and law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,85,92,765/- on account of non-payment service tax to the Government ignoring the facts that as*

per the audit report the assessee company has not paid service tax, hence the same must be added back to the income of the assessee.”

3. The facts in brief are that based on the observation made by the auditors, the Ld. Assessing Officer (“**AO**”) added Rs. 1,85,92,765/- to the income of the assessee company by holding that the company has not paid the said amount of service tax.

4. The assessee challenged the said addition in appeal before the Ld. CIT(A) on the ground that the service tax payable by the assessee was not debited to Profit & Loss Account and was not claimed as an expenditure in the return of income.

4.1 The Ld. CIT(A) discussed this issue in para 9 of his order. Before the Ld. CIT(A), the assessee submitted that it has suo-moto disallowed the cumulative amount of unpaid service tax amounting to Rs. 2,48,63,317/- standing in the books of account in AY 2011-12. Thus, disallowance of the same in current year (AY 2010-11) leads to double disallowance. A chart was submitted to demonstrate that miscellaneous amount of unpaid service tax amounting to Rs. 2,48,63,317/- was disallowed suo-moto by the assessee under section 43B of the Income Tax Act, 1961 (“**Act**”) in its computation of income for AY 2011-12 which is reproduced below:

S. No.	Financial Year	Service tax payable during the year	Reversal of service tax/Cenvat Credit availed during the year	Service tax paid during the year	Balance service tax payable during the year	Cumulative Service tax payable at end of the year	Amount disallowed in tax computation	Remarks
1	2005-06	17,87,825	3,71,385	-	14,16,440	14,16,440	-	
2	2006-07	93,85,218	37,47,133	9,19,962	47,18,123	61,34,563	-	
3	2007-08	1,11,64,376	48,30,919	50,90,049	12,43,408	73,77,971	-	
4	2008-09	1,17,21,287	21,71,089	30,00,000	65,50,198	1,39,28,169	-	
5	2009-10	1,12,81,120	36,66,131	-	76,14,989	2,15,43,158	1,85,92,765	Amount

								<i>disallowed order passed u/s 143(3)</i>
6	2010-11	2,11,65,037	80,08,920	98,35,958	33,20,159	2,48,63,317	2,48,63,317	<i>Amount disallowed u/s 43B suo-moto by TTIL</i>
7	2011-12	2,59,89,459	56,58,375	-	2,03,31,084	4,51,94,401	2,03,31,084	<i>Amount disallowed 43B suo-moto by TTIL</i>
	<i>Total</i>				4,51,94,401		6,37,87,166	

4.2 The Ld. CIT(A) deleted the impugned addition by observing that the assessee has taken corrective action in the subsequent year. There is no loss to the Revenue, even though the addition has been made on merit and is sustainable in law and on facts, confirming the addition will result in multiplicity of litigation. The Ld. CIT(A) also noted that the assessee has not claimed the said unpaid service tax as an expenditure during the year.

5. Aggrieved, the Revenue is in appeal before us.

6. Despite issue of several notice of hearing by the Tribunal, none attended for the assessee. We, therefore, proceeded to decide the appeal after hearing the Ld. DR.

7. We have given careful thought to the issue of impugned disallowance. The case of the assessee is that it has not claimed the amount of unpaid service tax as deduction in AY 2010-11 presently under consideration. Therefore, it cannot be the subject matter of disallowance under section 43B of the Act. We find force in this contention of the assessee. Before the Ld. CIT(A), assessee has submitted a chart showing that the impugned amount

of service tax has been suo-moto disallowed by it during the previous year relevant to the AY 2011-12. This needs verification. Therefore, we consider it proper to remit the matter back to the file of the Ld. AO to verify the contention of the assessee and if on verification he finds that the contention of the assessee is correct, then the impugned addition be not made in AY 2010-11 presently under consideration. We direct and order accordingly.

8. In the result, the appeal of the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 31st May, 2022.

**sd/-
(G. S. PANNU)
PRESIDENT**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 31/05/2022

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	