

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 3169/DEL/2019 (A.Y 2013-14)**

Income Tax Officer, Ward : 27 (1) New Delhi. <b>(APPELLANT)</b>	Vs.	United Business Xpress India Pvt. Ltd., B-1/28, Mohammad Pur, Bhikaji Cama Place, New Delhi-110 066. <b>PAN No. AAACU6650A</b> <b>(RESPONDENT)</b>
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<b>Assessee by :</b>	<b>Shri Baldev Raj, C. A.;</b>
<b>Department by:</b>	<b>Shri R. S. Yadav, Sr. D. R.;</b>

<b>Date of Hearing</b>	<b>22.08.2022</b>
<b>Date of Pronouncement</b>	<b>26.08.2022</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the Revenue against the order dated 31.01.2019 of the Id. Commissioner of Income Tax (Appeals)-43, New Delhi [hereinafter referred to CIT (Appeals)] for Assessment Year 2013-14.

2. Briefs facts of the case are that, the assessee who is engaged in the business of domestic and international couriers filed return declaring income of Rs. 34,84,270/-. The case of the assessee was selected for scrutiny and

statutory notice u/s 143(2) of the Income Tax Act("Act" for short) was issued and further noticed u/s 142(1) of the Act was also issued. The Representative of the assessee participated in the assessment proceedings. The assessment order came to be passed on 04/03/2016 by making an addition of Rs. 30,752/- as per provision of Section 41 of the Act and a sum of Rs. 63,23,646/- has been added back to the declared income of the assessee on the ground that payment of the service tax liability after the due date of filing of return of income is not allowable u/s 43B of the Act. Thus, unpaid service tax liability has been added back to the declared income of the assessee.

3. Aggrieved by the order dated 04/03/2016, the assessee has preferred an appeal before the CIT(A). The Ld. CIT(A) vide order dated 31/01/2019, the Revenue has preferred the present Appeal. Though the Revenue has not incorporated grounds of Appeal in Form No. 36, an authorization letter to file Appeal has been placed along with the Appeal set. The Ld. DR submitted that the Grounds approved in the said authorization letter may be treated as Grounds of Appeal which are as follows:-

*"1. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance of Rs. 2,63,23,646/- made by the Assessing Officer u/s 43B of the I.T Act, on account of unpaid Service-Tax.*

*2. The order of the CIT(A) may kindly be set aside and order of the Assessing Officer may kindly be restored."*

4. The Ld. DR vehemently submitted that the order of the Ld.CIT(A) is erroneous and prayed for setting aside the order of the Ld.CIT(A) and also prayed restoring the order Ld. A.O.

5. Per contra, the Ld. Counsel for the assessee submitted that it is well settled law declared by the Jurisdictional High Court in the case of Noble and Hewitt India (P) Ltd. (166 Taxman 48) wherein it is held that when the service tax has not been deposited by the assessee to the concerned authorities but no deduction in this regard has been claimed, question of applicability of Section 43B does not arise. The Ld. Counsel has relied that order of the Ld.CIT(A) and submitted that no interference is required by this Tribunal.

6. We have heard the parties, perused the material on record and gave our thoughtful consideration. It is not in dispute that the assessee charged service tax component in the bills raised by it with regard to the sales and installation of telecom towers, parts components and accessories. The assessee renders services in connection with domestic and international courier. The assessee is also eligible to service tax which has been collected from customers. As the bill raised indicates that bill is inclusive of services rendered and consequently service tax. It is the case of the assessee before the Lower Authorities that the assessee Company did not claim deduction in this regard nor did it deposit the amount as expenditure under P & L Account. But no evidence has been filed to substantiate that the payment has not been received from the concerned parties.

7. The Ld.CIT(A) while deleting the addition observed that 'since the service tax component is not an item of deduction that has been claimed by way of debited to the P & L Account by the assessee'. Further, the Ld. CIT(A) has relied on the decision of Delhi High Court in the case of Noble and Hewitt India (P) Ltd. (166 Taxman 48).

8. The Hon'ble Delhi High Court in the case of Noble and Hewitt India (P) Ltd. (supra) held as under:-

*“5. Here we are concerned with an assessee who has not even claimed any deduction on the ground of service tax and has not debited the amount to its Profit & Loss Account. Moreover the provisions of section 43B of the Act are quite clear in this regard. The decision of the Calcutta High Court in Chowringhee Sales Bureau (P.) Ltd.'s case (supra) was not in the context of the applicability of section 43B of the Act.*

*In our opinion since the assessee did not debit the amount to the Profit & Loss Account as an expenditure nor did the assessee claim any deduction in respect of the amount and considering that the assessee is following the mercantile system of accounting, the question of disallowing the deduction not claimed would not arise.”*

9. Further the similar view also taken by the Jurisdictional High Court in the case of Jetline (India) Pvt. Ltd. Vs. Commissioner of Income Tax, wherein it is held as under:-

*“74. The ITAT followed its order dated 8th August 2008 in ITA No. 294/Luc/2000 which held that Section 43B is only attracted when the Assessee claims deduction for any sum payable by way of tax or duty under any law for the time being in force, and, where, as in the case of the Assessee, no charge is claimed or made to the profit or loss account, there was no question of disallowing the amount taken to the balance sheet on the liabilities side or of "adding back" and deleted the addition.*

*75. Consequently, the Court upholds the order of the ITAT which affirmed the order by the CIT(A) deleting the above addition. The issue is decided in favour of the Assessee and against the Revenue.”*

10. Since, in the present case, the service tax component is not an item of deduction that has been claimed by way of debit to the P &L Account by the assessee, the above ratio laid down by the Jurisdictional High Court is squarely applicable. By respectfully following the said ratio, we do not find any error or infirmity committed by the Ld. CIT(A) . Therefore, we do not find merit in the Revenue's Grounds of Appeal. Accordingly, the Grounds of Appeal of the Revenue are dismissed.

11. In the result, the Appeal of the Revenue is dismissed.

Order pronounced in the open court on : 26/08/2022.

**Sd/-**

**( SHAMIM YAHYA )  
ACCOUNTANT MEMBER**

**Sd/-**

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Dated : 26/08/2022

*\*R.N\* Sr. PS*

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

