

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 3742/DEL/2018 [A.Y 2014-15)

The Dy. C.I.T
Central Circle - 25
New Delhi

Vs. M/s Bistro Hospitality Pvt Ltd
C -32A, Nathur Singh Market
Masoodpur, Vasant Kunj,
New Delhi

PAN: AABCB 4586 C

(Applicant)

(Respondent)

Assessee By : None
Department By : Shri Kanav Bali, CIT-DR

Date of Hearing : 01.09.2022
Date of Pronouncement : 01.09.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 2, New Delhi dated 20.12.2017 pertaining to Assessment
Year 2014-15.

2. The grievances of the assessee read as under:

"1. Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition made by Assessing Officer amounting to Rs. 40,45,470/- on account of disallowance of Service Tax claimed in the profit and loss account as the assessee was not crediting the Service Tax charged from the customers to the profit and loss account but claimed the deduction of the Service Tax.

2. Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred in allowing the assessee relief to the tune of Rs. 2,03,54,514/- on the issue of disallowance on account of rejection of consumption of food and beverages claimed."

3. None appeared on behalf of the assessee inspite of notice. A perusal of our record shows that this appeal was first listed for hearing on 12.04.2021 and, thereafter, this appeal was getting adjourned on each occasion for non-appearance by the assessee or his authorized representative. We are left with no choice but to proceed exparte.

4. The ld. DR was heard at length. Case records carefully perused.

6. Briefly stated, the facts of the case relating to Ground No. 1 are that the assessee has claimed Service Tax payment of Rs. 40,45,470/- which was disallowed by the Assessing Officer on the ground that the assessee has neither shown collection of Service Tax and payment of Service Tax and there is no mention in the Notes to the Accounts.

7. The Id. CIT(A) deleted the addition on finding that payment of Service Tax was allowable liability on the part of the assessee and not collected from its customers.

8. We find that the Assessing Officer has misdirected herself in understanding the Notes to the Accounts. Service Tax liability is liability of the assessee and it is not a case where Service Tax has been collected by the assessee from its customers. We, therefore, do not find any error or infirmity in the findings of the Ld. CIT(A). Ground No. 1 is dismissed.

9. Facts relating to Ground No. 2 show that the Assessing Officer has made disallowance of Rs. 4,07,09,028/- on the ground that the assessee has not maintained/furnished quantitative details/stock register for goods traded/consumed.

10. The Assessing Officer further observed that the assessee failed to furnish item-wise trading results and quantitative details of opening and closing stock.

11. Before the Id. CIT(A), the assessee strongly contended that daily purchases are made from different suppliers of perishable items and it is not feasible to furnish quantitative details from the suppliers. But it was strongly contended that the assessee had maintained stock register which was produced before the Assessing Officer alongwith details of purchases. It was contended that the assessee is running chain of restaurants and buys groceries, liquors, vegetables and other perishable items on daily basis and it is not possible to furnish quantitative details.

12. The Id. CIT(A) was partly convinced with the explanation of the assessee and, therefore, restricted the disallowance to 10% of consumption of foods and beverages which should meet the ends of justice. Accordingly, addition of Rs. 2,03,54,514/- was sustained.

13. Before us, the Id. DR strongly relied upon the findings of the Assessing Officer.

14. We have carefully perused the assessment order and the order of the first appellate authority. Considering the nature of business of the assessee and considering the fact that items like liquor is sold on the basis of quantity. It cannot be ruled out that the assessee is maintaining stock register. Since the ld. CIT(A) confirmed the disallowance of Rs. 2,03,54,514/-, in our considered opinion, this should meet the ends of justice. We, therefore, decline to interfere with the findings of the ld. CIT(A). Ground No. 2 is also dismissed.

15. In the result, the appeal of the Revenue in ITA No. 3742/DEL/2018 is dismissed.

The order is pronounced in the open court on 01.09.2022.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 01st September, 2022.

VL/

Copy forwarded to:

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

Asst. 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	
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