

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : G : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.8649/Del/2019
Assessment Year: 2015-16

Seema Buildtech Pvt. Ltd.,
H.No.C-336, Gali No.17,
West Vinod Nagar,
New Delhi.

Vs. ITO,
Ward-23(1),
New Delhi.

PAN: AAPCS4623R

(Appellant)

(Respondent)

Assessee by	:	Shri Vivek Gupta, CA
Revenue by	:	Ms Meenakshi Dohare, Sr. DR
Date of Hearing	:	27.03.2023
Date of Pronouncement	:	27.04.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order of the CIT(A)-8, New Delhi, dated 09.09.2019, for Assessment Year 2015-16.

2. The Id. Counsel of the assessee submitted that grounds No.1 and 5 of the assessee are general in nature and ground No.4 is consequential. Therefore, these grounds are dismissed. The remaining effective grounds of appeal No.2 and 3 raised by the assessee read as follows:-

"2. That on the facts and the circumstances of the case and provisions of the law, the Id. AO as well as Ld CIT(A) erred in making/confirming the disallowance u/s 43B of IT Act of Rs.1,44,32,242/- in respect of service

tax payable shown as current liability in the Balance sheet as at 31.03.2015 by the appellant.

3. That without prejudice to ground No.2 above and on the facts and circumstances of the case and provisions of the law, the Id. AO as well as Ld CIT(A) erred in making/confirming the disallowance of Rs.1,05,00,369/- in respect of service tax payable pertaining to earlier years out of total amount of Rs.1,44,32,242/- shown as current liability in the Balance sheet as at 31.03.2015 by the appellant."

3. The Id. Counsel of the assessee submitted that the AO as well as the Id.CIT(A) has grossly erred in making and confirming disallowance u/s 43B of the Income-tax Act, 1961 (for short, 'the Act') of Rs.1,44,32,242/- in respect of service tax payable shown as current liability in the balance sheet as at 31.03.2015 by the assessee. The Id. AR submitted that in view of the recent order of the ITAT Delhi dated 14.12.2022 in the case of *M/s S&A Finman Ltd. in ITA No.2220/Del/2017* for AY 2012-13, referring the judgement of the Hon'ble jurisdictional High Court of Delhi in the case of *CIT vs. Noble and Hewitt India Pvt. Ltd., reported as 305 ITR 324*, it was held that where the amount of service tax has not been routed through P & L Account, then, the provisions of section 43B of the Act are not applicable to the service tax liability shown in the balance sheet consequent upon the inclusion of service tax in the bills raised by the assessee particularly when the gross amount including the service tax have not been recovered from the respective parties. The Id. AR also pointed out that without prejudice to the ground No.2, it is also required to be considered that the Id.CIT(A) while confirming the disallowance has ignored a very vital, important and relevant fact that out of the amount of disallowance of Rs.1,44,32,242/-, Rs.1,05,00,369/- was in respect of service tax payable pertaining to earlier assessment year 2014-15 for which no addition can be made in the hands of the assessee.

4. Replying to the above, the Id. CIT-DR strongly supported the orders of the authorities below and submitted that when the assessee is reporting turnover including service tax and also showing outstanding/payable service tax to the exchequer at the end of the financial year, which remained unpaid till the filing of the return of income, then, the AO was right in making addition u/s 43B of the Act and the Id.CIT(A) was also correct in upholding the same.

5. On careful consideration of above rival submissions, first of all, we note that the AO, dismissing the submission of the assessee that indirect taxes are not routed through Profit & Loss Account, held that as per section 43B of the Act, once the liability of service tax payment arises and noted in the books of account of the assessee, then, the same is allowable only if the payment of service tax has been made or paid before filing of return u/s 139(1) of the Act. From the copy of Statement of Profit & Loss for the year ended on 31.03.2015 (AY 2015-16) and Note/Schedule 14 to the statement available at pages 11 and 18 of the assessee's paper book, it is clearly discernible that the assessee has shown revenue from operations of Rs.4,34,95,566/- (including service tax). The amount of service tax payable has been shown in the balance sheet at S.No.4(C) including service tax payable of Rs.1,44,32,292.81 as per Note 7 to Balance Sheet.

6. Thus, the submission of the assessee that the amount of service tax has not been routed through P&L Account is contrary to the factual position vivid from the financial statements including P&L Account and Balance Sheet of the assessee for FY 2014-15 relevant to AY 2015-16. Therefore, the AO was right in invoking the provisions of section 43B of the Act and the Id.CIT(A) was also right in upholding the

disallowance made by the AO. Accordingly, grounds of the assessee being devoid of merits are dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 27.04.2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 27th April, 2023.

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Copy forwarded to :

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

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi