

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA**

[Before Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 448/Kol/2023**  
**Assessment Year : 2018-19**

SPACE OUT OF HOME	Vs.	ITO, Ward-1(2), Durgapur
PAN: ABSFS 7975 D		
Appellant		Respondent

Date of Hearing	20.06.2023
Date of Pronouncement	03.08.2023
For the Assessee	Shri Shuvo Chakraborty, Advocate
For the Revenue	Shri Prabhakar Prakash Ranjan, JCIT, Sr. DR

**ORDER**

**Per Sonjoy Sarma, JM:**

The present appeal has been preferred by the assessee against the order dated 27.03.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee has raised the following grounds of appeal:

1. *For that confirmation of u/s 154 order by the appellate authority is bad in law.*

2. *For that while confirming the said u/s 154 order, ld. appellate authority did not considered three vital points as such firstly while passing the 154 order, CPC has not considered the service tax actually paid by the appellant within due date and was fully entitled to the deduction u/s 43b, secondly balance outstanding service tax amount was not of relevant FY but the accumulated amount of previous years since the said tax demand is challenged in appeal, thirdly, appellant neither has taken the deduction of said balance amount in the relevancy AY nor has debited the amount in profit and loss account but kept as liability in audited balance sheet.*

3. *For that CPC cannot make addition of said outstanding service tax liability since it is not cessation of liability u/s 41 as the quantum appeal is pending before the service tax authority nor*

*can disallow the actually paid service tax u/s 43B on both counts it is gross violation of law.*

*4. For that u/s 143(1) and u/s 154 before making such addition CPC had to give notice to the appellant to show cause which it did not hence entire order is illegal and void ab initio.*

*5. For that appellant may modify the grounds.*

2. The assessee filed its return of income for the A.Y. 2018-19 by declaring income of Rs. 3,47,480/-. However, processing the return of income filed by the assessee CPC, Bengaluru disallowed a sum of Rs. 19,37,607/- which was reflected in the audit report as outstanding payment towards service tax in the hands of assessee.

3. Aggrieved by the above order, assessee filed a rectification petition before CPC by requesting to allow the claim of assessee. However, CPC, Bengaluru passed an order vide order dated 25.09.2019 without rectifying such defects and keep the order remained same as passed earlier.

4. Feeling aggrieved by the above order, assessee preferred an appeal before the Id. CIT(A) where the appeal of the assessee was dismissed.

5. Dissatisfied with the above order, assessee is in appeal before the Tribunal against the impugned order passed by the Id. CIT(A) vide order dated 27.03.2023.

6. At the time of hearing, Id. AR submitted before the bench by stating that the assessee is engaged in the business of advertisement and in consequent to that, assessee has to pay

service tax in compliance of mandatory requirement under the provisions of law. He further submitted that from the audit report submitted by assessee before the ld. AO at the time of hearing which reflected a service tax amount outstanding as Rs. 19,37,607/- which has been wrongly disallowed by the AO while processing the return of income filed by the assessee. He further contended that out of the alleged sum of Rs. 19,37,607/- only Rs. 2,59,216/- is in relation with assessment year 2018-19 and balance amount of Rs. 16,78,391/- were related with other previous year which had accumulated from last 5 years back and in connection with A.Y. 2018-19 outstanding amount of service tax of Rs. 2,59,216/- has already been deposited by the assessee before submission of return. Therefore, provision of section 43B cannot term to be violated by the present assessee in such situation, the addition made by AO is uncalled for. He further contended that the addition made by the AO on the alleged outstanding service tax liability is not sustainable since it is in the case of assessee not cessation of liability u/s 41 of the Act as the quantum of appeal is still pending before the service tax authority regarding sum of Rs. 16,78,391/- and for remaining amount of Rs. 2,59,216/- assessee has already paid before filing of return. Therefore, both counts the addition made by AO is not sustainable as it is violation of provisions of law. To substantiate his argument, the ld. AR furnished a paper book containing 60 pages and from page no. 33 to 57 produce before us by showing that the consequential service tax appeal is still pending before the CGST authority for disposal.

7. On the other hand, ld. DR supported the order passed by the authorities below and submitted that there is no infirmity in

the order passed by the ld. CIT(A), accordingly appeal of the assessee may be dismissed.

8. We after hearing the rival submission of the parties and going through the necessary documents as submitted by the AR of the assessee before us, we find that the alleged addition made by the AO of Rs. 19,37,607/- which was wrongly disallowed at the time of processing of return as out of alleged sum of Rs. 19,37,607/- only Rs. 2,59,216/- is related with assessment year 2018-19 and remaining amount of Rs. 16,78,391/- was related with other previous year accumulated from last 5 years and in connection with the same, appeal is still pending for disposal before the CGST and for the remaining amount of Rs. 2,59,216/- assessee has already deposited before submission of return of income. In such situation, addition made u/s 43B of the Act cannot be sustained in the hands of assessee. We, therefore, set aside the impugned order passed by the ld. CIT(A) and direct the AO to delete the addition of Rs. 19,37,607/- made in the hands of assessee. In terms of our above findings, the appeal of the assessee is hereby allowed.

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

Order pronounced in the open court on 03.08.2023.

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 03.08.2023

*Biswajit*

Copy of the order forwarded to:

1. Appellant- SPACE OUT OF HOME, 40/N, Road No. 23, Bhiringee, Durgapur-713213.
2. Respondent – ITO, Ward-37(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata