

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No. 673/Ahd/2024
Assessment Year: 2017-18**

Rajviraj Engineers and Contractors Pvt. Ltd., T/3, Bhavna Flats, Narayannagar Road, Paldi, Ahmedabad-380007 [PAN - AACDR 5927 P]	Vs	The ITO, Ward-3(1)(2), Ahmedabad
(Appellant)		(Respondent)
Assessee by	Shri Sunil Talati, AR	
Revenue by	Shri Sanjay Kumar, Sr DR	
Date of Hearing	05.08.2024	
Date of Pronouncement	09.08.2024	

ORDER

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 19.02.2024 passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Assessment Year (AY) 2017-18.

2. The assessee has raised the following grounds of appeal :-

"1. The Ld. CIT(A) has erred in confirming the disallowance u/s 43B of the Act, of Rs.8,39,871/- being Service Tax payable, under the head "Profit & Gains from Business & Profession" as made in the rectification order u/s 154 of the Act. It is submitted that Appellant Company has neither debited such amount in the Profit & Loss Account nor claimed the expenditure in the return of income. Therefore, based on the facts, it is prayed to be deleted the disallowance made u/s 43B of the Act. The same be held now.

2. *The order passed by the Ld. CIT(A) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now."*
3. The Assessing Officer, CPC, passed an order u/s 154 of the Act dated 25.09.2019 in the assessee's case thereby income under the head "Profit & Gains from Business & Profession", amounting to Rs.8,39,871/-, being the Service Tax payable was disallowed u/s 43B of the Act.
4. Being aggrieved by the said order dated 25.09.2019 passed by the Assessing Officer-CPC, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.
5. The Id. AR submitted that the CIT(A) has not taken into account that the assessee is a private limited company and has shown service tax liability for the current year amounting to Rs.8,39,871/- on 31.03.2017. The assessee-company collected the service tax from the customers on behalf of the Government and the same was paid subsequently to the Government Exchequer. Accordingly, the assessee-company, on the separate collection of such service tax amount, has shown liability in its books of accounts which was subsequently paid to the Government. The assessee-company has not claimed any deduction on account of such service tax amount in its audited Profit and Loss Account in the year under consideration. The Id. AR submitted that the Assessing Officer as well as CIT(A) has not taken into that the assessee has not claimed deduction and the same was not debited in the Profit & Loss Account; therefore, the same should not have been disallowed by the Assessing Officer as well as should not have been confirmed by the CIT(A).

6. The Id. DR submitted that the Service Tax component is in the nature of Revenue and unless it is not paid, it will form income of the assessee; therefore, the Assessing Officer has rightly disallowed the same u/s 43B of the Act.

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee, through its Authorized Representative, has clarified that the assessee has not claimed or debited service tax amount in its Profit & Loss Account during the Assessment Year 2017-18, and since the records were destroyed as it was more than 6 years, it is confirming on the letter dated 05.08.2024 that no amount of service tax is outstanding at all and, therefore, there is no demand of any service tax for any year from the Service Tax Department. Since the assessee has not claimed any deduction u/s 43B of the Act in its Profit & Loss Account for the relevant assessment year, the disallowance u/s 43B of the Act cannot *prima facie* arise and, in fact, the component of service tax was subsequently paid; therefore, the disallowance in respect of the same made by the Assessing Officer does not sustain.

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

Order pronounced in the open Court on 9th August, 2024.

Sd/-

(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 9th day of August, 2024

BTK*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

TRUE COPY

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*