

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos. 1682 & 1683/Del/2022
(Assessment Years: 2017-18 & 2019-20)**

Sircar Securities & Allies Services Pvt. Ltd, C/o. Agarwal Vishwanath & Associates 133/1/1A, S. N. Banerjee Road, Pushkal Bhawan, 3 rd Floor, Kolkata (Appellant)	Vs. ACIT, Circle-23(2), New Delhi (Respondent)
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PAN:AAOCS0951R

Assessee by :	Shri Deep Agarwal, Adv
Revenue by:	Shri Anuj Garg, Sr. DR

Date of Hearing	09/07/2024
Date of pronouncement	30/08/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1682 & 1683/Del/2022 for AY 2017-18 & 2019-20, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'ld. NFAC', in short] in Appeal No. ITBA/NFAC/S/250/2022-23/1043150736(1) dated 24.05.2022 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 10.01.2020 and 10.09.2020 by the Assessing Officer, CPC, Delhi (hereinafter referred to as 'ld. AO').
2. Identical issues are involved in both these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

ITA No. 1682/Del/2022 – Asst Year 2017-18 – Assessee Appeal

3. At the outset, we find that the assessee seeks to transfer these appeals from Delhi to Kolkata Tribunal in view of the fact that the PAN was transferred to Kolkata jurisdiction. But we find from the intimation passed u/s 143(1) of the Act for the Asst Year 2017-18, the jurisdiction of the assessee during Asst Year 2017-18 was Circle 23(2), Delhi and even the first appellate order was passed by NFAC Delhi. The law is now very well settled that the jurisdiction of the AO would decide the jurisdiction of the Tribunal and accordingly, the request of the assessee vide its letter dated 31.5.2023 to transfer these appeals to Kolkata Tribunal is hereby rejected.

4. The Ground Nos. 1 & 5 raised by the assessee are general in nature and does not require any specific adjudication.

5. The Ground No.2 raised by the assessee is challenging the confirmation of addition made on account of service tax u/s 43B of the Act in the sum of Rs 79,95,528/-.

6. We have heard the rival submissions and perused the materials available on record. The return of income for the Asst Year 2017-18 was filed by the assessee on 27.8.2018 declaring total income of Rs 56,59,143/-. This return was duly processed u/s 143(1) of the Act by the Id. CPC on 10.01.2020 wherein a sum of Rs 79,95,528/- was added by the CPC by applying the provisions of section 43B of the Act on account of service tax not remitted to the Central Government within time. This action of the CPC was upheld by the Id. NFAC, Delhi. But it is pertinent to note that the service tax portion was not even claimed as deduction by the assessee. The same was not even routed through the profit and loss account. This sum of Rs. 79,95,528/- represent service tax payable by the assessee which stood

unpaid before the due date of filing of return u/s 139(1) of the Act for the Asst Year 2017-18 . This fact was duly mentioned by the Tax Auditor in the Tax Audit Report in Form 3CD vide Column No. 26(i)(B)(b) thereon. Accordingly, it was pleaded by the assessee that unpaid service tax of Rs 79,95,528/- cannot be subject matter of addition u/s 43B of the Act. The assessee in support of its contentions placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs Noble and Hewitt (I) (P) Ltd dated 10.9.2007 and decision of Hon'ble Bombay High Court in the case of PCIT vs Tops Security Ltd were relied upon, in addition to certain tribunal decisions also on the same issue. The Id. NFAC, Delhi observed that the assessee having collected service tax portion from its customers was supposed to deposit the same with the Central Government and not doing so had resulted in unjust enrichment to the assessee which requires to be taxed u/s 43B of the Act. In our considered opinion, the assessee had routed the entire receipt of service tax and payment of service tax as a balance sheet item and had not routed the same in the profit and loss account. We find that the assessee had not claimed any deduction towards service tax at all in the computation of income. While this is so, there is no question of applicability of provisions of section 43B of the Act in the instant case. Hence we hold that the lower authorities grossly erred in framing the addition u/s 43B of the Act. Accordingly, the Ground No. 2 raised by the assessee is allowed.

7. The Ground Nos. 3 & 4 raised by the assessee are challenging the confirmation of disallowance made on account of employees contribution of Provident Fund/ ESI in the sum of Rs 52,13,488/-.

8. We have heard the rival submissions and perused the materials available on record. At the outset, the Id. AR before us fairly stated that this issue is decided against the assessee by the decision of Hon'ble Supreme

Court in the case of **Checkmate Services Pvt. Ltd Vs. CIT reported in 448 ITR 518(SC)**. Accordingly, the Ground Nos. 3 & 4 raised by the assessee are dismissed.

9. In the result, the appeal of the assessee for Asst Year 2017-18 is partly allowed.

ITA No. 1683/Del/2022 – Asst Year 2019-20 – Assessee Appeal

10. The Ground Nos. 1 & 6 raised by the assessee are general in nature and does not require any specific adjudication.

11. The Ground Nos. 2, 3 & 4 raised by the assessee for Asst Year 2019-20 are identical to Ground Nos. 2, 3 & 4 raised hereinabove for Asst Year 2017-18 and hence the decision rendered by us hereinabove for Asst Year 2017-18 shall apply mutatis mutandis for Asst Year 2019-20 also, except with variance in figures.

12. The Ground No. 5 raised by the assessee is challenging the levy of fees for late filing of return u/s 234F of the Act. This ground was stated to be not pressed by the Id. AR at the time of hearing. The same is reckoned as a statement made from the Bar. Accordingly, the Ground No. 5 raised by the assessee for Asst Year 2019-20 is hereby dismissed as not pressed.

13. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 30/08/2024.

-Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 30/08/2024

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi