

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.878/Ahd/2024
(Assessment Year: 2018-19)

Munjal Auto Industries Ltd., 187, GIDC Estate, Waghodia Dist., Vadodara-391760	Vs.	Deputy Commissioner of Income Tax, CPC, Bangalore (JAO-DCIT Circle-2(1)(1), Vadodara
[PAN No.AAACG8588L]		
(Appellant)	..	(Respondent)

Appellant by :	Ms. Amrin Pathan, A.R.
Respondent by:	Shri Waghe Prasad Rao, S.R.-DR
Date of Hearing	16.10.2024
Date of Pronouncement	16.10.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), ADDL/JCIT (A)-4, Bengaluru, vide order dated 28.02.2024 passed for A.Y. 2018-19.

2. The Assessee has taken the following grounds of appeal:-

“Violation of Principle of natural justice:

1. The learned Commissioner of Income Tax (Appeals), ADDL/JCIT(A) - 4, Bengaluru ["CIT(A)"] erred in fact and in law in passing the order u/s 250 of Income Tax Act, 1961 ("the Act") and confirming the action of the learned Deputy Commissioner of Income Tax, Centralized Processing Centre, Bangalore ("the AO") without granting proper opportunity of being heard.

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2. *The learned CIT(A) erred in fact and in law in passing order and confirming the action of the learned AO in making disallowance of Goods and Service Tax ("GST") of Rs. 13,27,094 without complying with clause 12 of Faceless Appeal Scheme, 2021 and hence order passed by the learned CIT(A) is bad in law.*

Without prejudice to the above: Disallowance u/s 43B:

3. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in making disallowance of Rs. 13,27,094 pertaining to GST u/s, 43B of the Act.*

4. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in making disallowance of Rs.13,27,094 u/s 43B of the Act despite the fact that deduction in respect of same was not claimed by the Appellant.*

5. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in making disallowance of Rs. 13,27,094 u/s 43 B of the Act without appreciating the fact that it is not passed through profit and loss account.*

6. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in computing the income from business or profession of the Appellant at Rs. 51,38,77,084/- instead of Rs. 51,25,49,990/-.*

7. *Alternatively, the learned CIT(A) erred in fact and in law in not granting the deduction of GST of Rs. 13,27,094 in the year in which payment is made in accordance with the provisions of section 43B of the Act.*

Other Grounds:

8. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in charging interest u/s. 234C of the Act.*

9. *Your Appellant craves the right to add to or to alter, amend, substitute, delete or modify all or any of the above grounds of appeal."*

3. In this case the disallowance of Rs. 13,27,094/- was made by the CPC under Section 43B of the Income Tax Act on account of mismatch in the amount reported as disallowance under Section 43B as per the Tax Audit Report. The adjustment was made by CPC on account of non-payment of GST, within the due date.

4. The Ld. CIT(A) relying on the judgment of Chowringhee Sales Bureau Pvt. Ltd. vs. CIT 87 ITR 542 (SC) and the case of Wyzminds Solutions Pvt. Ltd. vs. ITO in ITA No. 3417/Bang/2018 upheld the action of the CPC.

5. The assessee in appeal before us against the aforesaid order passed by the Ld. CIT(A).

6. However, the facts reveal that the assessee has not claimed the amount of GST in the Profit & Loss Account. Hence, the facts of the judgments relied upon by the Ld. CIT(A) ifefer from the facts of the assessee's case. Since the assessee has not claimed the amount in the Profit & Loss Account, no disallowance is called for in the instant case.

7. Reliance in this regard is being placed in the case of **CIT vs. U P Hotels Pvt. Ltd. 35 taxmann.com 565 (Allahabad)**, in which the Allahabad High Court held that in case assessee has not claimed any deduction in respect of its liability for payment of luxury tax, no question of addition under section 43B will arise. While passing the order the High Court has made the following observations:

“The Act imposes tax on income. In order to form income of a person, the person must receive or deemed to receive any sum. The amount of luxury tax which was not received cannot form part of the income of any person. [Para 7]

The Act further gives relief, deduction and exemption from payment of income-tax to the person on various income. Section 43B provides a right to the assessee to claim deduction of any sum payable by the assessee by way of tax, duty, cess or fee etc. This section imposed a condition that such deduction be allowed only in case of actual payment of the liabilities mentioned therein by the assessee. Section 43B is concerned with deduction claimed by the assessee. Thus, the scope of inquiry by the Assessing

Officer under section 43B is as to whether the assessee can be allowed deduction which can only be allowed to the assessee when it has liability to pay under the law and has actually paid that amount. The question of addition will arise only when the assessee has claimed deduction and the Assessing Officer finds that conditions mentioned in this section has not been satisfied. In this case the assessee has not claimed any deduction in respect of its liability for payment of luxury tax as such no question of addition will arise. [Para 8]

Section 43B does not cast duty on the assessee to realize the various amounts mentioned in it. In case, where a person has not realized luxury tax from the customers then under the law he being liable to pay it and it will be realized from him under the relevant law irrespective of the fact that he has collected or not. But it does not give the Assessing Officer any jurisdiction to add it in the gross income of the assessee. Commissioner (Appeals) as well as the Tribunal have concurrently found that the assessee has not realized the amount of luxury tax, which was added in its gross income. [Para 9]

In view of the aforesaid discussions, the question referred to in this reference is answered in the affirmative i.e. against the revenue and in favour of the assessee. [Para 11]”

8. Further, in the case of **P.K. Parikh HUF vs. ITO in ITA No. 556/Ahd/2022**, the ITAT has made the relevant observations, which are relevant to the issue in hand:

*“7. We have heard both the parties and perused all the relevant materials available on record. The assessee did not debit the amount to the profit and loss account as an expenditure not the assessee claimed any deduction in respect of amount. In fact, the assessee has treated the same as current liabilities and provisions and also given the description under Schedule 7 regarding duties and taxes. Thus, the contention of the Id. A.R. that the provisions of section 43B is not applicable to the assessee as the assessee has paid the GST amount before filing of the return of income appears to be correct. **The decision of Hon’ble Apex Court in case of Chowringhee Sales Bureau (P.) Ltd.. (supra) will not be applicable as in the present case, assessee had given the details of the current liabilities and not estimated the same and was not debited the same as an expenditure in profit and loss account and not claimed any deduction to that effect.** But since the assessee had paid the said amount prior to filing of the return of income, the decision of Hon’ble Delhi High Court will be applicable in case of assessee as the ratio laid down by the Noble & Hawitt (I)(P.) Ltd. (supra) will be squarely applicable in the present case. Thus, the appeal of the assessee is allowed.”*

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9. Accordingly, since the assessee has not claimed deduction of this amount and has not routed the same through P&L Account, we are of the considered view that no disallowance is called for under Section 43B of the Act for the unpaid GST since no deduction was claimed by the assessee with respect to the aforesaid amount.

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

This Order is pronounced in the Open Court on 16/10/2024

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 16/10/2024

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad