

आयकर अपीलीय अधिकरण
दिल्ली पीठ "ए", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं.1207/दिल्ली/2024 (नि.व. 2020-21)

ITA No.1207/DEL/2024 (A.Y.2020-21)

ATS Real Estate Builders P. Ltd.,
711/92, Deepali, Nehru Palace,
New Delhi 110019
PAN: AAKCA-8766-C

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax,
Circle-1(1), Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by

: Shri Ved Jain, Advocate

Shri Ayush Garg, Chartered Accountant

प्रतिवादीद्वारा/ Respondent by

: Shri Vipul Kashyap, Sr.DR

सुनवाई की तिथि/ Date of hearing

: 30/10/2024

घोषणा की तिथि/ Date of pronouncement

: 27/01/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)/Additional/Joint Commissioner of Income Tax-(Appeals)-1, Bengaluru (hereinafter referred to as 'the CIT(A)') dated 22.02.2024, for assessment year 2020-21.

2. The assessee in appeal has raised as many as six grounds of appeal. Ground no. 1 & 6 of appeal are general in nature, hence, require no adjudication. Ground

no. 2 to 4 of appeal are in respect of single issue i.e. disallowance u/s. 43B of the Income Tax Act, 1961(hereinafter referred to as 'the Act') Rs.3,55,01,693/- on account of GST payable. In Ground no. 5 of appeal the assessee has assailed disallowance of Rs.5,68,496/- made in respect of late deposit of employees contribution towards Provident Fund. The Id. Counsel for the assessee made statement at the Bar that he has not pressing ground no. 5 of appeal. Thus, solitary issue for consideration before the Tribunal is disallowance made under the provisions of Section 43B of the Act.

3. Shri Ved Jain, appearing on behalf of the assessee submits that assessment was made u/s. 143(1) of the Act. Notice was received by the assessee from CPC on 30.09.2021 proposing adjustments *inter alia* for disallowance u/s. 43B of the Act on account of mismatch in expenditure as indicated in the Audit Report and ITR-4. The assessee vide reply dated 21.09.2021 explained that GST amounting to Rs.3,55,01,693/- is not charged to Profit & Loss account during the year. GST collected from customers has been credit to Central Government Account. Whatever GST or Service Tax remains payable at the end of Financial Year is shown as GST payable or Service Tax payable under the head current liabilities. The CPC without considering submissions of the assessee made adjustment of aforesaid amount u/s. 43B of the Act. The assessee carried the issue in appeal before the CIT(A), but failed to get desired relief. The Id. Counsel for the assessee submits that disallowance u/s. 43B of the Act can only be made in respect of deductions which are claimed in profit and loss account. Where no deduction for any particular expense has been claimed in profit and loss account, no disallowance is required to be made. He reiterated that amount of GST payable has not been routed through

profit and loss account. In support of his submissions that deduction/expenses not routed through profit and loss account cannot be disallowed u/s. 43B of the Act placed reliance on following decisions:

i. CIT vs. Noble and Hewitt (I) P. Ltd., 2007 (9) TMI 238 (Delhi) decided on 10.09.2007;

ii. CIT vs. Calibre Personnel Services P. Ltd., 2015 (2) TMI 587 (Bom.) decided on 02.02.2015; &

iii. CIT vs. S & A Finman Ltd., 2022 (12) TMI 691, ITAT Delhi decided on 14.12.2022.

3.1. The Id. Counsel for the assessee further submitted that no adjustment can be made u/s. 143(1) of the Act when issue is debatable. The disallowance made u/s. 43B of the Act on account of GST payable is not a *prima facie* adjustment; rather the same is a debatable issue since said amount was never routed through P&L account. One of the possible view is that since said amount was never routed through P&L account, therefore, how can same be added back in taxable income. To support his second contention he placed reliance on following decisions:

i. Abhishek Cements Ltd. vs. Union of India, 44 taxmann.com 348 (Delhi); &

ii. CIT vs. Eicher Goodearth Ltd. 269 ITR 125 (Delhi).

4. Per contra, Shri Vipul Kashyap representing the department vehemently defended the impugned order. The Id. DR submits that there was mismatch in expenditure reflected in Audit Report and ITR. The inconsistency in expenditure claimed in Tax Audit Report was pointed to the assessee. The reply of the assessee

was not satisfactory, hence, disallowance was made u/s. 43B of the Act which was further upheld by the CIT(A). He prayed for dismissing appeal of the assessee.

5. Both sides heard, orders of the authorities below examined and case laws on which the Id. Counsel for the assessee placed reliance considered. At the outset, Id. Counsel for the assessee made statement at Bar that he has not pressing ground no. 5 of appeal assailing disallowance made u/s. 36(1)(va) of the Act in respect of late deposit of employees contribution towards Provident Fund. In view of statement made by Id. Counsel for the assessee, ground no. 5 of appeal is dismissed.

6. The ground no. 2 to 4 of appeal are in respect of single issue i.e. disallowance made under provisions of section 43B of the Act in respect of Goods & Service Tax payable. The short contention of the assessee is that GST amounting to Rs.3,55,01,693/- has not been routed through Profit and Loss account, therefore, no disallowance can be made in respect of aforesaid amount u/s. 43B of the Act. Similar submission was made by the assessee before the CIT(A). We find that the fact the amount disallowed u/s. 43B of the Act has not been routed through P&L account is not rebutted by the Revenue. No contrary material has been placed before us, by the Revenue to show that the assessee has claimed deduction in respect of GST Rs.3,55,01,693/-. The contention of the assessee that aforesaid amount has been reflected as GST payable under the head current liabilities is uncontroverted. The Hon'ble Delhi High Court in the case of CIT vs. Noble and Hewitt (I) P. Ltd. (supra) held that where the assessee has neither claimed deduction on account of Service Tax nor has debited the amount to Profit and Loss

account, the provisions of section 43B of the Act do not get attracted. Hence, question of disallowance of deduction not claimed does not arise.

7. In light of facts of the case and the decision rendered by Hon'ble Jurisdictional High Court, we find merit in submissions of the assessee. Hence disallowance made by the AO u/s. 43B of the Act is directed to be deleted. The findings of the CIT(A) in respect of this issue are reversed and ground no. 2 to 4 of appeal are allowed.

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

Order pronounced in the open court on Monday the 27th day of January, 2025.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 27/01/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI