

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी (एसएमसी)”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 860/Kol/2023
Assessment Year: 2018-19

ATC India Electronics Pvt. Ltd. (PAN: AANCA 0933 C)	Vs.	DCIT, Circle-13(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	10.01.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.01.2025
For the assessee/ निर्धारिती की ओर से	Shri S. M. Surana, Advocate
For the revenue / राजस्व की ओर से	Shri Sailen Samadder, Addl. CIT, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the “Ld. CIT(A)”) dated 30.03.2023 for the AY 2018-19.

2. At the outset, we note that there is a delay of 79 days in filing the appeal by the assessee for which the assessee has filed condonation petition stating that the delay in filing the appeal to be due to illness of the director of the assessee company who has

been looking after day to day issues as well as taxation matters of the assessee company. After finding the reasons to be genuine and bonafide, we are inclined to condone the delay by admitting the appeal of the assessee for adjudication.

3. At the time of hearing, ground no. 3 and 4 were not pressed and accordingly the same were dismissed as not pressed.

4. Issue raised in ground no. 1 is against the confirmation of addition of Rs. 56,21,460/- by the Ld. CIT(A) as made by the AO on account of GST payable by the assessee for which the assessee failed to produce any documentary evidences whereas the ground no. 2 is against the confirmation of addition of Rs. 1,24,742/- by the Ld. CIT(A) as made by the AO on account of unpaid professional tax u/s 43B of the Act.

5. Facts in brief are that during the course of assessment proceedings, the assessee has furnished copies of profit and loss account, balance sheet. The AO on perusal of balance sheet and auditor report found that duties and taxes of Rs. 90,44,967/- were outstanding on 31.03.2018. However, tax audit report did not contain the details of payment of above amounts being paid till the date of filing the return of income. Accordingly, the assessee was called upon to show cause as to why the above amount should not be disallowed. The assessee furnished the details of outstanding amounts along with evidences. The AO, in respect GST payable, found that the same was also shown as payable in the balance sheet while also showing the same amount of ITC receivable on account of GST in the balance sheet and accordingly, held that the assessee has not furnished the date of payment of Rs. 56,25,460/- and added the same u/s 43B of the Act to the income of the assessee. Similarly the AO added the Rs. 1,24,742/- on account of unpaid professional tax u/s 43B of the Act.

6. Similarly this amount was confirmed by the Ld. CIT(A) in the appellate proceedings.

7. The Ld. Counsel of the assessee furnished before us Form GSTR under Rule 61(5) which is a GST return for 2017-18(March) containing the details of total tax

payable, paid through ITC as well as tax paid in cash which showed that there was no tax outstanding as observed by the AO as the GST was paid through ITC adjustment and nothing was outstanding. Accordingly, the AR requested the bench that ground no. 1 may be allowed. So far as the ground no. 2 is concerned, professional tax was not debited to the profit and loss account and it was collected on behalf of employees and deposited directly. The Ld. A.R furnished before us the acknowledgement slip-cum-paper form (iii) under West Bengal State Tax on professions, Trades, Callings and Employment Rules, 1979 filed on 09.05.2019 for FY 2017-18 along with challans of payment which states that whatever tax was collected by the assessee was duly paid and there was nothing outstanding and accordingly ground no. 2 may be allowed.

8. The Ld. D.R submitted before the Bench issue may be restored to the AO for necessary verification and deciding the issue accordingly.

9. After hearing the rival contentions and perusing the material on record and taking into account the GSTR-3B and acknowledgment slip-cum-form of professional tax return for FY 2017-18 with challans , we find that though both the sums i.e. GST payable of Rs. 56,21,460/- and professional tax of Rs. 1,24,742/- were outstanding at the financial year end but were duly paid as per the evidences furnished before us. So no disallowance of GST and professional tax was called for. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the additions. Ground no 1 and 2 are allowed.

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

Order is pronounced in the open court on 31st January, 2025

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 31st January, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ATC India Electronics Pvt. Ltd., 10/2, Rani Park, Badu Road, Madhyamgram, Kolkata-7000129
2. Respondent – DCIT, Circle-13(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata