

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 383/RPR/2025

(निर्धारण वर्ष Assessment Year: 2018-19)

Deputy Commissioner of Income Tax-1(1), 1 st Floor, Shri Ram Plaza, Vypar Vihar, Bilaspur, Chhattisgarh.	vs	M/s Vishal Automobiles, Tifra near Railway Crossing, Bilaspur 495001, Chhattisgarh.
PAN: AAFV0333C		

CO No. 16/RPR/2025

(Arises out of ITA No: 383/RPR/2025)

M/s Vishal Automobiles, Tifra near Railway Crossing, Bilaspur 495001, Chhattisgarh.	Vs	Deputy Commissioner of Income Tax-1(1), Aayakar Bhawan, Civil Lines, Raipur-492001, C.G.
PAN: AAFV0333C		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri Vinod Kumar Khatri, CA.
राजस्व की ओर से / Revenue by	:	Dr. Priyanka Patel, Sr. DR.
सुनवाई की तारीख / Date of Hearing	:	29.07.2025
घोषणा की तारीख / Date of Pronouncement	:	30.07.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the revenue and CO by the assessee, against / in support of the order of learned Commissioner of Income Tax-Additional/JCIT (A)-3 (in short, Id. CIT(A)), Delhi, passed u/s 250 of the Income Tax Act, 1961 (in short, 'the IT Act') for the AY 2018-19, dated 27.03.2025, which

in turn arises from the intimation under section 143(1) of the IT Act passed by the Centralized Processing Center (in short, the CPC) Bengaluru, dated 16.10.2019.

2. The grounds of appeal assailed by the revenue in the present appeal are culled out as under:

- “1. Whether on the fact and circumstances of the case, the CIT(A) was justified in deleting the adjustment of Rs.2,00,33,478/- made u/s 43B of the Act.*
- 2. The order of the CIT(A) is erroneous both in law and on facts.*
- 3. Other grounds that may be argued at the time of hearing of appeal.”*

3. The sole grievance raised by the revenue in present appeal is that the CPC while processing the return of the assessee has disallowed a sum of Rs.2,05,26,439/- u/s 43B of the IT Act, but the same has been deleted by the Ld. CIT(A) to the extent of Rs.2,00,33,478/-.

4. Ld. Departmental Representative (Ld. Sr DR) submitted that since the assessee has not complied with the provision of section 43B of the Act, the impugned order of Ld. CIT(A) was not justified in deleting of adjustment made by the CPC, it was an error on the part of the Ld. CIT(A), therefore, the order of Ld. CIT(A) is liable to be set-aside and the addition so made by the CPC deserves to be upheld.

5. Per contra, Ld. Authorized Representative (in short, Ld. AR) for the assessee submitted that the issue is squarely covered by the judgment of Hon'ble Jurisdictional High Court in the case of **Assistant Commissioner of Income Tax-I v. M/s Ganpati Motors reported in 2017(4) TMI 1613** and thereafter in the case **Grand Motors, NH-200 vs. ITO Ward 2(1)** passed in **TAXC No. 207 of 2024**, which were submitted before the Ld. CIT(A) and he decided the issue based on guiding jurisprudence. The discussion and decision made by the Ld. CIT(A) referred to by Ld. AR is extracted here under, for the sake of completeness of facts:

“Discussion- The intimation u/s 143(1) and submission along with documents submitted by appellant are carefully examined. The fact of case is that the appellant filed ITR declaring Income at Rs. 28,94,378/-. The said ITR is processed u/s 143(1) wherein income is determined at Rs. 2,34,20,817/-. Therefore, adjustment of Rs. 2,05,26,439/- was made u/s 43B. The adjustment was made on the basis of tax audit report submitted by appellant online, The relevant information is in respect of any sum referred to in clause (a), (c), (d). (e). (1) or (g) of section 438 the liability for which of expenses was incurred during the year and not Paid before the due date of filing ITR is as under-

26 (i)B was incurred in the previous year and was		
26 (i)(B)(a) Paid on or before the due date for furnishing the return of income of the previous year under section 139(1)		
Section	Nature of liability	Amount
Nil		
26 (i)(B)(b) not paid on or before the aforesaid date		
Section	Nature of liability	Amount
Tax,Duty,Cess,Fee etc	SERVICE TAX	137130
Tax,Duty,Cess,Fee etc	ENTRY TAX	798421
Tax,Duty,Cess,Fee etc	SALES TAX	19590888
(State whether sales tax, goods & service Tax, customs duty, excise duty or any other indirect tax, levy, cess, impost, etc., is passed through the profit and loss account.)	Yes	ENTRY TAX RS. 492961/-

5.1 The appellant in his submission stated that the sum for disallowance was picked up from figure in balance sheet showing the closing balance outstanding in the balance sheet. The appellant had submitted a manual tax audit report which has a different data than shown online in column 26(i)(B)(b). However, the appellant submitted the complete details of accounts consisting opening balance, transaction during the year and closing balance. The appellant submitted that the sales tax and service tax amounts were not routed through the P&L account hence these cannot be added u/s 43B as the amounts were not claimed as expenses. The appellant also relied on following judicial decisions -

1. CIT(A) order no. 'Appeal No: CIT(A)/BSP/A.No. 111/17-18/20-21 dated 14.07.2020' in the case of appellant for AY 2017-18
2. ITAT, Raipur order dated 31.01.2019 and High Court of Chhattisgarh order in Ganapati Motors.
3. High Court of Chhattisgarh decision in the case of Grand Motors vs ITO, TAXC No. 207 of 2024 dated 25.11.2024.

The case laws cited by appellant are carefully examined. In the case of Grand Motors, the Issue was identical for AY 2018-19. The 1st appellate authority and ITAT confirmed the disallowance considering the amendment in section 145A. However, the Hon'ble High Court Chhattisgarh decided the issue as under-

"12. Reverting to the facts of the case, it is admitted position on record that the appellant /assessee did not claim the amount of 62,32,262/- in his profit and loss account as an expenditure / deduction, nor the appellant claim deduction in respect of that account under Section 43B of the IT Act. In that view of the matter, the Assessing Officer, the CIT(A) and the ITAT, all three authorities have concurrently erred in holding that the appellant has claimed deduction/expenditure under Section 43B of the IT Act adding to its taxable income. Accordingly, the impugned order passed by the ITAT holding that the

appellant is liable to pay tax on 62,32,262/-, is liable to be and is hereby set aside. The substantial question of law is answered in favour of the assessee and against the Revenue."

Considering the above discussion and binding nature of decision of Jurisdictional High Court, the adjustment of Rs. 1,97,28,018/-is deleted.

5.2 The other disallowance in the intimation u/s 143(1) is Rs. 7,98,421/- on account of entry tax. The appellant submitted the details and stated that the amount includes Rs. 3,05,460/-for opening balance. Further amount of Rs. 4,92,961/- has been incurred during the year. The assessee submitted that this amount has been routed through the P&L, account. The tax auditor in form 3CD also mentioned that entry tax was routed through P&L account. During the course of appeal proceeding the appellant was confronted that the amount has been routed through P&L account hence ratio of judgement in the cases cited by him are not applicable on this account. The appellant had not submitted any specific response on this issue.

Therefore, the amount of Rs. 4,92,961/- incurred by assessee on entry tax which has not been paid till the time allowed u/s 139(1) hence the addition of Rs. 4,92,961/- u/s 43B is confirmed.

6. Considering the above, the appeal is partly allowed"

6. With the aforesaid submission, it was the prayer of Ld. AR that since the matter is squarely covered by the judgment of the Hon'ble Jurisdictional High Court in the case of **Grand Motors** (supra), therefore, the same may please be allowed to the assessee. Accordingly, Ld. CIT(A) has rightly decided the issue in favour of the assessee, following the mandate of law as interpreted by the Hon'ble Jurisdictional High Court, deserves to be upheld.

7. We have considered the rival submissions, perused the materials available on record and the case laws relied upon by the assessee. Admittedly, the issue involved in the present appeal is squarely covered by the judgment of Hon'ble Jurisdictional High Court in the case of **Grand Motors** (supra) and the copy of the same has been placed before us at page nos. 49 to 54 of the assessee's paper book, from which the relevant findings are culled out as under:

"2. The appeal was heard on the question of admission and was admitted for final hearing by formulating the following substantial question of law:

"Whether the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal are concurrently justified in upholding the disallowance of ₹ 62,32,262/- made under sub-clause (iv) of clause (a) of sub-section (1) of Section 143 of the Income Tax Act, 1961 by wrongly invoking the provisions contained in Section 43B of the IT Act and thereby recorded a finding perverse to the record?"

7. Mr. Amit Chaudhari, learned Standing Counsel for the Income Tax Department / Revenue, would submit that the appellant did not claim the said amount of 62,32,262/- in his profit and loss account as expenditure and the case is covered by the decision rendered by this Court in M/s Ganapati Motors's case (supra).

8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

9. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 43B(a) of the IT Act, which states as under:

“43B. Certain deductions to be only on actual payment. —Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

xxx xxx xxx”

10. In this regard, decision of this Court in M/s Ganapati Motors’s case (supra) would be more relevant in which the issue before the Court was, whether Section 43B of the IT Act is attracted even when the assessee does not claim any deduction on the strength of that provision and considering the said question, this Court held in paragraph 3 as under:

“3. The Assessing Authority, on the instant issue, noticed that the assessee’s claim regarding the treatment of VAT in the Books of Accounts has been verified from the Books and that has been found to be in order. The Assessing Authority also found that VAT has been found separately accounted for in the Books of Accounts. The only ground on which the Assessing Authority refused to exclude the VAT collected by the dealer from the profit of business is on the basis that the VAT component was not paid off on or before the due date for furnishing the return in relation to the previous year under Section 139(1) of the Income Tax Act. The First Appellate Authority also noticed that it is an undisputed fact that the Appellant did not charge VAT to the Profit and Loss account. It was therefore noted by the First Appellate Authority that in such circumstances, the liability may still be unpaid, but it cannot be disallowed being not claimed as deduction in the Books of Accounts.”

11. Similarly, the Delhi High Court in the matter of Commissioner of Income-tax v. Noble & Hewitt (I) (P.) Ltd.2 held in paragraph 6 as under:

“6. In our opinion since the assessee did not debit the amount to the Profit & Loss Account as an expenditure nor did the assessee claim any

deduction in respect of the amount and considering that the assessee is following the mercantile system of accounting, the question of disallowing the deduction not claimed would not arise.”

12. Reverting to the facts of the case, it is admitted position on record that the appellant / assessee did not claim the amount of ₹ 62,32,262/- in his profit and loss account as an expenditure / deduction, nor the appellant claim deduction in respect of that account under Section 43B of the IT Act. In that view of the matter, the Assessing Officer, the CIT(A) and the ITAT, all three authorities have concurrently erred in holding that the appellant has claimed deduction / expenditure under Section 43B of the IT Act adding to its taxable income. Accordingly, the impugned order passed by the ITAT holding that the appellant is liable to pay tax on 62,32,262/-, ₹ is liable to be and is hereby set aside. The substantial question of law is answered in favour of the assessee and against the Revenue.

13. The tax appeal is allowed to the extent indicated herein-above.”

8. Further, while dealing with the similar issue in the case of **Dy. Commissioner of Income Tax-1(1), Raipur vs. Grand Motors, Raipur in ITA No. 544/RPR/2024**, vide order **dated 23.01.2025**, the co-ordinate bench of this Tribunal has decided the issue in favour of the assessee, wherein the relevant observations are culled out as follows:

“10. We have considered the rival submissions, perused the material available on record and case laws relied upon by the parties. Admittedly, the issue in present case qua the admissibility of unpaid VAT liability which was not paid on or before the due date for furnishing the return u/s 139 of the Act, if the same is not charged to P&L Account, the same cannot be disallowed being not claimed as deduction in the books of accounts. We may herein note that on this issue

the revenue through its Ld. Standing Counsel had accepted that the said amount was not claimed as an expenditure in P&L Account and the case is covered by the decision rendered by Hon'ble Jurisdictional HC in the case of M/s Ganapati Motors (supra), under such admission by the revenue, the contentions raised before us are found to be bereft of any substance. Regarding reliance of the department on the judgment of Hon'ble Apex Court in the case of Chowringhee Sales Bureau (P) Ltd. Vs CIT, AIR 1973 SC 376, (1973) 87 ITR (542), it would be worth noting that the same has been duly considered and discussed by the Hon'ble Jurisdictional HC, while pronouncing the judgment in the case of Ganapati Motors (supra), therefore the same cannot be any help.

17. In view of aforesaid facts, circumstances and observations, we are of the considered view that the issue in present appeal assailed by the revenue is squarely covered in favour of the assessee by the judgment of Hon'ble Jurisdictional HC in the case of M/s Grand Motors, Bilaspur (supra) i.e., sister concern of the present assessee, therefore, in absence of any contradictory decision of the Hon'ble Jurisdictional HC or by Hon'ble Apex Court, we do not find any infirmity in the order of Ld. CIT(A), the same, therefore, stands uphold.

12. Consequently, grounds of appeal of revenue raising the sole controversy stands dismissed.”

9. In backdrop of the aforesaid facts and circumstances and judicial pronouncement, we are of the considered view that the controversy raised herein is no more *res integra* and the same is squarely covered by the judgment of Hon'ble Jurisdictional High Court referred to supra, which is further followed by this Tribunal, therefore, respectfully following the same, in absence of any contradicting submissions by the revenue, we do not find any merits in the

controversy raised by the department. Accordingly, the appeal filed by the department stands dismissed.

10. In result, ITA No.383/RPR/2025 filed by the revenue has been rendered as **dismissed** in terms of our aforesaid observations.

11. Since we have dismissed the appeal of revenue in **ITA 383/RPR/2025**, the **CO 16/RPR/2025** of the assessee, supportive to the impugned order of Ld. CIT(A), became infructuous, accordingly dismissed.

12. In combined result both Appeal of revenue and CO of assessee are rendered to be dismissed, in terms of our aforesaid observations.

Order pronounced in the open court on 30/07/2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर / Raipur; दिनांक Dated 30/07/2025
**HKS

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR,
ITAT, Raipur
5. गार्ड फाईल / Guard file.

//True copy//

आदेशानुसार/ BY ORDER

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur