

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AGRA BENCH, AGRA**

**BEFORE : SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 36/Agr/2025  
Assessment Year: 2020-21**

Mohd Nayeem 74, Sadar Bazar Jhansi	<b>Vs.</b>	Income-tax Officer, Ward 2(3)(5), Jhansi
<b>PAN : ACFPN3382F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Nitin Goyal, Advocate & Sh. Amit Goyal, Advocate
Department by	Sh. Anil Kumar, Sr. DR

Date of hearing	16.02.2026
Date of pronouncement	18.02.2026

**ORDER**

**PER : S. RIFAUR RAHMAN, ACCOUNTANT MEMBER:**

The assessee has preferred this appeal against the order of learned CIT(Appeals) -2, Chennai dated 05.12.2024 u/s. 250 of the Income-tax Act, 1961 ("the Act" for short) for the assessment year 2020-21.

2. At the time of hearing, Id. AR of the assessee brought to our notice, brief facts of the case relating to the issues are, Id. AR submitted that the assessee in summary assessment u/s 143(1) of the Act based on the audit report disallowed the amount wherein the auditor has declared in

Form No. 3CD that there is outstanding payment due of Rs. 81,08,561/- to GST, based on the above audit report, CPC has disallowed the above said outstanding u/s 43B of the Act.

3. Aggrieved with the above order, the assessee preferred an appeal before Id. CIT(Appeals) and raised objections and filed a detailed submissions, objected to the additions made u/s. 143(1) of the Act. The Id. CIT(Appeals) after considering the submissions of the assessee sustained the additions by observing as under:-

6.3. The Appellant has not paid the GST within the prescribed time limit u/s 43B of the Act, which is evidenced by the outstanding amount of Rs. 81,08,561/- shown in the Balance Sheet. The Appellant's contention that the above is not debited to the Profit and loss Account is not acceptable since the same ought to have been rendered a proper accounting treatment as prescribed. Therefore, any attempt otherwise to circumvent section 43B is not permissible. The Appellant's exclusive method of accounting is thus not as prescribed. Also, as per Section 145 of the Act and the Income Computation and Disclosure Standards (ICDS) the GST/CENVAT/VAT must be included in the total turnover. This stand has been upheld by various judicial decisions including that of Hon'ble ITAT, Varanasi in the case of Husna Parveen in ITA No.3/VNS/2022. Recently in the case of The Grand Motors Vs ITO, the Hon'ble ITAT Raipur Bench vide Order dated 09.07.2024 has also upheld identical disallowance confirmed by the CIT(Appeals) (ITA No. 195/RPR/2024).

4. Aggrieved, the assessee is in appeal before us, raising following grounds of appeal :

1. That the order of the Ld. Addl. CIT(A) -2 Chennai dated 05/12/2024 bearing No:ITBA/APL/S/250/2024-25/1070939029(1) is bad in law and on facts.

2. That the Ld. Addl CIT (A) was not justified in sustaining the addition of Rs. Rs.81,08,561/- 43B ignoring the fact and legal position that this amount was not claimed as deduction U/s 43B and as such is completely out of the ambit of this non-obstinate section.

3. That the Ld. Addl CIT(A) failed to adjudicate ground no 5 of the appeal, wherein the appellant had challenged the Order U/s 143(1) dated 03/11/2021 bearing DIN No.CPC/2021/A3/184062095 passed by the CPC for not considering the remark of auditor in para No: 26(i)(B)(b) in Form 3CD which is stated as under before making impugned addition

26(i)(B)(b)	not paid on or before the aforesaid date		
	Section	Nature of liability	Amount
	Tax, Duty, Cess, Fee etc	GST	8108561
(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.)	No		

That at the outset there had been no requirement of such remark in the audit report if all such types of unclaimed liabilities are to be disallowed.

4. That without being prejudice with the above grounds of appeal, the appellant shall be allowed to claim the deduction of Rs. 81.08.561/- U/s 43B in subsequent financials years in which GST of Rs.8108561/- relevant to A/y 2020-2021 was actually paid by the appellant.

5. That Ld. CIT-A failed to give any kind of direction to the lower authority in the impugned order so as to grant deduction of the alleged addition of Rs. 8108561/- U/s 43B. in the subsequent years wherein the appellant had made the payment of this amount.

6. That the appellant craves the leave to add, alter, modify delete any of the ground/s of appeal either before or at the time of hearing before this hon'ble bench.

5. In this regard, he brought to our notice page 12 & 13 of the paper book-2 wherein he has filed certificate from the tax auditor with the breakup of outstanding of GST declared in audit report, it was explained that GST liability pertaining to F.Y 2018-19 is Rs. 37,00,927/- and balance pertaining of F.Y 2019-20 of Rs. 44,07,634/-. He submitted that the outstanding liability pertaining F.Y 2018-19 was already disallowed by the Assessing Officer in the previous Assessment Year to the extent of Rs. 93,86,783/-. The above said amount was part of the same outstanding which was disallowed in A.Y 2018-19. In this regard, he brought to our notice assessment order relevant to Assessment Year 2019-20 wherein Assessing Officer has disallowed the amount of Rs. 93,83,000/-. Further, he submitted that aggrieved with the above order, assessee preferred an appeal before First Appellate Authority and ITAT. He brought to our notice order of ITAT which is placed at pages 2 to 5 of the paper book(1) wherein the submissions of the assessee was rejected and sustained the additions made u/s 43B of the Act. Further, he

submitted that the outstanding balance relating to the previous year which was shown as outstanding in the current year in the Form 3CD. It amount of double additions. He submitted that to the extent of disallowance made by the Assessing Officer in the previous assessment year may be deleted.

6. Further, he submitted that the additional ground raised by the assessee are jurisdictional issue, the relevant facts are already available on record. Further, the same may be admitted for adjudication. Ld. DR did not object to admit the additional grounds. After considering the submissions, we proceeded to admit the additional grounds for adjudication. He submitted that the assessee has raised additional grounds of appeal wherein to the extent of payment made by the assessee during the current assessment year relating to outstanding of the previous year, it was submitted that the assessee had paid to the extent 54.84 lacs during the year, He prayed that the same may directed to the Assessing Officer to allow the same.

7. On the other hand, learned DR submitted that the issue raised by the assessee needs verification on the addition proposed by the Assessing Officer as well as credit climbed by the assessee towards

payment of GST during the year under consideration. Therefore, he submitted that the issue may be remanded back to the Assessing Officer for verification.

8. Considered the rival submissions and the material placed on record. We observe that there is outstanding payment of GST to the extent of Rs. 81,08,561/-, the same was reported by the auditor in Form 3CD, based on the above declarations, the CPC has disallowed the same however, before us, Id. AR of the assessee submitted that above outstanding amount consists of outstanding liability relating to the Assessment Year 2019-20 of Rs. 37,00,927/-. It was brought to our notice the relevant assessment order of previous assessment year. It is observed that the Assessing Officer had disallowed to the extent of Rs. 93,86,783/- and during the year under consideration, the assessee has made payment of Rs. 54,84,189/-. The net balance payable is Rs. 37,00,927/- relating to A.Y 2019-20. Since the disallowance of Rs. 93,86,783/- was already disallowed and confirmed by the Appellate Authorities the outstanding of liability relevant to the previous assessment year, the same outstanding to the extent of Rs. 37,00,927/- cannot be disallowed again in the present assessment year for the reason that GST is collected on behalf of the Government, this was

never claimed as expenditure by the assessee in the previous year. Since, in the previous assessment year the outstanding amount was disallowed u/s 43B, the same amount cannot be disallowed under the assessment year under consideration. As the same required verification, therefore, we are inclined to remit the issue to the file of JAO to verify the claim made by the assessee as per law and allow the same after due verification, it is needless to say that the assessee may be given proper opportunities of being heard.

9. Coming to the additional grounds raised by the assessee as discussed above GST is not an expenditure claimed by the assessee in its financial statement. The assessee collects the same on behalf of the Government and it is the responsibility of the assessee to remit the same to the Government account. Since during the previous assessment year the outstanding amount was unpaid, the Assessing Officer has disallowed the same u/s 43B of the Act. As the assessee has remitted Rs. 54.84 lacs during the impugned assessment year and as directed by the Co-ordinate Bench, the relevant credit should be given to the assessee during the year under consideration. We already remitted the issue of disallowance u/s 43B relating to the previous year outstanding, thus issues of credit towards the payment made during year also be

remitted to the file of Assessing Officer to verify and allow the same as per the law, once again, it is needless to say that the assessee may be given proper opportunities of being heard.

10. In the result, grounds raised by the assessee including additional ground are remitted to the file of the Assessing Officer. In the result appeal filed by the assessee are allowed for statistical purposes.

***Order pronounced in the open court on 18.02.2026.***

**Sd/-  
(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(S. RIFAUH RAHMAN)  
ACCOUNTANT MEMBER**

Dated:18.02.2026

\*Ganesh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra