

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'आई', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "I", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI AMARJIT SINGH, JM

आयकर अपील सं./ITA No.4104/Mum/2015

(निर्धारण वर्ष / Assessment Year :2011-12)

Mr. Inayatullah Peer Mohammad Shaikh, C/o Mohan Sriharsha & Associates, Chartered Accountants, 302 B Wing, Mangalya, Off Marol Maroshi Road, Near Marol Fire Brigade, Andheri (East), Mumbai-400059	Vs.	ITO-19(3)(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ALEPS 9159 H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.2276/Mum/2014

(निर्धारण वर्ष / Assessment Year :2009-10)

Mr. Inayat Peermohammad Shaikh, C/o Mohan Sriharsha & Associates, Chartered Accountants, 302 B Wing, Mangalya, Off Marol Maroshi Road, Near Marol Fire Brigade, Andheri (East), Mumbai-400059	Vs.	ITO-19(3)(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ALEPS 9159 H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Nishit Gandhi
राजस्व की ओर से /Revenue by : Shri Santosh Mankoskar
सुनवाई की तारीख / Date of Hearing : 01/02/2016
घोषणा की तारीख/Date of Pronouncement : 31/03/2016

आदेश / O R D E R

PER R.C.SHARMA (A.M.) :

These are the appeals filed by the assessee against the order of CIT(A), Mumbai, for the assessment years 2011-12 & 2009-10, in the matter of order passed u/s.143(3) of the I.T. Act.

2. The only grievance of the assessee pertains to the addition of outstanding liability of VAT and service tax u/s.43B of the IT Act.

3. Rival contentions have been heard and record perused. During the course of scrutiny assessment the AO made addition on account of VAT and Service Tax not paid during the year by invoking provisions of Section 43B of the Act. We found that provision of Section 43B is applicable only with respect to the expenditure which has been debited and claimed without payment of the same. In the instant case before us, the assessee is neither debited VAT or Service Tax nor claimed the same as deduction while computing its income. Therefore, there is no reason for making addition on VAT or service tax which has not been claimed as expenditure in the P&L account. The VAT and Service Tax so collected from the customers are neither in the nature of income nor expenses, insofar as the tax so collected are directly paid in the Government Treasury and assessee is not going to earn any income from such tax collected from the customers. Since the assessee did not debit VAT and Service Tax in the profit and loss account nor did the assessee claimed any deduction in respect of VAT and Service Tax amount while computing his taxable income, the issue is squarely covered by the decision of Hon'ble Delhi High Court in the case of Noble & Hewitt (India) (P) Ltd., 305 ITR 324. The Mumbai bench of the Tribunal in the case of Pharma Search, 82 DTR 303 also held that provisions of Section 43B cannot be invoked unless the assessee has claimed by way deduction the amounts specified u/s.43B without

making actual payment. Respectfully following the decision of Hon'ble Delhi High Court as well as decision of the Mumbai bench of the Tribunal, we do not find any justification for addition so made by the AO. Accordingly, the AO is directed to delete the addition so made in the assessment year 2009-2010 and 2011-2012 on account of VAT and Service Tax not claimed in the profit and loss account.

4. In the result, both appeals of the assessee are allowed.

Order pronounced in the open court on this 31/03/2016

**Sd/-
(AMARJIT SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 31/03/2016

प्र.कु.मि/pkm, नि.स/ PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार
(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai