

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI B. R. BASKARAN, AM

ITA No.2917/Mum/2013
(A.Y:2007-08)

Talwalkars Wellness Place, Kukade House, Patil Maruti Wadi, Off. N. C. Kelkar Road, Dadar Mumbai 400 028 PAN:AADFT 2925 E	Vs.	The Asst. Commissioner of Income Tax, Circle 15(2), Matru Mandir, Tardeo, Mumbai 400 007
Appellant	..	Respondent

Appellant by	..	None
Respondent by	..	Ms. Pooja Swaroop, DR

Date of hearing	..	01-09-2016
Date of pronouncement	..	01-09-2016

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of order of CIT (A)-, Mumbai in appeal No.CIT (Appeals) - 28, Mumbai dated 07-02-2011. Assessment was framed by the ACIT, Circle-15(2), Mumbai u/s 143(3) of the Income Tax Act, 1961 (hereinafter ‘the Act’) for the assessment year 2007-08 vide his order dated 30-11-2009.

2. The only issue in this appeal of assessee is against the order of the CIT (A) confirming the action of the AO in disallowing the payment of service tax amounting to Rs.26.81 lacs u/s 43B of the Act.

3. We have heard the learned Sr. DR and gone through the facts and circumstances of the case. The facts are that the assessee has disclosed outstanding liabilities in its balance sheet on account of service tax payable at Rs.26,65,150/- and professional tax payable at Rs.1,60,550/-. According to the

AO, these payments are outstanding and covered under the provisions of Section 43B of the Act. Since, these payments are not made, deduction cannot be allowed. Accordingly, he disallowed the entire amount of Rs.26.81 lacs. Aggrieved, the assessee preferred appeal before the CIT (A), who also confirmed the action of the AO. Aggrieved, now the assessee is in second appeal before the Tribunal.

4. Before us, the assessee filed computation of income for the assessment year 2005-06, 2006-07 and 2007-08 in Annexure –II and claimed that the service tax payable of Rs.4,20,092/- in assessment year 2005-06 was disallowed u/s 43B of the Act. Further, it was claimed that a further sum of Rs.10,30,769/- is disallowed u/s 43B of the Act in assessment year 2006-07. The computation of assessment year 2006-07 was also filed. Even, explanation was given in the grounds of appeal. The assessee has also enclosed photo copy of service tax paid amounting to Rs.12,14,289/- on 31-10-2007 in Annexure-III. The assessee has also enclosed copy of professional tax paid challan of Rs.16,550/- on 15-10-2007 in Annexure-IV. It was explained in its written submission that the assessee has enclosed this service tax challan and professional tax challan paid before the ACIT, Circle-15(2) during the course of assessment proceedings vide letter dated 14-10-2009. In view of these facts, we are of the view that the assessee itself, suo moto disallowed a sum of Rs.4,20,092/- in assessment year 2005-06 and further disallowed a sum of Rs.10,30,769/- in assessment year 2006-07. The balance sum of Rs.12,14,289/- was paid on 31-10-2007 and professional tax of Rs.16,550/- was paid on 15-10-2007. The proofs regarding these are before us. In such a situation, we are of the view that no disallowance by invoking provisions of

Section 43B of the Act can be made because the assessee has suo moto disallowed earlier amount and balance amount was paid as is evident above. In view of these facts, just for verification purposes, we remit this issue back to the file of the AO, because the assessee has filed photocopies of all the documents before us which requires verification. If, the verification comes true, the AO has to delete the disallowance. We order accordingly.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 01-09-2016.

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 01-09-2016
Lakshmikanta Deka/Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI

Sr.No.	Particulars	Date	Initials	Member Concerned
1	Dictation given on	06/09/16	LK Deka	JM
2	Draft placed before author	08/09/16		
3	Draft proposed/placed before The second Member			
4	Draft discussed/approved by Second member			
5	Approved Draft comes to the Sr.PS			
6	Kept for pronouncement on			
7	File sent to the Bench Clerk			
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order			