

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 315/Hyd/2016
Assessment Year: 2011-12**

Envision Enterprise Solutions P. vs. Income-tax Officer,
Ltd., Hyderabad. Ward – 2(1), Hyderabad.

PAN – AABCE 5700 H
(Appellant)

(Respondent)

Assessee by : Shri V. Raghavendra Rao
Revenue by : Shri K.E. Sunil Babu

Date of hearing 08-08-2016
Date of pronouncement -08-2016

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal is preferred by the assessee against the order of the learned Commissioner of Income-tax(A) - 9, Hyderabad for AY 2011-12.

2. Briefly the facts of the case are that assessee M/s Envision Enterprise Solutions Pvt. Ltd. engaged in the business of software development, filed its return of income for AY 2011-12 on 28/09/2011 declaring a total income of Rs. 33,89,420/-. The case was selected for scrutiny under CASS and notice u/s 143(2) was issued on 01/08/2012 and served on the assessee on 11/08/2013.

3. During the course of scrutiny, the AO observed that the assessee has not paid statutory dues for services tax (Rs. 53,11,646/-), Central Sales Tax (Rs. 5,42,895/-) and VAT (Rs. 68,753/-) till the

due date for filing the return thereby attracting disallowance u/s 43B of the IT Act. Non payment of statutory due was pointed out at Sl. No. 9a of the annexure to the auditors report. In this connection, a show cause notice was issued on 21/01/14 and it was informed by the assessee that these dues were paid only during FY 2013-14. Accordingly, the AO disallowed an amount of Rs. 59,23,293/- u/s 43B of the Act.

4. Aggrieved with the above order, the assessee preferred an appeal before the CIT(A).

5. Before the CIT(A), the assessee submitted that the amount of service tax, CST and VAT are appeared on the liabilities side of the balance sheet, but, the same were not claimed as deduction nor it was charged to P&L A/c. Assessee contended that disallowance was not called for by the AO.

6. After considering the submissions of the assessee, CIT(A) did not accept the submissions of the assessee and observed that it is unusual in any business to have a separate sales tax, VAT and CST accounts showing collection and payments of these taxes and passing entry in the balance sheet without passing the same in the P&L Account. Relying on the cases, namely, i) Chowringhee Sales Bureau Vs. CIT, 87 ITR 542 (SC), ii) CIT Vs. Associated Pigments Ltd., [1993] 71 taxman 244 244 (Cal.) and iii) CIT Vs. Balabux Birla & Co., 252 ITR 372 (P&H), the CIT(A) confirmed the disallowance made by the AO u/s 43B of the Act.

7. Aggrieved with the above order, the assessee is in appeal before us raising the following grounds of appeal:

1. The order of the learned Commissioner of Income Tax (Appeals)-9, Hyderabad, is erroneous both on facts and in law so far as it is prejudicial to the appellant.

2. The learned Commissioner of Income Tax (Appeals)-9, Hyderabad, erred in concluding that the Service Tax of Rs.53,11,645, Central Sales Tax Rs.5,42,895 and VAT of Rs.68,753 was not passing through the Profit and Loss etc will not come to the rescue of the appellant.

3. The learned Commissioner of Income Tax (Appeals)-9, Hyderabad, erred in confirming the addition of Rs.59,23,293.

4. The appellant craves leave to add/ alter/ modify grounds which would be necessary for adjudication of the case."

8. Ld. AR of the assessee submitted before us that no doubt there was liability appearing on the liabilities side of the balance sheet, but, these expenses were not claimed by the assessee in the P&L A/c. He submitted that as per the provisions of section 43B, those expenditure, which are claimed, but, which were not paid before filing of the return, can be disallowed. He also submitted that as per page 41 of the paper book in the subsequent AY 2012-13, the AO had accepted the contentions of the assessee that service tax, sales tax and VAT are not routed through P&L A/c as such the same are not to be disallowable under the provisions of section 43B of the Act. He submitted that assessee is following consistently the method of accounting, as per which only liabilities of the statutory dues like service tax, VAT and sales tax are created without charging to P&L A/c.

9. Ld. DR, on the other hand, relied on the orders of CIT(A) and AO.

10. Considered the submissions of both the counsels and perused the material facts on record. It is observed that the assessee is following the method of accounting consistently that statutory dues are collected from the customers and the collection of statutory dues are treated as statutory liability and shown as liability in the balance sheet without charging into P&L A/c. This method is being followed consistently and acceptable method of accounting. Provisions of

section 43B will be applicable only when the assessee claimed those payments of statutory dues as expenditure.

10.1 In the case of CIT Vs. Noble and Hewitt (I) P. Ltd., [2008] 305 ITR 324 (Del.), on which reliance placed by the assessee, the Hon'ble Delhi High Court has held 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.

7. Ld. Counsel for the revenue submits that the assessee has sought to evade tax under the mercantile system of account. We are of the view that it is not for the revenue authorities to tell the assessee how to maintain its accounts.

10.2 In the case of CIT Vs. Everest Litho Press, [2006] 285 ITR 297 (Mad.), on which reliance placed by the assessee, the Hon'ble Madras High Court has held as under:

"6. In the case on hand, the amount collected as sales tax was never claimed as deduction by the assessee. Section. 43B of the Act is not attracted at all when the assessee has not claimed any deduction of the amount collected by it. The Gauhati High Court, in the case of India Carbon Ltd. v. Inspecting Assistant CIT [1993] 200 ITR 759, considered a similar issue and held as follows (headnote) :

" ... the amount of sales tax appeared on the liabilities side of the balance-sheet of the petitioner-company. The petitioner did not claim the added amount as deduction nor did he charge it to the profit and loss account. The amount of sales tax could not' be 'added back to the income of the assessee under section' 43B. In the present case, the question was whether section 43B applied and not whether sales tax collected formed part of the trading receipts."

7 In the instant case, the amount had been added by the Assessing Officer under section 43B of the Act. All the authorities below had given a factual finding that the assessee never claimed deduction under section 43B of the Act and therefore section 43B of the Act is not applicable."

10.3 Respectfully following the ratios laid down in the aforesaid decisions, we are not in agreement with the CIT(A) as the assessee has not claimed statutory liability as business expenditure as laid down in the above decisions that the business expenditure are not claimed in the P&L account, provisions of section 43B will not be applicable. Accordingly, we set aside the order of the CIT(A) and direct the AO to delete the disallowance made u/s 43B of the Act.

11. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 12th August, 2016

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 12th August, 2016

kv

Copy to:-

- 1) *Mirza Farhatullah Baig, C/o Shri B. Shantthi Kumar, Advocate, 111, Taramandal Complex, 5-9-13, Saifabad, Hyderabad.*
- 2) *ACIT, Circle – 4(1), Aayakar Bhavan, Basheerbagh, Hyderabad – 04.*
- 3) *CIT(A) - I, Hyderabad*
- 4) *Pr. CIT – 1, Hyderabad*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*