

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**Before Sh. Raj Kumar Chauhan, Judicial Member
&
Sh. Brajesh Kumar Singh, Accountant Member**

ITA No. 7541/Del/2025 :Asstt. Year: 2019-20

KBH Energy and Infra Services Pvt. Ltd., Plot No. G-23, DLF Centre Point, Faridabad-122106	Vs	Centralized Processing Centre (CPC), Bangaluru
(APPELLANT)		(RESPONDENT)
PAN No. AAGCK0313H		

**Assessee by: Sh. D. C. Garg, CA
Revenue by: Ms. Ankush Kalra, Sr. DR**

Date of Hearing: 24.03.2026	Date of Pronouncement: 27.05.2026
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ORDER

Per Raj Kumar Chauhan, Judicial Member:

The appeal is directed against the order dated 26.09.2025 of Learned Commissioner of Income Tax (Appeals), Mumbai (hereinafter referred to as the "CIT(A)"), passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "*the Act*") wherein disallowance made u/s 43B of the Act regarding GST liability of Rs.45,62,808/- were confirmed.

2. The brief facts as culled out from the authorities are that the appellant filed its return of income on 31.10.2019 declaring business income of Rs. 35,92,068/-. The same was processed by CPC Bangaluru and intimation dated 12.05.2020 was issued making adjustment of Rs. 45,62,808/- on account of non-payment of GST and another sum of Rs. 49,288/- for non-

deposit of PF. The appellant filed rectification application dated 14.02.2024, challenging in the income made by the CPC. However, the CPC vide rectification intimation dated 21.06.2024 denied the correction in the intimation and issued the rectified intimation determining the same income i.e. Rs.82,04,164/-.

3. Aggrieved by the said order of the CPC Bangaluru, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) vide impugned order has dismissed the ground against the disallowance of Rs. 45,62,808/- u/s 43B of the Act with respect to the GST liability. However, the disallowance of Rs. 49,288/- on account of late deposit of PF u/s 43B of the Act was allowed for statistical purposes.

4. Aggrieved by the impugned order with respect to the confirmation of disallowance on account of GST liability, the assessee/appellant is in appeal before the Tribunal and has raised the following grounds of appeal:

"1. Learned Faceless Appeal Centre (NFAC) has grossly erred in law as well on facts in confirming adjustment of Rs. 45,62,808/- on account of GST payable, made by the Centralized Processing Centre (CPC) by invoking section 43B.

2. Learned NFAC has grossly erred in law as well as on facts in confirming action of the CPC without appreciating the fact that adjustment of GST is beyond the jurisdiction of CPC.

3. Learned NFAC has grossly erred in law as well as on the facts in confirming action of the CPC in making

adjustment on account of GST amounting to Rs. 45,62,808/-without appreciating the facts that the GST has never been claimed as expense by the Assessee.

4. Learned NFAC has grossly erred in law as well as on the facts in confirming action of the CPC in making adjustment on account of GST amounting to Rs. 45,62,808/-by disregarding the verdicts of various courts."

5. We have heard the Id. AR and the Id. DR. Ld. AR has also filed the written arguments submitting that the solitary issue involved in this case is disallowance of GST amounting to Rs.45,62,808/- made by CPC u/s 43B of the Act. It is argued that the said disallowance made by CPC is invalid and unlawful because the assessee company never routed the GST through profit and loss account and has not claimed the GST amount as expenses. It is explained that the GST payable is appearing under the head "other current liability" under sub-head electronic cash ledger of Rs.70,62,808/-. Page 25 of the paper book has been referred in that regard. It is further submitted that page 13 of the paper book which is tax audit report issued by tax auditor would show that the assessee company paid Rs.25,00,000/- during the year and balance GST amount of Rs.45,62,808/- remain outstanding. It is therefore argued that the law is well settled on that account because when the assessee has neither routed an expenses through profit and loss account nor claimed the same as expenses, hence, the disallowance of the same u/s 43B was unwarranted.

6. In support of his argument, the Id. AR has relied the case of Delhi Tribunal in the case of Dalip Singh Rathore Vs. ITO in ITA No. 1717/Del./2025, order dated 30.09.2025 alongwith Ahmadabad Tribunal in case of Munjal Auto Industry Ltd. Vs. DCIT in ITA No. 878/Ahd./2024, order dated 16.10.2024.

7. The Id. DR on the other hand, submit that the assessee has not treated the GST amount as per proper accounting procedure and the statutory provisions and accounting standards were not followed which necessitates the inclusion of the GST liability in the turnover and as such the appellant has attempted to avoid section 43B of the Act by using an alternative accounting method which is not permissible in law. It is therefore submitted that the CPC has rightly disallowed the amount of the GST liability and the same has been correctly and legally confirmed by the impugned order.

8. We have considered the rival submission and examined the record. In order to appreciate the argument raised before us on behalf of the parties, we would like to extract the relevant portion of the impugned order wherein the disallowance u/s 43B of the Act which is the issue involved before us has been dealt with by the Id. CIT(A). Para 5 to 5.3 is accordingly extracted below as under:

"5. Ground No. 3 relates to disallowance u/s 43B of the Act pertaining GST Liability Rs. 45,62,808/-.

5.1. In this regard, the appellant has submitted that the CPC has made the disallowance w.r.t. GST Liability of Rs. 45,62,808/- without appreciating the fact that the appellant never claimed it as expense in the first place. The appellant also contended that since no expense is claimed in the P&L A/c, it cannot be disallowed. In support of its claim, the appellant has submitted its P&L A/c, relevant parts of which is reproduced as under:-

KBH ENERGY AND INFRA SERVICES PRIVATE LIMITED
SHOP NO. G-23, DLF CENTRE POINT SECTOR-11 FARIDABAD HR 121006
CIN:-U74960HR2016PTC057722, Email:-info@kbhinfra.in
STATEMENT OF PROFIT AND LOSS
For the year ended on 31st March, 2019

	Particulars	Note No	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
I.	Revenue from operations	20	50,061,409.00	58,141,039.00
II.	Other Income	21	150,459.00	27,203.00
	Total Revenue (I + II)		50,211,868.00	58,168,242.00
III.	Expenses:			
IV.	Construction and Development Exp.	22	30,512,981.00	31,872,739.00
	Purchase of Stock-in-Trade		5,203,272.00	14,626,166.00
	Changes in inventories of finished goods, work-in-progress and Stock-in-Trade		-	-
	Employee benefit expense	23	7,706,396.00	6,818,908.00
	Financial costs	24	573,556.00	143,702.00
	Depreciation and amortization expense		891,467.00	454,338.00
	Other expenses	25	2,068,987.00	2,029,645.00
	Total Expenses		46,956,659.00	55,945,498.00

22	Construction & development Expense		
	Site Expense	729,114.00	235,744.00
	Labour charges	6,316,165.00	6,051,784.00
	AC Work	2,369,944.00	10,464,509.00
	DC Work	14,994,872.00	7,069,296.00
	Calibration Service		
	Civil Work	1,389,372.00	45,516.00
	Job Work		2,097,034.00
	Consumable Item	79,118.00	73,361.00
	Hydra Transferring Charge	835,967.00	268,150.00
	JCB Transferring Charge	1,035,700.00	1,210,785.00
	Tractor Transferring Charge	504,920.00	678,969.00
	Transportation Charge	140,914.00	275,263.00
	Module Installation Charges	100,000.00	1,281,872.00
	Electric Material	25,763.00	6,648.00
	Safety Material	73,119.00	30,087.00
	Freight Inward		129,342.00
	Freight outward	75,642.00	
	Fuel & Oil	737,850.00	611,362.00
	Oil Filtration Service	414,700.00	489,750.00
	Packing Material	620.00	2,050.00
	Rent for D.G/ staff room at Sites	664,761.00	566,375.00
	Vehicle Running Charge	114,400.00	284,842.00
	Work in Progress for which bill not issued at end of the year		
	Total	30,512,981.00	31,872,739.00

25	Other Expense		
	Audit Fee	60,000.00	60,000.00
	Business Promotion Service	60,612.00	103,007.00
	Commission	865,000.00	300,000.00
	Conveyance Expenses	107,052.00	180,804.00
	Courier Services	43,770.00	153,455.00
	Diwali Expenses	45,183.00	51,098.00
	Electricity	32,153.00	72,991.00
	Legal Exp.	60,350.00	41,580.00
	Office Exp	53,286.00	43,543.00
	Rent office/Guest House charge	274,185.00	424,525.00
	Preliminary Exp W/o	9,600.00	9,600.00
	Printing & Stationary	41,063.00	75,000.00
	Repair & Maintenance	134,867.00	141,574.00
	Telephone Charges	9,519.00	64,169.00
	Toll Tax	18,350.00	5,815.00
	Tour & Traveling	231,442.00	267,769.00
	Water Exp	22,555.00	34,650.00
	discount & roundoff		65.00
	Total	2,068,987.00	2,029,645.00

5.2. From the above, it is clear that the appellant has not claimed any GST liability of Rs. 45,62,808/- u/s 43B as expense. Section 43B allows deduction of statutory dues actually paid before the due date of filing return u/s 139(1) of the Act. Since the appellant has not claimed any GST liability of Rs. 45,62,808/- in its P&L A/c, the disallowance of the same by the AO is not justified.

5.3. The appellant claimed that the GST liability is not debited to profit and loss account and hence, same is not disallowable u/s 43B is untenable, as GST liability is integral to sales and turnover, requiring proper accounting treatment. The statutory provision and accounting standards necessitates the inclusion of GST liability in the turnover, rendering the appellant attempt to avoid section 43B through alternative accounting methods is impermissible. Therefore, disallowance of Rs. 45,62,808/- made by AO u/s 43B is confirmed. Accordingly, Ground No. 3 is Dismissed."

9. The argument of the assessee/appellant that the appellant has not claimed the GST liability of Rs.45,62,808/- u/s 43B of the Act as expenses and has also not claimed any GST liability in its P&L account, therefore, the disallowance of the same by the AO was not justified, did not find favour with the Id. CIT(A) who has declined to consider the said argument on the simple ground that the statutory provision and accounting standard regarding inclusion of GST liability in the turnover has not been followed by the assessee. Thus, no legal basis has been shown in the impugned order to make the said disallowance u/s 43B of the Act and confirmations of the same vide impugned order.

10. On the other hand, the Id. AR while relying the case of Dalip Singh Rathore (supra) of Delhi Tribunal and Munjal Auto

Industries Ltd. (supra) of the Ahmadabad Tribunal has submitted that the issue is covered by the ratio of these two judgments of the co-ordinate benches.

11. We have examined both the judgments to find out whether the issue before us is covered by those judgments. The relevant portion in the case of Dalip Singh Rathore in ITA No. 1717/Del/2025 (supra) is extracted below as under:

"2. Ld. Counsel for the assessee, at the outset, submitted that the CPC while processing the return made disallowance u/s 43B in respect of GST and Service Tax amounting to Rs.45,69,143/- on the ground that the same is not paid before due date of filing the return. Ld. Counsel submitted that the said amount representing GST and Service Tax were neither rooted through profit and loss account nor did the liability from service tax belong to the assessment year under consideration. Ld. Counsel further placing reliance on the decision of the Hon'ble Chattisgarh High Court in the case of Grand Motors vs. ITO in Tax(c) No.207/2024 dated 25.11.2024 submitted that on identical facts where the CPC disallowed VAT, Entry Tax, CST while processing the return u/s 143(1), for not remitting into Government account before due date of filing of return of income made disallowance invoking the provisions of section 43B, the Hon'ble High Court referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Noble & Hewitt (I) (P.) Ltd. held that since assessee did not claim the amount in his profit and loss account as his expenditure/deduction u/s 43B, the disallowance made by CPC while processing return u/s 143(1) was deleted.

3. Ld. DR strongly supported the orders of the authorities below.

4. Heard rival submissions, perused the orders of the authorities below. The CPC while processing the return disallowed VAT & GST as these amounts were not remitted before due date for filing of return of income. The action of the CPC was confirmed by the Ld. CIT(A). The issue of whether the VAT, Entry Tax, CST etc. which were neither debited to profit and loss account nor claimed as deduction by the assessee and not paid

before the due date for filing of return, whether such amounts can be considered for disallowance by the CPC while processing the return u/s 143(1), came up for consideration before the Hon'ble Chattisgarh High Court and the Hon'ble Chattisgarh High Court referring to its decision in the case of ACIT vs. M/s Ganpati Motors and also the decision of the Hon'ble Delhi High Court in the case of CIT vs. Nobel & Havet (I) (P.) Ltd. held that no such disallowance is warranted observing 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 Rs.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?"

3. The aforesaid substantial question of law arises on the following factual backdrop: -

4. The appellant assessee is a partnership firm engaged in trading of motor cars, etc. and filed return of income for the assessment year 2018-19 on 31-3-2019 declaring total income of Rs.9,42,610/-. The Assessing Officer, Centralised Processing Centre (CPC) processed the return of the assessee and issued intimation under Section 143(1) of the IT Act making certain disallowances and enhancing total taxable income of the assessee at Rs.2,61,28,820/-. The specific disallowances are made under Section 43B of the IT Act on account of nonpayment of liabilities such as VAT, Entry Tax, CST before the prescribed date of filing the return of income under Section 139(1) of the IT Act.

5. Feeling aggrieved against the order of the Assessing Officer, the appellant assessee preferred appeal before the first appellate authority i.e. the Commissioner of Income Tax (Appeals) under Section 246A(1)(a) of the IT Act and the CIT(A), by its order dated 15-3-2024, partly allowed the appeal of the appellant assessee to the extent of Rs.1,79,97,376/- pertaining to opening balance for the assessment year 2018-19 deleting the same, but the balance disallowance of Rs.62,32,262/- shown as payable in the balance sheet was confirmed against which the appellant assessee preferred further

appeal before the ITAT which was also, in turn, dismissed finding no substance against which this appeal has been preferred.

6. Mr. S. Rajeswara Rao, learned counsel appearing for the appellant / assessee, would submit that the appellant did not claim any deduction of indirect taxes including VAT / other taxes in computing the income for the previous year and the appellant is following the exclusive method of accounting for indirect taxes as in the past. He would further submit that Section 43B of the IT Act mandates that a deduction otherwise allowable under the Act shall be allowed only in computing the income referred in Section 28 of that previous year in which such sum is actually paid by the assessee and since the appellant did not claim any deduction of indirect taxes in computing the income for the previous year i.e. the profit and loss account as expenditure, therefore, the CIT(A) and the ITAT, both, have concurrently erred in dismissing the appeal of the appellant assessee. He would rely upon the decision of this Court in the matter of Assistant Commissioner of Income Tax-I v. M/s Ganapati Motors¹ to buttress his submission.

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 Rs.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.* 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 Rs.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 Rs.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.

7. This decision squarely applies to the facts of the assessee's case. Thus, respectfully following the said decision, we set aside the order of the Ld. CIT(Appeals) and direct the AO/CPC to delete the disallowance of Rs.45,69,143/- made u/s 43B in respect of VAT and GST and re-compute the income accordingly. Ground No. (C) of grounds of appeal is allowed."

12. In Munjal Auto Industry Ltd. (supra) where also the non-payment of the GST within due date was disallowed u/s 43B of the Act and the finding of the Ahmadabad Tribunal from para 3 onwards is relevant and expected below as under:

"3. In this case the disallowance of Rs. 13,27,094/- was made by the CPC under Section 43B of the Income Tax Act on account of mismatch in the amount reported as disallowance under Section 43B as per the Tax Audit Report. The adjustment was made by CPC on account of nonpayment of GST, within the due date.

4. The Ld. CIT(A) relying on the judgment of Chowringhee Sales Bureau Pvt. Ltd. vs. CIT 87 ITR 542 (SC) and the case of Wyzminds Solutions Pvt. Ltd. vs. ITO in ITA No. 3417/Bang/2018 upheld the action of the CPC.

5. The assessee in appeal before us against the aforesaid order passed by the Ld. CIT(A).

6. However, the facts reveal that the assessee has not claimed the amount of GST in the Profit & Loss Account. Hence, the facts of the judgments relied upon by the Ld. CIT(A) ifefer from the facts of the assessee's case. Since the assessee has not claimed the amount in the Profit & Loss Account, no disallowance is called for in the instant case.

7. Reliance in this regard is being placed in the case of CIT vs. U P Hotels Pvt. Ltd. 35 taxmann.com 565 (Allahabad), in which the Allahabad High Court held that in case assessee has not claimed any deduction in respect of its liability for payment of luxury tax, no

question of addition under section 43B will arise. While passing the order the High Court has made the following observations:

"The Act imposes tax on income. In order to form income of a person, the person must receive or deemed to receive any sum. The amount of luxury tax which was not received cannot form part of the income of any person. [Para 7]

The Act further gives relief, deduction and exemption from payment of income-tax to the person on various income. Section 43B provides a right to the assessee to claim deduction of any sum payable by the assessee by way of tax, duty, cess or fee etc. This section imposed a condition that such deduction be allowed only in case of actual payment of the liabilities mentioned therein by the assessee. Section 43B is concerned with deduction claimed by the assessee. Thus, the scope of inquiry by the Assessing Officer under section 43B is as to whether the assessee can be allowed deduction which can only be allowed to the assessee when it has liability to pay under the law and has actually paid that amount. The question of addition will arise only when the assessee has claimed deduction and the Assessing Officer finds that conditions mentioned in this section has not been satisfied. In this case the assessee has not claimed any deduction in respect of its liability for payment of luxury tax as such no question of addition will arise. [Para 8]

Section 43B does not cast duty on the assessee to realize the various amounts mentioned .in it. In case, where a person has not realized luxury tax from the customers then under the law he being liable to pay it and it will be realize from him under the relevant law irrespective of the fact that he has collected or not. But it does not give the Assessing Officer any jurisdiction to add it in the gross income of the assessee. Commissioner (Appeals) as well as the Tribunal have concurrently found that the assessee has not realized the amount of luxury tax, which was added in its gross income. [Para 9]

In view of the aforesaid discussions, the question referred to in this reference is answered in the affirmative i.e. against the revenue and in favour of the assessee. [Para 11]"

8. Further, in the case of P.K. Parikh HUF vs. ITO in ITA No. 556/Ahd/2022, the ITAT has made the relevant observations, which are relevant to the issue in hand:

"7. We have heard both the parties and perused all the relevant materials available on record. The assessee did not debit the amount to the profit and loss account as an expenditure not the assessee claimed any deduction in respect of amount. In fact, the assessee has treated the same as current liabilities and provisions and also given the description under Schedule 7 regarding duties and taxes. Thus, the contention of the Id. A.R. that the provisions of section 43B is not applicable to the assessee as the assessee has paid the GST amount before filing of the return of income appears to be correct. The decision of Hon'ble Apex Court in case of Chowringhee Sales Bureau (P.) Ltd.. (supra) will not be applicable as in the present case, assessee had given the details of the current liabilities and not estimated the same and was not debited the same as an expenditure in profit and loss account and not claimed any deduction to that effect. But since the assessee had paid the said amount prior to filing of the return of income, the decision of Hon'ble Delhi High Court will be applicable in case of assessee as the ratio laid down by the Noble & Hawitt (I)(P.) Ltd. (supra) will be squarely applicable in the present case. Thus, the appeal of the assessee is allowed."

9. Accordingly, since the assessee has not claimed deduction of this amount and has not routed the same through P&L Account, we are of the considered view that no disallowance is called for under Section 43B of the Act for the unpaid GST since no deduction was claimed by the assessee with respect to the aforesaid amount.

10. In the result, the appeal of the assessee is allowed."

13. The issue before us is identical and similar as already noted by us that no legal justification has been shown by the Id. CIT(A) in the impugned order for confirmation of the disallowance made u/s 43B of the Act of alleged GST liability notwithstanding that the same has neither been claimed as expenses nor the same has been routed through P&L account.

14. Respectfully following the decision of Delhi Tribunal in case of Dalip Singh Rathore (supra) of Delhi Tribunal and Munjal Auto Industries Ltd. (supra) of the Ahmadabad Tribunal, we are of the considered opinion that the disallowance has been made without any legal basis and is ordered to be deleted accordingly.

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

Order Pronounced in the Open Court on 27/05/2026.

Sd/-

(Brajesh Kumar Singh)
Accountant Member

Dated: 27/05/2026

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Raj Kumar Chauhan)
Judicial Member

ASSISTANT REGISTRAR