

आयकर अपीलीय अधिकरण," K" खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI-"K", BENCH

सर्वश्री राजेन्द्र,लेखा सदस्य एवं पवन सिंह , न्यायिक सदस्य

Before S/Shri. Rajendra, Accountant Member and Pawan Singh, Judicial Member

आयकर अपील सं./ITA No.7016/Mum/2012, निर्धारण वर्ष/Assessment Year- 2008-09

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| Ness Technologies (India) Private Limited,Unit 501, Interface, New Link Road, Malad (W), Mumbai-400 064 PAN: AAACA 9469 L | v/s. | Asst. CIT, Central Circle-34, Room No. 104, 1 st Floor, Aayakar Bhavan. M. K. Road, Mumbai-400 020 |
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(अपीलार्थी /Assessee)

(प्रत्यर्थी / Respondent)

निर्धारिती ओर से/Assessee by

:Sh. Nikhil Tiwari

राजस्व की ओर से/ **Revenue by**

:Sh. N. K. Chand

सुनवाई की तारीख/ Date of Hearing

:29- 12 -2015

घोषणा की तारीख / Date of Pronouncement

: 01.01.2016

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Vide its order dated 09.09.2015, Tribunal had partially recalled its order dated 24.09.2014, as grounds no.13 to 17 remained un-adjudicated.

2.Ground no.13 deals with exemption u/s.10 A of the Act. During the course of assessment proceedings,the Assessing Officer (AO)did not exclude communication charges and expenses incurred in foreign currency for travelling and communication charges from the total turnover.The said sums were reduced from the export turnover while computing the deduction available to the assessee u/s. 10A of the Act. The assessee objected the treatment given by the AO before the Dispute Resolution Panel-2 (DRP), Mumbai. Vide its directions, u/s. 144C(5) of the Act,dated 31.7.2012 the DRP directed the A.O. to verify and compute deduction u/s.10A of the Act as per law. However, the AO did not exclude the expenses as stated earlier.

3. During the course of hearing before us, the Authorised Representative (AR) of the assessee stated that the earlier three years the Tribunal had decided the issue in favour of the assessee, that the Hon'ble Bombay High Court had upheld the order of the Tribunal for A.Ys. 2005-06 and 2006-07. The Departmental Representative (DR) left the issue to the discussion of the bench.

4.We have heard the rival submissions and perused the materials before us. We find that while deciding the ITA No. 5712 of 2010 (dated 24.9.2012), the Hon'ble Jurisdictional High Court had framed the following question of law:

“Whether on the facts and in the circumstances of the case, the Tribunal, in law, was right in holding that the communication charges, professional fees and expenses incurred in foreign exchange for travelling should be reduced from the total turnover as well as from export turnover for applying the provisions of Section 10A of the Income Tax Act, 1961?”

Answering the question, the Hon'ble Court held as under:

“2.Counsel for the parties state that the aforesaid question stands answered against the revenue in view of the decision of this Court in the case of CIT vs. Gem Plus Jewellery India ltd. Reported in [2011] 330 ITR 175 (Bom). In this view of the matter, we see no

reason to entertain the appeal. Accordingly, the appeal is dismissed with no order as to costs."

We find that on 25.09.2012, while deciding the appeal No. 584 of 2012, the Hon'ble High Court had taken the similar view. As that issue stands decided in favour of the assessee by the order of the Hon'ble High Court,so respectfully following the same,we are deciding ground no.13 in favour of the assessee.

5.Ground no.14-16 deal with not granting credit of taxes deducting at source (Rs.24.12 lacs)/charging of interest u/s. 234B and 234C of the Act. The AR stated that the assessee filed rectification application in that regard, that authority concerned may be directed to decide the issues raised in the application.DR left the issues to the discretion of the Bench.

6.We find that the assessee had filed application u/s.154 of the Act before the AO on 27.2.2013 and it has not been disposed by him till date. We direct that the rectification application filed by the assessee should be disposed within six weeks of receipt of our order.Grounds no.14-16 are allowed for statistical purposes.

7. Ground no.17 pertains to initiating penalty proceedings u/s.271(1)(c)of the Act. In our opinion,it is a premature issue and has to be rejected. Ground no.17 stands dismissed.

As a result appeal filed by the assessee stands partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 1st January, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 01 जनवरी, 2016 को की गई ।

Sd/-

(पवन सिंह/ Pawan Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai,दिनांक/Date: 01.01.2016

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "K " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, के खंडपीठ,आ.अ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.