

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “” KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.639/Kol/2016
Assessment Year:2009-10

M/s Nicco Corporation Ltd. Nicco House, 2, Hare Street, Kolkata-700001 [PAN No.AABCN 0570 G]	बनाम/ V/s.	JCIT (OSD), CIT-1 Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri P.K. Choudhury, AR
प्रत्यर्थी की ओर से/By Respondent	Shri Debasish Lahiri, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	20-08-2018
घोषणा की तारीख/Date of Pronouncement	05-09-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2009-10 arises against the Commissioner of Income Tax (Appeals)-5, Kolkata's order dated 01.02.2016, passed in case No.203/CIT(A)/5/(OSD)/11-12/14-15, in proceedings u/s 115WE(3) of the Income Tax Act, 1961; in short as 'the Act'.

Heard both the parties. Case File perused.

2. The assessee's sole substantive ground challenges correctness of both the lower authorities' action determining its fringe benefit value of ₹1,44,47,545/-, assessment of fringe benefit tax @ 30% coming to ₹43,34,264/-, 10% surcharge at ₹4,33,426/- and education cess of ₹1,43,031/- for the sole reason that since it had incurred losses

during the relevant assessment year the above surcharge @ 10% would not apply as it was not a case involving profits to be exceeding ₹1 crore threshold limit. Learned counsel reiterates the same vey plea during the course of hearing that both the lower authorities have erred in law as well as on facts in imposing 10% surcharge in view of the above huge losses in the impugned assessment year. Learned Departmental Representative is very fair in submitting that all relevant facts corresponding to instant sole issue have neither being discussed in assessment order nor in the CIT(A)'s order. We therefore deem it appropriate that it would be in the larger interest justice in case the Assessing Officer adjudicates the instant issue afresh as per law after affording adequate opportunity of hearing to the assessee. The assessee's sole substantive grievance is accepted for statistical purpose therefore.

3. This assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 05/09/2018

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 05/09/2018 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Nicco Corpn. Ltd., Nicco House, 2, Hare Street, Kol-01
2. प्रत्यर्थी/Respondent-JCIT(OSD),CIT-1/Kol Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary,
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता