

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

Before **Shri S.S.Godara, Judicial Member** and
Shri, M. Balaganesh, Accountant Member

ITA No.1077/Kol/2016
Assessment Year :2011-12

RNB Digitronix Pvt. Ltd., 53A, Free School Street, Kolkata-16 [PAN No.CALRO 7433G]	V/s.	Income Tax Officer (TDS) Ward-59(1), Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Natban Lal Jha, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri P.K. Monda, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	28-08-2018
घोषणा की तारीख/Date of Pronouncement	28-09-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2011-12 is directed against the Commissioner of Income Tax (Appeals)-24, Kolkata's order dated 09.03.2016 passed in case No.4/CIT(A) 24/Kol/2014-15 u/s 154 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. It emerges at the outset that the CIT(A)'s has passed his lower appellate order ex part whilst affirming the assessee's action treating the assessee to be an assessee in default qua royalty paid in the relevant previous year amounting to ₹24,97,318/- liable for TDS deduction @ 10% coming to ₹2,49,732/-. He has computed sec. 201(1) and 201(1A) interest of ₹2,49,732/- and ₹1.19,872/-; respectively. Suffice to say, both the Learned Representatives take us to CIT(A)'s order para-4 indicating the assessee to have sought adjournment on 18.02.2006 followed by similar such

postponement(s) finally culminating in the CIT(A)'s *ex parte* lower appellate order under challenge. The assessee's only case before us is that it was always ready and willing to render necessary assistance and the appellate authorities case impugned non appearance before the CIT(A) is neither intentional nor deliberate. It further transpires that CIT(A)'s findings in para-5 of the lower appellate order nowhere discuss the relevant royalty issue vis-à-vis application of TDS provisions enshrined in Chapter-XVII of the Act as per sec. 250(6) of the Act followed by a detailed adjudication. We therefore restore the instant appeal back to the CIT(A) for afresh adjudication on merits after affording three effective opportunities of hearing to the taxpayer for presenting its case failing which our instant remand directions would stand vacated.

3. This assessee's appeal is accepted for statistical purposes in above terms.

Order pronounced in the open court 28/09/2018

Sd/-

(लेखा सदस्य)

(M.Balaganesh)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 28/09/2018 कोलकाता ।

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

1. अपीलार्थी/Appellant-RNB Digitronix Pvt. Ltd., 53A, Free School St. Kolkata-16
2. प्रत्यर्थी/Respondent-ITO(TDS), Ward-59(1), Kolkata-71
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
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 ।