



ITA No.7432/Mum/2017
M/s. Priya Limited
Assessment Year :2014-15

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.7432/Mum/2017
(निर्धारण वर्ष / Assessment Year:2014-15)

DCIT-2(2)(2) Room No.545, 5 th Floor, Aaykar Bhavan, MK Road Mumbai-400 020.	बनाम/ Vs.	M/s. Priya Ltd. 4 th Floor Kimatrai Building 77/79 M.K.Road Marine Lines (East) Mumbai-400 002.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACP-2210-Q		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Appellant by	:	Abhi Rama Kartikeyan - Ld.DR
Respondent by	:	J.P. Bairagra -Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	18/03/2019
घोषणा की तारीख / Date of Pronouncement	:	09/04/3029

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2014-15 contest the order of Ld. Commissioner of Income-Tax (Appeals)-5, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No.IT-406/16-17* dated 03/10/2017 on following grounds of appeal: -

"1."Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was right in deleting the addition of Rs. 86,49,923/- made u/s 40A(2)(b) of the IT Act on account of purchase expenditure without



appreciating the fact that purchased software is freely available on internet for downloading for which assessee paid huge amount of Rs. 86,49,923/- to the related party?"

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that unsold software of Rs. 84,04,746/- is lying in closing stock and hence there is no effect on profit without appreciating that as per financial statements of assessee. There is no closing stock of impugned purchases since entire software of Rs.9,66,79,695/- has been sold for of Rs. 10,40,12,930/- in year under consideration?"*

2.1 Facts leading to the dispute are that the assessee being *resident corporate entity* engaged in the business of *export / import of chemicals etc. and trading in computer parts* was assessed for impugned AY u/s 143(3) on 28/12/2016 by Ld. Assistant Commissioner of Income Tax- Circle 2(2)(2), Mumbai [AO] wherein the income of the assessee was determined at Rs.312.99 Lacs after certain additions as against returned income of Rs.297 Lacs filed by the assessee on 30/09/2014. As evident from grounds of appeal, the sole subject matter of present appeal before us is disallowance of Rs.86.49 Lacs on account of certain purchases made by the assessee. This addition, although discussed in the quantum assessment order dated 28/12/2016, was omitted to be made while computing the income of the assessee and accordingly, the quantum assessment order has been rectified u/s 154 on 13/01/2017 to account for the same.

2.2 During assessment proceedings, it transpired that the assessee purchased certain software from a related entity within the meaning of Section 40A(2)(b) namely *Verixo Technologies Pvt. Ltd.* The assessee, while furnishing purchases invoices, submitted that it had purchased software from the said entity for *resale* in the normal course of business. These software was in the nature of *Linux Version-1, VMS Ent./Std.*



Addition, Re purposing software etc. which was stated to be purchased at rates ranging from Rs.1000/- to Rs.1600/-. However, finding the rates to be excessive and unreasonable and observing that Linux was free and open-source software, Ld. AO disallowed the same.

3. The assessee agitated the same with detailed submissions before Ld. first appellate authority vide impugned order dated 03/10/2017 wherein it was observed that the assessee had not claimed the expenditure since there was debit of Rs.86.49 Lacs by way of purchase of software and corresponding credit of by way of sale of software for Rs.1.16 Lacs and closing stock for Rs.84.04 Lacs and therefore, the stated disallowance was not justified. Aggrieved, the revenue is in further appeal before us.

4. The Ld. Departmental Representative [DR], supported the stand taken by Ld. AO whereas Ld. Authorized Representative for Assessee, *Shri J.P.Bairagra*, on the strength of documents placed in the *paper-book*, submitted that software formed part of closing stock which has been sold in subsequent years as evident from stock records.

5. We have carefully heard the rival submissions and perused relevant material on record including documents placed in the *paper-book*. Upon perusal, the undisputed position that emerges is the fact that the assessee has purchased the stated software under 6 bills for resale. The part of these software has been sold by the assessee during impugned AY and the balance software have been reflected as *Closing Stock* under the head *electronics* which is evident from closing stock details as placed on *page no. 100* of the *paper-book*. The perusal of quantitative details reveals that the assessee is having closing stock of



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these items for Rs.84.02 Lacs. Further, the assessee has sold the software in subsequent years which is evident from sales invoices placed on record. So far as the observations that the Linux was free open source software, is concerned, it has been submitted that the said software has been tailor made by the assessee as per the user's requirement and the said fact remain uncontroverted. Another noteworthy point is that fact that nothing has been placed on record by Ld. AO to support the finding that the price paid by the assessee was excessive or unreasonable, in any manner, having regards to the market price of these goods. Under these circumstances, no infirmity could be found in the impugned order.

6. Resultantly, the appeal stands dismissed.

Order pronounced in the open court on 09th April, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 09/04/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.