

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

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.96/Kol/2018
Assessment Year :2009-10

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|-----------------------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Income Tax Officer, Ward-10(1), P-7, Chowringhee Square, 3 rd Floor, Kolkata-69 | V/s. | M/s Primentor Consultancy and Services Pvt. Ltd., 1 st Floor, BD-9, Sector-1, Kolkata-700 064 [PAN No.ADCP 1468 M] |
| अपीलार्थी /Appellant | .. | प्रत्यर्थी/Respondent |

| | |
|--------------------------------------|-----------------------------------|
| अपीलार्थी की ओर से/By Appellant | Sital Das, Addl. CIT-SR-DR |
| प्रत्यर्थी की ओर से/By Respondent | Shri Soumitra Choudhury, Advocate |
| सुनवाई की तारीख/Date of Hearing | 18-04-2019 |
| घोषणा की तारीख/Date of Pronouncement | 30-04-2019 |

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for assessment year 2009-10 arises against the Commissioner of Income Tax (Appeals)-4 Kolkata's order dated 13.10.2017 passed in case No.1197/CIT(A)-4/10(1)/2014-15, involving proceedings u/s 154 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. It transpires at the outset that the instant appeal suffers from three days delay in filing. It has placed on record its condonaton petition / affidavit on record. the assessee is fair enough in not disputing the solemn averment therein. We accordingly condone the impugned three days' delay in filing of

the Revenue's instant appeal. The case is now taken up for adjudication on merits.

3. The Revenue's following substantive grounds reads as under:-

“(i) The Ld. CIT(A) has erred in holding that the rectification u/s.154 on the issue of change in accounting policy is not justified, when the AO has rightly rectified the mistake which is plainly and obviously inconsistent with the specific and clear provisions and when the revised return by the assessee was is invalid.

(ii) The Ld. CIT(A) has erred in not considering the fact that as per the provisions of sub section (5) of Section 139 of the IT Act, 1961, an assessee can only file a revised return only if it discovers any omissions or any wrong statement in the original return, whereas, the assessee company filed the revised return due to non realization of accrued income from software exports and not due to discovery of any omission or any wrong statement in the original return.

(iii) The Ld. CIT(A) has erred in deleting the additions made by the AO on account of provision of gratuity of Rs.8,65,470/- on ground that since provision for gratuity was not claimed in the revised return it could not have been added by the AO in the rectification order, whereas, the revised return filed by the assessee is invalid and the disallowances were made by the AO based on return of income submitted originally.”

4. The Learned Departmental Representative vehemently contends during the course of hearing that the Assessing Officer had rightly invoked sec. 154 rectification proceedings. He then terms the assessee's revised return to be not admissible as per provision of the Act. We find no merit in Revenue's instant argument based on the above extracted pleading. Case file suggests that the Assessing Officer had himself accepted assessee's revised return dated 30.09.2011 as per sec. 143(3) order dated 14.12.2011. He had also issued the necessary questionnaire to the assessee to this effect making all the relevant queries on 17.10.2011 u/s 142(1) of the Act. All these crucial facts have gone un rebutted from the Revenue side during the course of hearing. We therefore hold that CIT(A) has rightly held in view of the various judicial precedents that it is not an error apparent on the case of record involved at

Assessing Officer's behest. The Revenue fails in its various substantive grounds thereby.

5. This Revenue's appeal is dismissed.

Order pronounced in the open court 30/04/2019

Sd/-

(लेखा सदस्य)

(Dr.A.L. Saini)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 30/04/2019 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

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

1. अपीलार्थी/Appellant-ITO Ward-10(1), P-7, Chowringhee Sq, 3rd Floor, Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Primentor Consultancy & Services Pvt. Ltd., 1st Floor, BD-9, Sector-1, Kolkata-64
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,

सहायक पंजीकार

आयकर अपीलीय अधिकरण,

कोलकाता ।