

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1581/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2009-10)

M/s. Rajputana Stainless Limited 213 Madhwas, Halol Kalol Road, Kalol, Panchmahal	बनाम/ Vs.	Assistant Commissioner of Income Tax-5 Panchmahal Circle, Godhra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR9333G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri K. P. Singh, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri S. K. Dev, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	02/05/2019
घोषणा की तारीख /Date of Pronouncement	03/05/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-4, Vadodara, ('CIT(A)' in short), dated 28.02.2017 arising in the assessment order dated 25.03.2015 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 263 of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. The ground of appeal raised by assessee reads as under:

“1. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer by sustaining the addition of Rs.50,00,000/- u/s. 68 of the Act on account of share application money received from M/s. Talent Infoway Limited.*”

2. When the matter was called for hearing before the Tribunal, the learned AR for the assessee submitted at the outset that the dispute relates to addition of Rs.50 Lakhs under s.68 of the Act on account of share application money received from M/s. Talent Infoway Limited. The learned AR for the assessee referred to page no.95 of the paper book in this regard and submitted that the assessee had moved an application before the Settlement Commission and the aforesaid addition presently in contest is already offered before the Settlement Commissions as included by way of additional income of Rs.6.22Crores as reflected in the order of the Settlement Commission under s.245D(4) of the Act. The learned AR for the assessee accordingly submitted that the income having already been offered before the Settlement Commission cannot once again be added in the regular assessment which will amount to double taxation.

3. The learned DR for the Revenue submitted that the inclusion of Rs.50 Lakhs in the disclosure made before the Settlement Commissioner requires factual verification and accordingly the matter may be sent back to the file of the AO for appropriate verification.

4. On consideration of the rival submissions, we are in agreement with the contention of the assessee on principle that the same income if offered and taxed in the proceedings before the Settlement Commission, cannot be included once again in the present proceeding under s.143(3) of the Act. Accordingly, we remit the issue back to the file of the AO for factual verification on this aspect. It shall be open to the assessee to adduce evidence before the AO to support its

contention that addition in controversy already forms part of the assessed income framed by the Settlement Commission. Once the contention of the assessee is found to be true, the AO shall delete the addition to the extent of income already declared before the Commission.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on 03/05/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 03/05/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।