

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI S. S. GODARA, JM & DR. A. L. SAINI, AM

M.A No.162/Kol/2019

(A/o ITA No.1309/Kol/2018)

(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Rama Vinimay Coal Pvt. Ltd. Room No.214, 2 nd Floor, Kamalalaya Centre, 156A, Lelin Sarani, Kolkata – 700013.	Vs.	ITO, Ward-4(2), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCR8962R		
(Appellant)	..	(Respondent)

&

ITA No.1309/Kol/2018

(निर्धारण वर्ष / Assessment Year: 2013-14)

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(Appellant)	..	(Respondent)

Appellant by : Shri Rites Goel, Advocate

Respondent by : Shri Raja Sengupta, JCIT, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 30/08/2019

घोषणा की तारीख/Date of Pronouncement : 30/09/2019

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee's Miscellaneous Application filed u/s 254(2) of the Act seeks to recall/rectify our order dated 17.05.2019 dismissing the main appeal for non-prosecution.

Heard both the parties. Case file perused.

2. The assessee's only plea raised in its miscellaneous application is that its authorized representative could not appear in the impugned case hearing on 06.05.2019 on account of illness. The Revenue is fair enough in not disputing of this averments. We therefore recall our order dated 17.05.2019 dismissing the impugned appeal ITA No.1309/Kol/2018 for non-prosecution. The same is restored at its original number.

3. We now proceed to deal with the main appeal. The assessee's above-stated main appeal itself with the consent of both the parties. Its sole substantive ground challenges both the lower authorities' identical action of disallowing 20% of its wage and salary claim of Rs.49,75,910/-; coming to Rs.9,95,182/- during the course of assessment as upheld in the lower appellate proceedings. Ld. Departmental Representative fails to dispute that the Assessing Officer has accepted the assessee's impugned claim in principal @80% since he has chosen to disallow the remaining 20% only on the ground that it failed to substantiate the increase in the impugned expenditure to that incurred Rs.21,37,742/- in the preceding Assessment Year. Ld. Departmental Representative fails to rebut that neither of the lower authority has compared the assessee's corresponding revenue receipts/business turnover of two Assessment Years as well as the corresponding figures in succeeding Assessment Years. Case file suggests that the assessee has also not been able to prove to sufficiently discharge his onus qua the impugned expenses. It further emerges from the case files that the assessee's net profit ratio in Assessment Years 2012-13, 2013-14 & 2014-15 has fluctuated between 0.97%, 0.87% and 1.73% on turnover of Rs.5,83,00,009/-, 88,02,98,221/- and 71,70,97,933/-; respectively. We deem it appropriate in these peculiar facts and circumstances that the disallowance of Rs.20% in issue is on a higher side and therefore, larger interest of justice would be met in case of the same is restricted to 10% only. We order accordingly. It is made clear that our instant situations, finding shall not be treated as precedent in other Assessment Years. Necessary computation to follow. The assessee's main appeal in ITA No.1309/Kol/2018 is partly allowed.

4. To sum up, the assessee's MA No.162/Kol/2019 is allowed and ITA No.1309/Kol/2018 is partly allowed in the above terms.

Order is pronounced in the open court on 30.09.2019.

Sd/-
(A. L. SAINI)
ACCOUNTANT MEMBER

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 30/09/2019

(RS, Sr.PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - M/s. Rama Vinimay Coal Pvt. Ltd.
2. The Respondent- ITO, Ward-4(2), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A) [sent through email]
4. आयकर आयुक्त/ CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्ड फाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.