

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
ITA No.1341/Del./2016, A.Y. 2006-07
ITA No. 1342/Del./2016, A.Y. 2010-11

Infrasoft Technologies Ltd. Unit No. 86 & 87, SDF-III, SEEPZ, SEZ, Andheri (East) Mumbai PAN : AAACB2817R (APPELLANT)	Vs.	DCIT Circle-11(1), C.R.Building, I.P.Estate New Delhi (RESPONDENT)
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ASSESSEE BY : Sh. Vijay Mehta, CA
REVENUE BY : Shri S.S.Rana, CIT(DR)

Date of Hearing : 26.11.2019
Date of Order : 29.11.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant Infrasoft Technologies Ltd., Mumbai (hereinafter referred to as 'the assessee') by filing the aforesaid appeals, sought to set aside the impugned orders dated 31/12/2015 passed by Ld. Commissioner of Income Tax(Appeals)-4, New Delhi qua the Assessment Year 2006-07 & 2010-11 Respectively on the grounds inter alia that :

1. *That on the facts and in the circumstances of the case the Learned CIT (A) was not justified in dismissing the appeal ex parte without giving sufficient opportunity.*
2. *That in any case the notice u/s 148 is void ab initio and bad in law on the account of*
 - a) *Notice being served beyond the period of limitation;*
 - b) *Sanction u/s 151 is post facto after the issue of notice u/s 148;*
 - c) *The reopening of the assessment u/s 148 is merely on the basis of information from investigation department without any material or reasonable nexus with the appellant;*
 - d) *The expenses having being verified in original assessment dated 27.11.2.009 made u/s 143(3), the reopening of assessment u/s 147 is a mere change in opinion on appraisal of the same facts;*
 - e) *That the reassessment has been framed without giving a show cause notice and without disposing off the objections dated 26th April 2013 and 21st March 2014.*
3. *That the finding that the expenses of Rs. 12,59,470 are bogus is erroneous and contrary to the material on record .*
4. *That the appellant craves for leave to reserve to itself the right to add, alter or modify any of the grounds of appeal mentioned above at time of hearing*

ITA No. 1342/Del/2016 (A.Y. 2010-11)

1. *That on the facts and in the circumstances of the case the Learned CIT (A) was not justified in dismissing the appeal ex parte without giving sufficient opportunity.*
Re: Section 10A
2. *That on the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the action of Assessing Officer in disallowing the claim of the Appellant company u/s 10A of the Income tax Act.*
3. *That on the basis of material on record, the learned CIT(A) ought to have held that a new undertaking eligible for Section 10A benefits was set up in Assessment year 2000-2001.*
Re: Section 14A
4. *That on the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the action of the Assessing officer in disallowing Rs.14,72,652 u/s 14A of the Act under normal provisions as well as provisions of section 115JB of the Act.*
5. *That the appellant craves for leave to add, alter, modify any of the grounds of appeal mentioned above at the time of hearing.*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of information received from DCIT, Central Circle-43, Mumbai on 22.03.2011 regarding Sh. Parag Mehta and Ors. And M/s. Washington Software Ltd. and search and seizure operation it has come on record that M/s. Washington Software Ltd. and its related group of cases were engaged in fraudulent billing activities and are in the business of providing bogus bills for software and has been continuing this business for many years. During the search proceedings, statement of Sh. Sanjay D. Sonawani was recorded who has stated that M/s. Washington Software Ltd. had not made any sale nor raised any invoice upon the company listed in reply to question 10, and the company has stopped its production since F.Y. 2003-04 and as such software expenses to the tune of Rs. 12,59,470/- debited to the assessee company for AY 2006-07 were bogus expenses. Consequently, AO disallowance of Rs. 12,59,470/- for A.Y. 2006-07 being bogus in nature and made addition thereof to the total income of the assessee.

Assessing Officer made disallowance of Rs. 48,18,933/- on account of deductions claimed by the assessee u/s 10A of the Income Tax Act for AY 2010-11 on the ground that the same is

not bonafide or genuine. AO further made disallowance of Rs. 14,72,652/- by invoking provisions contained u/s 14A of the Act for AY 2010-11.

4. Assessee carried the matter before Ld. CIT(A) by way of filing the appeal who has dismissed both the appeals ex parte without going into merits of the case. Feeling aggrieved the assessee has come up before the Tribunal by way of filing the present appeals.

5. We have heard the ld. DR, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Bare perusal of the impugned orders passed by Ld. CIT(A) go to prove that both the appeals have been dismissed ex parte for non-prosecution by the assessee. The Ld. CIT(A) recorded in para 2 of the impugned orders that the case was fixed for 03.08.2015, 20/08/2015 and 27/08/2015 and then 14.09.2015 but due to non-appearance of the assessee, the appeals were dismissed. Impugned orders are salient if notices wherever sent to assessee for the date fixed or notices were ever served upon the assessee. Even otherwise the CIT(A) is required to dispose of the appeal on merits even if the assessee has not come forward to pursue the case. Ld.

AR for the assessee made a request for one opportunity to substantiate its claim.

7. In these circumstances, we are of the considered view that to decide the issues in controversy once for all both the cases are required to be set aside to the CIT(A) to decide afresh after providing opportunity of being heard. Consequently appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in open court on this 29th November, 2019.

Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER
Dated : 29th /11/ 2019
BR

Sd/-
(KULDIP SINGH)
JUDICIALMEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)-4, New Delhi.
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI

Date of dictation	28.11.2019
Date on which the typed draft is placed before the dictating Member	29.11.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the	

Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	