

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

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

ITA No.1653/Kol/2017
Assessment Year :2008-09

Prime Decor Laminate Services, Pvt. Ltd., 9/12, Lal Bazar Street, 3 rd Fl. Block-B, R.No.10, Kolkata-001 [PAN No.AADCB 3770 E]	V/s.	Income Tax Officer Ward-5(4), Aayakar Bhawan, P-7, Chowringhee Square,Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri K.M. Roy, FCA & Rajiv Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Dr. P.K. Srihari, CIT-DR
सुनवाई की तारीख/Date of Hearing	04-11-2019
घोषणा की तारीख/Date of Pronouncement	22-11-2019

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2008-09 arises against the Commissioner of Income Tax(Appeals)-6 Kolkata's order dated 29.07.2016 passed in case No.238/CIT(A)-6/Kol/2015-16 involving proceedings u/s 143(3) r.w.s. 263 r.w.s. 147 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 assessee's instant appeal suffers for 272 days' delay in filing stated to be attributable to serious brain surgery of its auditor / accountant. All these averments have not been disputed from the

Revenue side. Hon'ble apex court's landmark judgment *COLLECTOR, LAND ACQUISITION VS. Mst. KATIJI* (1987) 167 ITR 471 (SC) holds that such technical aspects must make way for the cause of substantial justice. We therefore hold that the impugned delay of 272 days' in filing is neither intentional nor deliberate but on account of severe illness of the assessee's auditor / accountant. The same stands condoned. We take up main appeal for adjudication on merits.

3. The assessee's sole substantive grievance raised in the instant appeal pleads that both the lower authorities have erred in law and on facts in treating its share capital / premium of ₹11,33,00,000/- as bogus and unexplained cash credits liable to be added u/s68 of the Act. The instant *lis* appears to have arisen from the CIT's revision order / directions dated 28.03.2013 to the Assessing Officer to frame afresh assessment thereof invoking revision jurisdiction vested u/s 263 of the Act.

4. Learned CIT-DR invited our attention to the assessment order itself dated 26.03.2014 in **para-1** that the former round of regular assessment was finalized on 26.04.2010 forming subject-matter of revision proceedings. The CIT's findings indicate that the assessee had failed in proving genuineness / creditworthiness of its investor party(ies) turning out to be shell companies. His case accordingly is that both the lower authorities have rightly made the impugned addition in the given facts and circumstances of the case.

5. We have given our thoughtful consideration to rival contentions. We find that neither of the lower authorities' action treating the assessee's share capital / premium as bogus; deserves to be sustained in entirety. Page 6 of the assessment order contains the CIT's revision direction to the Assessing Officer that he would "**examine the genuineness and creditworthiness of the share capital; not on test check basis, but in respect of shareholders by conducting independent enquiries not through the assessee**". This

clinching direction has nowhere been complied with by the Assessing Officer since he has placed the entire burden on the assessee to prove genuineness / creditworthiness of the share application / premium. Mr. Roy is fair enough at this stage that the assessee shall produce its investor parties if provided one more innings before the Assessing Officer. We deem it appropriate in these peculiar circumstances that larger justice would be met if the Assessing Officer re-examines the entire issue afresh as per law within three effective opportunities of hearing. The assessee is directed to appear before the Assessing Officer on or before **15.04.2020** alongwith a copy of this order for further adjudication.

6. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open court 22/11/2019

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Kolkata,

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

*Dkp

दिनांक:- 22/11/2019 कोलकाता ।

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

1. अपीलार्थी/Appellant- Prime Décor Laminate Services Pvt. Ltd., 9/12 Lal Bazar Street, 3rd Floor, Block-B R.No.10, Kolkata-700 001
2. प्रत्यर्थी/Respondent- ITO Wd-5(4), P-7, Chowringhee Sq. Aayakar Bhawan, Kolkata-69
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 ।