

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.3550/Del/2016  
निर्धारणवर्ष/Assessment Year:2007-08

<b>ACIT Circle-25(1) C.R. Building, I.P. Estate, New Delhi.</b>	<b>बनाम Vs.</b>	<b>Tata Teleservices Ltd. 2A, Old Ishwar Nagar, Main Mathura Road, New Delhi.</b>
		<b>PAN No. AAAC2438A</b>
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

राजस्वकीओरसे /Revenue by	Shri James Singsam, Sr. DR
निर्धारितकीओरसे /Assessee by	None

सुनवाईकीतारीख/ Date of hearing:	28.01.2020
उद्घोषणाकीतारीख/Pronouncement on	29.01.2020

**आदेश /O R D E R**

**PER BHAVNESH SAINI, J.M.**

1. This appeal by Revenue has been directed against the order of Ld. CIT(Appeals)-14, New Delhi dated 21.03.2016 for Assessment Year 2007-08.
2. It is noted in the impugned order that grievance of the assessee had been that the AO has not considered the revised FBT return filed by the assessee and proceeded to conclude the FBT assessment based on the original FBT return. The assessee, therefore, contended that AO was not justified in not granting refund of Rs. 1.06 crores claimed by the assessee as per revised FBT return along with interest thereon.

3. The Ld. CIT(A) noted in the appellate order that assessee has filed its FBT return for assessment year under appeal originally on 31.10.2007 declaring a Fringe Benefit value of Rs. 20.54 crores. On 09.03.2009 the original return was revised with the Fringe Benefit value of Rs. 17.45 crores. The AO processed the original return on 05.03.2009. The assessee filed a rectification application against the intimation which is not processed till date. The AO also initiated assessment proceedings u/s 115WE(2) of the Act and assessment was completed vide order dated 24.12.2009 without considering the revised return of FBT filed by assessee. The Ld. CIT(A) found the contention of the assessee to be correct that assessments have been completed without considering the revised return of FBT filed by the assessee. Therefore, AO was directed to consider the revised return and disposed off pending rectification application as per law. Appeal was allowed.

4. Department appeal is time barred by nine days. Considering the explanation in application for condonation of delay, the delay in filing appeal which is nominal is condoned.

5. Ld. DR contended that Ld. CIT(A) has no power to set aside the case to the AO.

6. After considering the submission of the Ld. DR, we do not find any merit in the Departmental appeal. Since, assessee filed revised return of income as well as filed rectification application against intimation, therefore, it was the duty of the AO to frame the assessment as per

revised return and shall have to dispose of the rectification application as per law. The order of the Ld. CIT(A) would not amount to setting aside the assessment to the AO. The order passed by the Ld. CIT(A) is in accordance with law and, as such, need no interference. Departmental appeal stands dismissed.

7. In the result, the departmental appeal is dismissed.

Order pronounced in the open court.

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Dated: 29<sup>th</sup> January, 2020  
*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard  
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi