

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम बाला गणेश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2947/Chny/2018
निर्धारण वर्ष /Assessment Year: 2010-11

M/s. Tenth Planet Technologies
Pvt. Ltd.,
No.807, Anna Salai, 6th Floor,
(Opp. to LIC Building),
Chennai – 600 002.

The Dy. Commissioner of
Income Tax (International
Taxation)-2(2),
Chennai.

[PAN: AABCT 8911F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri I. Dinesh, Advocate
प्रत्यर्थी की ओर से /Respondent by : Mrs. Vijayaprabha, JCIT
सुनवाई की तारीख/Date of Hearing : 25.02.2020
घोषणा की तारीख /Date of Pronouncement : 28.02.2020

आदेश / ORDER

PER M. BALAGANESH, ACCOUNTANT MEMBER:

This appeal of the assessee arise out of the order of the Ld. Commissioner of Income Tax (Appeals)-16, Chennai vide proceedings in ITA No. 03/CIT(A)-16/2010-11, dated 09.08.2018 against the order passed by the DCIT, International Taxation-2(2), Chennai (AO) u/s. 201(1) & 201(1A) of the Income Tax Act, 1961

(hereafter 'the Act') dated 31.03.2017 for the Assessment Year (A.Y) 2010-11.

2. We have heard the rival submissions and perused the material available on record. The Ld. AO framed the assessment u/s. 201(1) and 201(1A) of the Act on 31-3-2017 treating the assessee as 'assessee in default' for non deduction of tax at source in respect of payments made towards purchase of software in the sum of Rs. 24,95,136/- by treating the same as royalty. This order was upheld by the Ld. CIT(A).

3. We find that before us the Ld. AO raised a preliminary objection that the assessment framed by the Ld. AO u/s. 201(1) and 201(1A) of the Act for the A.Y 2010-11 on 31-3-2017 was barred by limitation. To support his argument, the Ld. AR drew our attention to the pre-amended provisions of s. 201(3)(ii) of the Act, which stipulates that the order under sub s. (1) to s. 201(1) could be passed only within 6 years from the end of the financial year in which the payment was made. There is no dispute in the instant case that payment for purchase of software was made by the assessee during the financial year 2009-10 relevant to A.Y 2010-11. Hence, six years from the end of the financial year would expire on 31-03-2016, which would be the last date for framing the assessment u/s. 201(1) of the Act in terms of

pre-amended provisions of s. 201(3)(ii) of the Act. This section was later amended w.e.f 01-10-2014 substituting six years with seven years. We find that the the Ld. CIT(A) simply applied the amended provisions for the A.Y 2010-11 ignoring the fact that the said amendment is applicable only w.e.f 01-10 2014. Accordingly, we hold that the order passed by the Ld. AO u/s. 201(1) and 201(1A) of the Act on 31-03-2017 is barred by limitation and hence, the same is hereby quashed.

4. Since, the appeal of the assessee is decided on a technical issue, we refrain to give our opinion on the merits of the case. Accordingly, the grounds raised by the assessee are allowed.

5. In the result, the appeal of the assessee is allowed.

Order pronounced on 28th day of February, 2020 in Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(एम बाला गणेश)

(M. BALAGANESH)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai, दिनांक/Dated: 28th February, 2020.

EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF