

**IN THE INCOME-TAX APPELLATE TRIBUNAL “A” BENCH,
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 1214/MUM/2025
(A.Y. 2010-11)**

Auditime Information Systems India Limited Office No. 31, Der Deutsche park, Subhash Nagar, Nahur Railway Station, West, Mumbai – 400078.	v/s. बनाम	Deputy Commissioner of Income Tax 4(1)(2) Aaykar Bhavan, M. K. Road, Churchgate -400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADCA3032G		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	None
Respondent by :	Shri Ram Krishn Kedia (SR.DR.)

Date of Hearing	07.04.2025
Date of Pronouncement	08.04.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 23.12.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax, Appeal, National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to rectification order passed u/s. 154 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 08.04.2019 for the Assessment Year [A.Y.] 2010-11.

2. The grounds of appeal are as under: -



1. The Ld. CIT(A) Passed an ex-parte order, even without considering the evidences brought on record, which were filed along with Form 35.
2. The Ld CIT(A) erred in not considering the fact that, the Ld. Assessing Officer has erred in passing an order beyond four years of passing an order by CIT Appeal on 27/02/2013 and thereby the assessment order is liable to be quashed and treat it as non-est and null and void ab-initio.
3. The Ld CIT(A) has also erred in not appreciating the fact that the Ld AO went beyond his jurisdiction while passing order u/s 154 as a response to passing order giving effect to Ld CIT(A)..
4. The Ld CIT(A) has erred in upholding order u/s 154 passed by the Ld. AO which is passed in contravention to with section 154 (7) and the time limit as permissible u/s. 154 (7) of four years from the date of the passing of the order u/s. 143 (3) on 27/02/2013.
5. The Ld CIT(A) has erred in upholding order u/s 154 passed by the Ld. AO to arrive at gross consultancy charges at Rs. 7,17,91,237/- without providing any basis thereof and without responding to the letter filed by the assessee on 31/07/2024.
6. The Ld CIT(A) has erred in upholding order u/s 154 passed by the Ld. AO which stated that no any reply has been filed in response to notices dated 03/07/2014, 02/11/2015 and 06/02/2019 especially when detailed responses were filed on 28/07/2014 and 31/07/2014.
7. The Ld CIT(A) has erred in upholding order u/s 154 passed by the Ld. AO who, did not consider various submissions dated 28/07/2014 and another letters dated 28/07/2014 filed 31/07/2014.
8. The Ld CIT(A) has erred in upholding order u/s 154 passed by the Ld. AO which is a high-pitched assessment u/s. 154 without providing an opportunity of being heard and complete denial to natural justice.
9. The Ld CIT(A) has erred in upholding order u/s 154 passed by the Ld. AO wherein the penalty u/s. 134B for Rs. 41,23,999/- is levied as against the credit claimed as per return of income Rs. 60,96,822/- and 19,72,823/-/thereby giving short credit for Rs. 19,72,823/-."

3. The brief facts of the case are that a rectification order u/s 154 of the Act was passed by the ld.AO on 18.03.2019, rectifying the income at Rs.1,71,58,670/- against the income of Rs.60,31,820/- which was assessed u/s 143(3) of the Act for the relevant assessment year. Aggrieved with the rectification order, the assessee preferred an appeal before the CIT(A). During the appellate proceedings various notices were issued to the assessee vide which it was requested to furnish written submission on ITBA Module i.e



notices dated 09.08.2021, 08.01.2024 and 13.12.2024 were sent on its registered email. However, there was no response by the assessee to any of the above notices. The Id.CIT(A) considered the 'Statement of Facts' filed alongwith Form no.35 which revealed that assessment order u/s143(3) of the Act was completed on 27.02.2013 by determining taxable income of Rs. 60,31,820/- by making certain addition/disallowance for the relevant year. Further, on perusal of the record the AO found the assessee had received gross consultancy charges of Rs.7,17,91,237/- on which TDS of Rs.60,29,182/- was deducted and claimed by it in return of income. However, the assessee had shown consultancy charges plus sales at Rs.5,13,87,276/- in the P & L Account, therefore the AO was of the view that the assessee had offered the income less by Rs.1,11,26,852/- for taxation due to difference between consultancy charges actually received and less shown in P & L account for the relevant financial year. During the rectification proceedings, the assessee made noncompliance against the statutory notices sent. Therefore, the AO rectified the taxable income at Rs.1,71,58,670/-. Even during the appellate proceedings, the assessee failed to furnish any reply/documentary evidences in respect of its appeal filed. Despite being provided ample opportunities in the appellate proceedings, it did not file any reply/evidences in respect of grounds of appeal as well as statements of facts. Therefore, in the absence of any reply/evidence, the appeal filed by it was rejected and the appeal was dismissed. It may be stated here that even when the case was called out for hearing before us, there was none representing it nor any communication was received.



4. On careful consideration of all material facts of the case, we notice that the ld.CIT(A) dismissed the appeal solely on the ground of non-prosecution. Such dismissal without deciding the appeal on merits is contrary to the principles of natural justice. It is settled law that it is the duty of the appellate authority to dispose of an appeal on merits after considering the materials on record, even if the appellant fails to appear. However, it is equally true that it is the fundamental duty of the assessee to diligently pursue the appeal and comply with the notices and proceedings initiated by the Revenue authorities. Despite the notices under section 250 of the Act by the CIT(A), no compliance was made.

4.1 Accordingly, we are of the opinion that no substantive adjudication of the appeal could be done. Therefore, we proposed during the hearing that the assessee should be given one more opportunity and this proposition was also not objected by the ld. DR. We are of the considered view that the scales of justice demand that the matter should be verified and revisited at the level of ld. CIT(A) and accordingly, the matter should be remanded back to the file of ld. CIT(A) for *de novo* adjudication by him while applying the principles of natural justice after affording sufficient opportunity of being heard to the assessee.

4.2 However, considering assessee's non-compliant attitude and lack of diligence in pursuing the appeal before the ld.CIT(A), we impose a token cost of Rs.5,000/- on him. The cost shall be deposited to the credit of the Income



Tax Department within 15 days of the receipt of this order and proof of payment shall be submitted before the Id.CIT(A).

5. In the result, the appeal of the assessee stands **allowed for statistical purposes.**

Order pronounced in the open court on 08/04/2025.

Sd/-

SANDEEP GOSAIN

यायिकसदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकारसदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 08.04.2025

Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

