

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI  
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

I.T.A. No.3157/M/2013 (Assessment Year: **2007-2008**)

Netmagic IT Services Pvt Ltd., Building No.22, Nirlon Complex, Western Express Highway, Goregaon (E), Mumbai-400063.	बनाम/ Vs.	ITO-9(2)(3), Mumbai.
स्थायी लेखा सं./PAN : AACCN2366D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Anuj Kisnadwala
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Manoj Kumar, DR

सुनवाई की तारीख /Date of Hearing : 03.10.2016

घोषणा की तारीख /Date of Pronouncement : 03.10.2016

**आदेश / O R D E R**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 25.4.2013 is against the order of the CIT (A)-20, Mumbai dated 4.2.2013 for the assessment year 2007-2008. In this appeal, assessee raised the following grounds which read as under:-

- 1.1. *On the facts and in the circumstances of the case and in law, the Ld CIT (A) has grossly erred in upholding penalty levied by the AO u/s 271(1)(c) of Rs. 47,80,773/-.*
- 1.2. *The CIT (A) ought to have appreciated that no proper satisfactions was reached by AO at the time of initiating penalty u/s 271(1)(c) as ground on which disallowance was made by AO was rejected by the CIT (A) and the disallowance was upheld by the CIT (A) on other ground on which no satisfaction was reached by the AO for initiating penalty u/s 271(1)(c) of the Act.*
- 2.1. *On the facts and in the circumstances of the case and in law, the Ld CIT (A) grossly erred in upholding levy of penalty on the disallowance of deduction claimed u/s 10A without appreciating that the issue under consideration is legal and debatable and that the appellant had dome complete disclosure of all facts relevant to the claim of deduction."*

2. At the outset, Ld Counsel for the assessee briefly narrated the facts and submitted that in the assessment made u/s 143(3) of the Act, AO disallowed the claim of deduction of Rs. 1,42,03,012/- u/s 10A of the Act. Aggrieved assessee carried the matter in appeal before the first appellate authority and the CIT (A) confirmed the rejection of exemption. Matter travelled to the Tribunal and in the first

round of the proceedings before the ITAT, the Tribunal allowed the appeal vide ITA No.8810/M/2010 (AY 2007-2008), dated 6.4.2016. Before us, it is the submission of the Ld Counsel for the assessee that since, the Tribunal allowed the quantum appeal, penalty levied u/s 271(1)(c) of the Act is required to be deleted.

3. After hearing the Ld Representatives of both the parties and on perusal of the cited order of the Tribunal (supra), we find, vide para 10 of the said order, Tribunal directed the AO to allow the deduction u/s 10A and decided the issue in favour of the assessee. Considering the same we are of the considered opinion, since the Tribunal allowed the quantum appeal, penalty levied u/s 271(1)(c) has no legs to stand. Accordingly, we delete the penalty. Thus, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 3<sup>rd</sup> October, 2016.

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 03.10.2016  
व.नि.स./ OKK, Sr. PS

**Sd/-**  
**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**