आयकर अपीलीय अधिकरण " बी" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA NO.4753/MUM/2015, (A.Y : 2009-10)

M/s Netmagic IT Services P.Ltd Bldg No.22, Nirlon Complex Western Express Highway Goregaon(E) Mumbai – 400 063 **PAN : AACCN2366D**	Vs.	ITO - 9(2)(3) Mumbai
(अपीलार्थी **/ Appellant)**		**(**प्रत्यर्थी / **Respondent)**

अपीलार्थी की ओर से /Appellant by : Shri Govind Javeri
प्रत्यर्थी की ओर से /Respondent by : Shri Jeevanlal Lavidiya

सुनवाई की तारीख / **Date of Hearing : 11.5.2017**
घोषणा की तारीख / **Date of Pronouncement : 17.5.2017**

आदेश / O R D E R

PER C.N.PRASAD (JM)

This appeal is filed by the Assessee against the order of the Ld. CIT(Appeals)-21, Mumbai dated 14.5.2015 for the assessment year 2009-10 in sustaining the penalty u/s 271(1)(c) on the disallowance of claim for deduction u/s 10A of the Act.

2. At the outset, the Ld. Counsel for the Assessee submits that the Coordinate Bench of this Tribunal by order dated 26.4.2017 in ITA No.1399/Mum/2013 restored the disallowance of deduction u/s 10A to the file of the Assessing Officer and to pass orders as per the directions contained in the Coordinate Bench order for the assessment year 2007-08 in

ITA No.8810/Mum/2008 dated 6.4.2016. The Ld. Counsel for the Assessee further submits that on similar circumstances for the assessment year 2007-08, the Coordinate Bench in ITA No.3157/Mum/2013 dated 3.10.2016 deleted the penalty levied u/s 271 (1)(c) of the Act.

3. The Ld.DR fairly submitted that the issue in appeal in quantum proceedings is in favour of the Assessee as the Coordinate Bench directed the Assessing Officer to allow deduction u/s 10A of the Act.

4. We have heard the rival submissions, perused the orders of the authorities below and the decision of the Coordinate Bench. The disallowance made in the assessment order u/s10A has been restored to the file of the Assessing Officer with a direction to follow the order of the Tribunal for the assessment year 2007-08. For the assessment year 2007-08, the Coordinate Bench directed the Assessing Officer to allow the deduction subject to Assessee satisfying other conditions prescribed u/s10A of the Act. Coming to the penalty u/s 271(1)(c), for the assessment year 2007-08, the Coordinate Bench deleted the penalty observing as under :

> "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."

Keeping in view the above orders, we delete the penalty levied u/s 271(1)(c) of the Act for the assessment year 2009-10 also.

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

Order pronounced in the open court on the 17th day of May 2017.

Sd/-	Sd/-
(RAMIT KOCHAR)	**(C.N.PRASAD)**
लेखा सदस्य /	**न्यायिक सदस्य /**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

मुंबई / Mumbai; दिनांक / Dated 17.5.2017

LR, SPS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
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,

सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण,मुंबई / **ITAT, Mum**