

आयकर अपीलीय अधिकरण “E” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1194/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2008-09)

M/s. Express Global Logistics Pvt. Ltd., 17, 2 nd Floor, Western India House, Sir P M Road, Fort, Mumbai 400001	बनाम/ v.	ACIT 2(1)(2) R.No. 561, 5 th Floor, Aayakar Bhavan, M.K. Marg-400020
स्थायी लेखा सं./ PAN : AAACE2632F		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Tanmay Phadke	
Revenue by :	Shri. Ram Tiwari	

सुनवाई की तारीख /**Date of Hearing** : **02.07.2018**

घोषणा की तारीख /**Date of Pronouncement** : **11.07.2018**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 1194/Mum/2017, is directed against appellate order dated 11.11.2016 passed by learned Commissioner of Income Tax (Appeals)-3, Mumbai (hereinafter called “the CIT(A)”), for assessment year (AY) 2008-09, the appellate proceedings had arisen before learned CIT(A) from the order dated 01-05-2015 passed by learned Assessing Officer (hereinafter called “the AO”) u/s 154 of the Income-tax Act, 1961 (hereinafter called “the Act”) for AY 2008-09.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"Unjust And unfair Disallowance of claim of TDS of Rs.9,93,555/-

The Learned C.I.T (Appeals)-3 erred in not granting credit of TDS of Rs. 9,93,555/- deducted from the revenue included in the computation of the Income under the head Profits from Business and Profession during the previous year ended 31st March, 2008.

The TDS of Rs.9,93,555/- was paid by the Appellant's clients on 30th March, 2010. The TDS certificates were provided to the Appellant much after the due date of filing the return.

The TDS was not claimed with the return as the same was deducted and paid to the Revenue Department much later then the due date of filing return.

The Appellant vide his letter dated 10th July, 2013 made an application before the AO to grant the credit the TDS."

3. The brief facts of the case are that the assessee is a company engaged in the business of clearing and forwarding agent. The assessee filed return of income on 20-09-2008 declaring total income of Rs. 4,57,01,174/- and claimed credit for payment of aggregate taxes to the tune of Rs. 1,55,37,327/- out of which , inter-alia, claim of credit of income-tax deducted at source amount(TDS) was Rs. 89,44,765/- . The AO issued intimation u/s. 143(1) wherein the AO, inter-alia, granted TDS credit of Rs. 79,05,771/- as against claim of TDS credit of Rs. 89,44,765/- filed by the assessee in the return of income filed with the Revenue.

4 Aggrieved by the grant of the short TDS credits allowed by the AO in the intimation issued u/s 143(1), the assessee filed rectification application vide letter dated 24-05-2013 u/s. 154 filed with the AO , inter-alia, for correcting mistake w.r.t. short credit of grant of TDS wherein credit allowed stood at Rs. 79,05,771/- as against the claim for TDS credit of Rs. 89,44,765/- filed by the assessee in its return of income. During the course of aforesaid proceedings conducted by the AO u/s 154, the assessee vide one letter dated 02.07.2013 filed with the AO filed additional claim for grant of TDS credit of Rs. 9,93,555/- for the first time which was not earlier claimed by the assessee in the return of income filed with the Revenue. The assessee,

however, submitted that the assessee offered corresponding income for taxation to the said income-tax deducted at source(TDS) of Rs. 9,93,555/- in the return of income filed with the Revenue but the income-tax deducted at source on the said income by the persons responsible for making payments deposited the said income-tax late to the credit of Central Government and consequentially the TDS certificates were also issued late by the said deductors to the assessee which is the main reason for the non claim of the credit of TDS earlier by the assessee in the return of income filed with Revenue and the assessee cannot be held responsible for such delay in filing of the claim as no fault lies with assessee and hence the assessee cannot be penalised for the same. It was also submitted that the assessee was not aware of the said deduction of income-tax at source(TDS) of Rs. 9,93,555/- by the deductors at the time of filing of return of income and it is only at a later stage , the assessee came to know of said deduction of income tax at source(TDS) by the deductors on behalf of the assessee. The said letter dated 02.07.2013 along with original TDS certificates and indemnity bond were filed by the assessee before the AO in the course of proceedings conducted by the AO u/s 154 , on 10.07.2013 which are all placed in paper book filed by the assessee before the tribunal and the letter filed by the assessee is reproduced below:-

"2nd July, 2013

To
The ACIT 2(1)
Mumbai.

Dear Sir,

Sub: Submission of Original TDS Certificates of Rs.9,93,555/-
Ref: PAN No: AAACE2632F
A.Y 2008-2009

In connection with your intimation u/s. 143(1) dated 24/10/2009 for A.Y 2008-2009 and our submissions made on 17/09/2009, 24/05/2013 and 27/06/2013, we hereby submit TWO Original TDS Certificates (along with Indemnity Bond) details of which are as under;

Name of the Party	Amount Paid/Credited (In Rs.)	Date of Payment/ Credit	Total TDS amount (In Rs.)	Date on which Tax is paid	Challan No.	Date of Certificate

Elecon Engineering Co. Pvt Ltd	1,94,10,060	31/03/2008	4,39,832	31/03/2010	54034	31/03/2010
Elecon Engineering Co. Pvt Ltd	2,33,03,022	31/03/2008	5,28,046	31/03/2010	54062	31/03/2010
Sub-Total	4,27,13,082		9,67,878			
Prayas Engineering Ltd	11,33,134	31/03/2008	25,677	11/10/2010	3509	14/10/2010
Sub-Total	11,33,134		25,677			
Total			9,93,555			

We would like to bring to your notice that we had filed the Return of Income for A.Y 2008-2009 on 01/10/2008 vide ack. no. 45411550300908. A copy of the same has been attached herewith for your kind perusal.

Further, we had not claimed the aforesaid TDS credit of Rs. 9,93,555/- at the time of filing the Return as the details of the TDS was not made available nor was the tax deducted or paid on or before the filing of our Return of Income.

We would also like to draw your Honors attention to the fact that these TDS Certificates were received by us very late, i.e after 31st March, 2010, thereby negating our chances of filing a Revised Return wherein we could have claimed the TDS credit.

Further, we are unable to access the Form 26AS for A.Y 2008-2009 on the CPC-TRACES website in order to verify whether the credit for the above mentioned amounts have been granted.

We hereby submit the ledger copies of the aforesaid parties for the A.Y 2008-2009 for your ready reference. It can be observed that 1707 invoices amounting to Rs. 7,25,21,087/- had been raised on Elecon Engineering Co. Pvt Ltd and 38 Invoices amounting to Rs. 12,23,650/- had been raised on Prayas Engineering Ltd.

We hereby further state that all the invoices have been considered in our books of accounts for the A.Y 2008-2009 and accordingly relevant income has been offered for tax.

Therefore, in the said circumstances, wherein at one hand we could not take appropriate credit of the TDS of Rs. 9,93,555/- in the original Return filed nor on the other hand we could file a Revised Return, we request your Honor to take these TWO Original TDS certificates (along with Indemnity Bond) on record and grant us the necessary credit for the same.

We hope your Honor finds the above submissions and details satisfactory and adequate for granting the necessary credit of TDS.

*Thanking You,
Yours faithfully,*

*For Express Global Logistics Private Limited
(Formerly Express Transport Private Limited)*

*Sd/-
PRANAVSHAH
SR. MANAGER FINANCE & TAXATION*

Encl: as above

Despite this aforesaid letter dated 02.07.2013 filed by the assessee along with two original TDS certificates and Indemnity Bonds with the AO (which all are placed in paper book at page no. 16-23 along with the letter dated 02-07-2013), the AO did not grant relief to the assessee in an order dated 01.05.2015 passed u/s. 154 of the Act so far as TDS credit to the tune of Rs.9,93,555/- is concerned which of course was not originally claimed by the assessee in the return of income filed with the Revenue but however the AO in its order passed u/s 154 allowed TDS credit to the tune of Rs. 89,44,765/- as was claimed by the assessee in the return of income filed with the Revenue as against TDS credit of Rs. 79,05,771/- granted in the intimation issued by the AO u/s 143(1).

5. Aggrieved by the denial of the TDS credit to the tune of Rs. 9,93,555/- by the AO in an order of rectification passed u/s 154 by the AO on 01.05.2015, which claim of TDS credit albeit was not claimed by the assessee in the return of income filed with Revenue due to late deposit of TDS by the deductors and which consequentially led to late issue of TDS certificate to the assessee by the deductors in the month of March 2010 and October 2010 respectively as against the due date of filing of return of income falling due on 30-09-2008 and the return of income having been filed u/s 139(1) on 20-09-2008, the assessee filed first appeal with learned CIT(A) which did not find favour with learned CIT(A) who vide appellate orders dated 11.11.2016, decided the issue against the assessee by dismissing the appeal of the assessee by holding as under:-

“ 5. I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.

6. The only ground of appeal is disallowance of claim of TDS of Rs. 9,93,555/-. This appeal for AY 2008-09 is against the order u/s 154 of the AO dated 01.05.2015. The AO has granted TDS of Rs. 89,44,765/- and determined the refund of Rs. 51,72,150/-, while making the rectification u/s 154 of the IT Act.

6.1 On the other hand, the appellant submitted that the Appellant is a Private Limited Company engaged in the business of Clearing and Forwarding Agent. The Appellant has filed his return of income for the Assessment year 2008-2009 on 20th September, 2008 (As attached on page no. 01) disclosing the total income of Rs.4,57,01,174/- and tax thereon of Rs. 1,55,37,327/- which was paid as Advance Tax of Rs.71,00,000/-, TDS of Rs. 89,44,765/- and had thereby claimed refund of Rs.5,07,438/-. The copies of the TDS certificates were submitted to the AO vide letter dated 17th September, 2009 (As attached on page no. 02) .The Original TDS certificates amounting to Rs.89,44,765/- were submitted to the AO vide letter dated 27th June,2013 (As attached on Page No. 03).

6.2 In the Intimation u/s 143 (1) (As attached on page no. 04) the TDS credit was granted only up to Rs.79,05,771/-, Advance Tax up to Rs. 46,00,000/- and the Short Term capital were not charged @ 10% u/s 111A instead of normal rate consequently leading to demand of Rs.39,28,310/-. The Appellant had filed rectification u/s 154 vide letter dated 24th May, 2013 (As attached on page no. 05) for short credit of TDS of Rs.10,38,994/- (Rs.89,44,765 - Rs.79,05,771) and Advance tax of Rs.25,00,000/- (Rs.71,00,000 - Rs.46,00,000). And vide letter dated 26th June,2013 (As attached on Page No. 06) for short term capital gain.

6.3 The Appellant's grievance is that its claim for grant of credit of TDS of Rs.9,93,555/- vide letter dated 02nd July,2013, has not been considered. (Copy of the letter alongwith Original TDS certificate, Ledger Copies and Indemnity Bond being attached on page no. 07-49). The TDS of Rs.9,93,555/- was paid by the Appellants clients on 30th March,2010 and the certificates were provided much after the due date of filing the return i.e 30th September, 2009 . The tabulation of the delayed TDS payment is as follows:

Name of Party	Amount Paid/Credited In Rs.	Date of Payment/Credit	Total TDS Amount In Rs.	Date on which Tax is paid	Challan No.	Date of Certificate
Elecon Engineering Co.Pvt Lid	1,94,10,060	31/03/2008	4,39,832	31/03/2010	54034	31/03/2010
Elecon Engineering Co.Pvt Lid	2,33,03,022	31/03/2008	5,28,046	31/03/2010	54062	31/03/2010
Sub-Total	4,27,13,082		9,67,878			

Prayas Engineering Ltd	11,33,134	31/03/2008	25,677	11/10/2010	3509	14/10/2010
Sub- Total	11,33,134		25,677			
Total			9,93,555			

A. The Appellant had offered the income from the above mentioned clients for tax in the AY 2008-09 while computing his Net Total Income. It shall be noted that the TDS has not been claimed in the return as the certificate were not provided by the clients nor the Appellant was aware of such deduction as TDS was deducted and paid by the client to the Government very late i.e. 31st March, 2010. Thus it was obvious that Appellant was not able to claim the TDS at the time of filing his return of income which was filed much earlier on 20th September, 2008.

B. Order u/s 154 was received dated 01st May, 2015 were in the TDS of Rs.89,44,765/-, Advance Tax of Rs-71,00,000/- and the Short Term Capital gain was correctly taxed and the refund of Rs. 51,72,150/- was received on 07th May, 2015. However, the AO did not gave the credit of TDS of Rs.9,93,555/- which was not claimed while filing the return but was submitted before Him.

C. The Appellant relying on the Principle of Natural Justice & Equity (As Palkhivala's commentary on Principles of Natural Justice & remedy for violation of Principles of Natural Justice are attached for easy perusal on page 50 -55) craves for granting the credit of the TDS which has been deducted and paid to the Government. Under Section 199 "Tax deducted at source and paid by the deductor, the deductee is to get the credit for it and the amount deducted is treated as tax having been paid. The tax deducted at source exceeds the tax found payable, the assessee would be entitled to a refund under section 237". (Copy of the Commentary from Kanga & Palkhivala's on Sec 199 is attached on page 56-57). The Appellant plea since the tax was paid delayed to the Government he was not able to claim the TDS at the time of filing the return.

6.4 I have carefully gone through the rival submissions and the facts of the case. The main dispute is relating to non grant of TDS of Rs. 9,93,555/-. The facts of the case as emerged from the submissions are that during the financial year 2007-08, relevant to AY 2008-09, the appellant has claimed TDS of Rs. 89,44,765/-, which the AO has granted. Two parties namely M/s Elecon Engineering Co. Pvt. Ltd. and Prayas Engineering Ltd. had deducted TDS in the case of the appellant has deducted tax of Rs. 9,67,878/- and Rs. 25,677/- respectively and paid to the Govt Account on 31.03.2010. This amount of TDS which was deducted by the above mentioned two parties and paid to the Govt. Account on 31.03.2010, which was not claimed by the appellant in his return of income filed on 20.09.2008, nor was found reflected in Form 26AS, and, therefore, the AO has not taken this into consideration. The appellant submitted that Principle of Natural Justice and Equity has been violated by the AO for non grant of TDS amounting to Rs.

9,93,555/-. The appellant has also given a reference of Circular No. 5/2013 dated 08.07.2013 and again Circular No. 14 XL-35 dated 11.04.1955. The appellant has also relied upon case laws namely:-

1. DCIT Circle 10(1) vs. Desein Pvt Ltd (ITAT - New Delhi)- (ITA nos.3488, 3489/Del/2013 AY 2007-08 and 2008-09 dt.11th May, 2011.
2. Sandersons & Morgans Kolkata, vs. ACIT Circle 54, Kolkata (ITAT Kolkata) - (ITA No.1520/Kol/2009 AY 2004-05 dt 23rd September, 2015.
3. High Court of Delhi on Its Own Motion vs. Union of India [2013] 31 taxmann.com 31
4. ITO vs. Anupallavi Finance & Investments [2011] 131 ITD 205 (Chennai Trib.)
5. Pardeep Kumar Dhir v. ACIT[2007] 109 TTJ 445 (Chandigarh Trib.)
6. Smt. Varsha G. Salunke v. DCIT[2006] 98 ITD 147 (Mumbai Trib.)
7. Yashpal Sawhney v. ACIT[2007]293ITR 539 (Bom)

6.5 Section 155 (14) reads as under:-

Where in the assessment for any previous year or in any intimation or deemed intimation under sub-section (1) of section 143 for any previous year, [credit for tax deducted or collected in accordance with the provisions of section 199 or as the case may be, section 206C] has not been given on the ground that the certificate furnished under section 203 [or section 206C] was not filed with the return and subsequently such certificate is produced before the Assessing Officer within two years from the end of the assessment year in which such income is assessable, the Assessing Officer shall amend the order of assessment or any intimation or deemed intimation under subsection (1) of section 143 as the case may be, and the provisions of section 154 shall, so far as may be, apply thereto:

Provided that nothing contained in this sub-section shall apply unless the income from which the tax has been deducted [or income on which the tax has been collected] has been disclosed in the return of income filed by the assessee for the relevant assessment year.

6.6 Section 155(14) deals with such situation where the credit of TDS has not been given on the ground that the certificate furnished u/s 203/206 was not filed with the return and subsequently such certificate is produced before the AO within two years from the end of the assessment year in which the income is assessable. This provision is w.e.f. 01.04.2007, as introduced or substituted by Finance Act, 2006.

6.7 In the instant case, the appellant made claim on 24.05.2013 i.e. after four years from the end of the assessment year in which such income is assessable. The appellant's case does not fall under this provision of the IT Act nor the Circulars or the judgments relied upon are

in support of the claim of the appellant. The appellant was given the opportunity of being heard and to explain its case by fixing this appeal and heard the appellant at length, so the grievance of the appellant of Natural Justice and Equity has been met out after giving the hearing at length and opportunity of being heard. Since the appellant does not fall under the provision of the IT Act as the claim of TDS is made after 4 years, I am of the opinion that the appellant's claim is not acceptable. In view of the same, Ground of Appeal is dismissed.

7. *In the result, the appeal for AY 2008-09 is dismissed."*

6. Aggrieved by the appellate order dated 11.11.2016 passed by learned CIT(A), the assessee has come in an appeal before the tribunal . The Ld. Counsel for the assessee vehemently argued that the contentions were raised during the course of proceedings before the AO u/s. 154 of the Act wherein it was submitted that assessee was not at fault because the deductor had not deposited the income-tax deducted at source on behalf of the assessee to the Credit of Central Government in time and consequentially TDS certificates were also received late by the assessee. It was submitted that the assessee was not aware of such deduction of income-tax at source by the deductors at the time of filing of return of income u/s 139(1) on 20-09-2008. It was submitted that corresponding income to this deduction of income-tax at source has already suffered taxation in the return of income filed with the revenue. It was submitted that consequently TDS certificate were issued by deductors late in March 2010 and October 2010 respectively and hence received late by the assessee. It was submitted that the assessee is not at fault. He drew our attention to the paper book page no. 16-23 and submitted that income-tax deducted at source was deposited to Credit of Central Government by Elecon Engineering Co. P. Ltd. on 31.03.2010 and TDS certificate was issued on 31.03.2010 . Similarly with respect to Prayas Engineering Ltd. it was submitted that the said concern deposited income-tax deducted at source on behalf of the assessee on 11.10.2010 and TDS certificate was issued in favour of the assessee only on 14.10.2010. The aforesaid TDS certificates are placed in paper book filed with tribunal. Thus it was contended by learned counsel for the assessee that the assessment year under consideration is assessment year 2008-09 wherein the due date of filing of return of income u/s 139(1) was 30-09-2008 and the assessee filed

its return of income on 20-09-2008 , while the TDS certificate were received as late as in assessment year 2011-12 and the assessee is not at fault for not claiming the said credit of taxes in the return of income filed with Revenue as the assessee was not aware of any such deduction of income-tax at source on behalf of the assessee by deductors. It was submitted that proceeding u/s. 154 of the Act were continuing when the claim was first filed before learned AO for grant of TDS credit of Rs. 9,93,555/- and there was no bar on raising the plea for grant of TDS credit as taxes can be levied only under the authority of law as is mandated under Article 265 of the Constitution of India. The learned counsel for the assessee also relied upon the decision of the Tribunal in the case of ACIT vs. Rupam Impex in ITA no. 472(RJT) of 2014 dated 21-01-2016 reported in (2016) 157 ITD 360 (Rajkot-Tribunal) and also decision of tribunal in ITA no. 1170/Ahd./2013 dated 02-05-2016 in the case of Ardor International Private Limited for AY 2008-09 and it was submitted that in both these cases , similar issue were decided by the tribunal in favour of the assessee.

The Ld. DR on the other hand relied upon the provision of Section 155(14) of the Act and relied upon the appellate order dated 11.11.2016 passed by the learned CIT(A).

The Ld. Counsel for the assessee in rejoinder submitted that provisions of Section 155(14) are applicable only when the assessee had filed a claim for credit of prepaid taxes by way of TDS in the return of income filed with the Revenue and such return of income so filed with Revenue is not supported by TDS certificate . It was submitted that under these circumstances keeping in view factual matrix of the case provisions of Section 155(14) are not applicable and it was submitted ITAT-Ahmadabad while deciding the case of Ardor International P. Ltd.(supra) in similar situation has considered the provisions of section 155(14) of the Act and decided the issue in favour of the assessee.

7. We have considered rival contentions and have perused the material on record including case laws relied upon by both the parties. We have observed that the assessee is in the business of clearing and forwarding agent. The assessee has filed return of income with Revenue u/s 139(1) on

20-09-2008 declaring income of Rs. 4,57,01,174/- on which taxes of Rs. 1,55,37,327/- were claimed to have been paid , out of which TDS amount was Rs. 89,44,765/- . The AO in an intimation u/s. 143(1) of the Act allowed credit of TDS of Rs. 79,05,771/- as against TDS claim of Rs. 89,44,765/- filed by the assessee. The assessee on 24-05-2013 filed petition u/s. 154 of the Act seeking rectification of the intimation u/s 143(1) wherein it claimed credit of TDS to the tune of Rs. 89,44,765/- as claimed in the return of income filed with Revenue u/s 139(1) as against credit of Rs. 79,05,771/- allowed by the AO in the intimation u/s 143(1). While the aforesaid proceedings were going on before the AO u/s 154 , the assessee also filed an additional claim of credit of TDS amount of Rs. 9,93,555/- for the first time before the AO in proceedings being conducted by AO u/s 154 which was not earlier claimed by the assessee in the return of income filed u/s 139(1) with the Revenue. The assessee had submitted that it has duly declared and offered for taxation income corresponding to these prepaid taxes by way of TDS to the tune of Rs. 9,93,555/- in the return of income filed with the Revenue which is not disputed by Revenue. It was submitted that the deductor of TDS has deposited TDS late to the credit of Central Government and also issued TDS certificates late which is the main reason for delay in filing of claim for grant of credit of TDS. The two TDS certificates , one dated 31-03-2010 and second dated 14-10-2010 are placed in paper book filed by the assessee while the impugned assessment year before us is AY 2008-09 wherein due date of filing of return of income u/s 139(1) is 30-09-2008 and the return of income having been filed on 20-09-2008. Both the authorities below have rejected the said claim of the assessee for grant of credit of TDS of Rs. 9,93,555/- at the belated stage and more particulars learned CIT(A) relied upon provisions of Section 155(14) of the Act in denying the said claim of TDS credit to the assessee to the tune of Rs.9,93,555/- .In our considered view taxes can only be levied and collected under the authority of law as is contemplated under Article 265 of Constitution of India. Whence the income has been offered for taxation , the assessee is entitled for corresponding income-tax which was deducted at source on the said income on its behalf by the payers of the income. The deductors have delayed payment of taxes to the credit of Central Government for no fault of the assessee which consequently led to issue of TDS certificate late by said payers of income

which is clearly evident from the date of deposit of TDS as well date of issuance of TDS certificates as is mentioned in TDS certificate issued by these two parties which are placed in paper book. The assessee is not in fault and assessee in any case has filed its claim for credit of TDS to the tune of Rs. 9,93,555/- in the ongoing proceedings conducted by the AO u/s. 154 of Act. The ITAT-Rajkot in ACIT v. Rupam Impex(supra) and ITAT-Ahmedabad in Ardor International Private Limited (supra) has dealt with this issue at length and we are in full agreement with the aforesaid decisions of the tribunal allowing relief to the assessee which we respectfully follow and hold that the assessee would be entitled for the relief of credit of income-tax deducted on income by the payers of the income which income was claimed to have been offered for taxation by the assessee in the return of income filed with Revenue filed u/s 139(1). The ITAT-Ahmedabad while holding in favour of the taxpayer has also dealt with the provisions of Section 155(14) of the 1961 Act on which heavy reliance is placed by learned CIT(A). We do not find any reasons for taking a different view than taken in these two judgments of the co-ordinate benches of the tribunal with which we concur. The assessee has raised this claim in the proceedings which were conducted by the AO u/s 154 otherwise than by filing revised return of income u/s 139(5) . If the AO could not have taken cognisance of the fresh claim filed by the assessee which was not filed by filing revised return of income u/s 139(5) , the learned CIT(A) being appellate authority could have always admitted the said fresh claim and thereafter adjudicated the same on merits. Hon'ble Bombay High Court decision in the case of CIT v. Pruthvi Brokers & Shareholders reported in (2012) 349 ITR 336(Bom) is relevant and binding being jurisdictional High Court. Thus, the assessee could not be denied the said claim of credit of TDS to the tune of Rs. 9,93,555/- but however for limited purposes for verification of contentions raised by the assessee, we are restoring this issue of grant of credit for prepaid taxes to the tune of Rs. 9,93,555/- being TDS back to the file of the AO for necessary verification of the TDS certificates filed by the assessee purported to be received from Elecon Engineering Co. P. Ltd. and Prayas Engineering Ltd. as to the credit of taxes to Central Government and also for verification of offering of the corresponding income by the assessee to taxation in the return of income filed u/s 139(1) on 20-09-2008, before allowing credit for said TDS amount

of Rs. 9,93,555/-. With the above observations, we are allowing the appeal of the assessee subject to verifications as per our above directions. We order accordingly.

8. In the result appeal of the assessee is allowed as indicated above.

order pronounced in the open court on 11.07.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 11.07.2018 को की गई ।

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 11.07.2018

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI