



services and is assessed in the status of a non-resident. It had filed its original return of income for the Asst Year 2011-12 on 29.9.2011 declaring total income of Rs 23,37,862/- u/s 115A of the Act claiming refund of Rs 2,40,800/- and claimed certain receipts as non-taxable to the tune of Rs 24,01,487/- (equivalent to 158094 Poland Currency).

3. The assessee thereafter filed a revised return for the Asst Year 2011-12 on 29.9.2012 declaring taxable income of Rs 1,04,96,654/-u/s 115A of the Act paying self assessment tax of Rs 5,815/- (paid on 28.9.12) and claimed certain receipts as non-taxable to the tune of Rs 24,82,739/- (equivalent to 39813 Euros). The assessee pleaded that the only difference between the original return and the revised return in respect of non-taxable invoices were with regard to change in foreign currency and the consequential exchange rate. In the original return, the invoices raised by the assessee were reflected in Poland currency and receipts to the tune of Rs 24,01,487/- were arrived at by applying the relevant exchange rate. But in the revised return, the same invoices from the very same parties were reflected in Euro currency and receipts to the tune of Rs 24,82,739/- were arrived at by applying the relevant exchange rate. With regard to the change in the taxable income between the original and revised return, the assessee stated that though the component of taxable services had been increased in the revised return, the same was also duly subjected to deduction of tax at source and there was a minor discrepancy in calculation of surcharge and cess thereon due to income being crossed over Rs 1 crore and accordingly the assessee had to pay self assessment tax thereon to the tune of Rs 5.815/- which was duly paid by the assessee on 28.9.2012 and revised return filed on 29.9.2012.

4. From the order sheet entries submitted before us and from perusal of the assessment records, it is evident that notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee calling for certain details in the years 2012 and 2013 respectively. In response thereto, the assessee filed a written submission dated 3.3.2014 filed on 5.3.2014 furnishing the following details :-

- a) Copy of revised return filed marked in separate annexure.
- b) Copy of acknowledgement received on filing the revised return marked in separate annexure.
- c) Copy of income tax computation along with the list of invoices marked in separate annexure.
- d) Copy of invoices marked as separate annexure.
- e) Copy of agreement in support of invoices treated as non-taxable in the return of income marked as separate annexure.

It was also clarified before the Id AO that no personnel from the assessee company had rendered services in India.

5. The Id AO on verification of the aforesaid particulars with documents completed the assessment u/s 143(3) of the Act on 10.3.2014 by observing as under:-

*In response to above notice, authorized representative of the assessee, Sri Bikash Chanda appeared from time to time and submitted necessary particulars, which were considered. The case was discussed and heard with him.*

*The assessee, PWC SP ZOO, a non-resident foreign company established under the laws of Poland, is having its registered office in Warszawa. It carried on the business of providing professional services.*

*In view of above, total income of the assessee is accepted as per return.*

In the tax computation sheet, the Id AO adopted the income returned as per the original return at Rs 23,37,862/- and gave credit for TDS only to the tune of Rs 29,856/- as against the claim of assessee at Rs 2,40,800/- . In the said tax computation sheet attached along with the assessment order, the Id AO raised a demand of Rs 2,97,520/- payable by the assessee.

6. Later this assessment was sought to be revised by the Id CIT u/s 263 of the Act by treating the order of the Id AO dated 10.3.2014 as erroneous in as much as it is prejudicial to the interest of the revenue on the ground that the revised return of income was not taken cognizance by the Id AO while completing the assessment and accordingly no enquiry was conducted by the Id AO with regard to the income declared and exemption claimed thereon. The Id CIT concluded that there was complete lack of enquiry and non-application of mind on the part of the Id AO while framing the assessee by not verifying the revised return and the contents thereon. Hence the order passed by the Id AO was treated as erroneous in as much as it is prejudicial to the interest of the revenue and order u/s 263 of the Act was passed by the Id CIT on 30.10.2015. Aggrieved, the assessee is in appeal before us.

7. We have heard the rival submissions. At the outset, we find that there is absolutely no dispute on the taxable services rendered by the assessee and the difference of income thereon offered in the original and revised return of income . The income offered in both the returns towards taxable services were duly subjected to deduction of tax at source and since the total income exceeded Rs 1 crore, the assessee would be invited with additional surcharge and cess and accordingly the assessee after adjustment of TDS , had to pay self assessment tax of Rs 5,815/- which was duly paid on 28.9.2012.

The list of invoices for taxable and non-taxable services as per the original return are as under:-

**List of invoices raised on Indian entities during the FY 2010-11(Original)**

Name of Debtor	Invoice No.	Date	Currency	Amount (foreign currency)	Amount (INR)	WHT (INR)
<b>TAXABLE INVOICES</b>						
Pricewaterhouse & Co (24014857)	31003323	28-Mar-11	PLN	12,072.00	187,080.00	19,269.00
Pricewaterhouse Coopers Pvt. Ltd. (24011110)	30005610	11-Jun-10	PLN	7,027.46	1,02,782.00	10,587.00
Pricewaterhouse Coopers Pvt. Ltd. (24011110)	30006834	20-Jul-10	PLN	85,408.75	2,048,000.00	210,944.00
Pricewaterhouse Coopers Pvt. Ltd. (24011110)	30007711	18-Aug-10	PLN	6,162.00		
Pricewaterhouse Coopers Pvt. Ltd. (24011110)	30008403	20-Sep-10	PLN	4,211.06		
Pricewaterhouse Coopers Pvt. Ltd. (24011110)	30009335	25-Oct-10	PLN	5,293.96		
Pricewaterhouse Coopers Pvt. Ltd. (24011110)	30010168	17-Nov-10	PLN	7,378.94		
Pricewaterhouse Coopers Pvt. Ltd. (24011110)	30011415	16-Dec-10	PLN	3,147.69		
Pricewaterhouse Coopers Pvt. Ltd. (24011110)	31000185	12-Jan-11	PLN	28,366.34		
<b>Total of Taxable Invoices</b>						
<b>NON-TAXABLE INVOICES (AS PER NOTE BELOW)</b>						
Name of Debtor	Invoice No.	Date	Currency	Amount (foreign currency)	Amount (INR)	WHT (INR)
ING Vysya Bank Ltd. (24013618)	30004628	11-May-10	PLN	20,194.99	290,435.00	-
Wipro Technologies Ltd. (24009086)	30004606	11-May-10	PLN	9,059.55	130,290.00	-
Wipro Technologies Ltd. (24009086)	30005415	31-May-10	PLN	7,751.73	1,08,790.00	-
Wipro Technologies Ltd. (24009086)	30005899	22-Jun-10	PLN	7,133.10	99,831.10	-
Wipro Technologies Ltd. (24009086)	30007806	23-Aug-10	PLN	23,394.49	345,299.00	-
Wipro Technologies Ltd. (24009086)	30008453	22-Sep-10	PLN	11,659.84	177,172.00	-
Wipro Technologies Ltd. (24009086)	30010370	23-Nov-10	PLN	5,874.15	92,492.50	-
Wipro Technologies Ltd. (24009086)	30011499	16-Dec-10	PLN	4,845.06	74,118.00	-
Wipro Technologies Ltd. (24009086)	31000605	24-Jan-11	PLN	12,502.35	197,190.00	-
Wipro Technologies Ltd. (24009086)	31001025	28-Jan-11	PLN	9,713.24	157,081.00	-
Wipro Technologies Ltd. (24009086)	31002103	24-Feb-11	PLN	16,443.41	257,848.00	-
Wipro Technologies Ltd. (24009086)	31003625	31-Mar-11	PLN	29,521.68	470,940.00	-
<b>Total of Non-taxable Invoices</b>					<b>2,401,486.60</b>	<b>-</b>

**Note for : Invoices treated as non taxable**

Scope of Work in these invoices is to arrange for work permits for expatriates from the client - Wipro & ING Vysya. The same does not constitute income as per Sec.9(1)(vi)(b) of the Income Tax Act. These have taken in the ITR for disclosure purpose. Conversion has been done as per Rule 115 of the Income Tax Rules on the basis of SBI TT Buying rate as on 31st March 2011.

The list of invoices for taxable and non-taxable services as per the revised return are as under:-

**List of invoices raised on Indian entities during the FY 2010-11(Revised)**

Name of Debtor	Invoice No.	Date	Currency	Amount (foreign currency)	Amount (INR)	WHT (INR)
<b>TAXABLE INVOICES</b>						
Pricewaterhouse & Co	31008323	28-Mar-11	Euro	3,000.00	187,080.00	19,259.00
Pricewaterhouse Coopers Pvt. Ltd.	30005610	11-Jun-10	Euro	1,700.00	102,782.00	10,587.00
Pricewaterhouse Coopers Pvt. Ltd.	30006834	20-Jul-10	USD	25,837.00		
Pricewaterhouse Coopers Pvt. Ltd.	30007711	18-Aug-10	USD	2,000.00		
Pricewaterhouse Coopers Pvt. Ltd.	30008403	20-Sep-10	USD	1,400.00		
Pricewaterhouse Coopers Pvt. Ltd.	30009335	25-Oct-10	USD	1,850.00	2,048,000.00	210,944.00
Pricewaterhouse Coopers Pvt. Ltd.	30010168	17-Nov-10	USD	7,550.00		
Pricewaterhouse Coopers Pvt. Ltd.	30011415	15-Dec-10	USD	1,050.00		
Pricewaterhouse Coopers Pvt. Ltd.	31000185	12-Jan-11	Euro	7,300.00		
Pricewaterhouse Coopers Overseas Ltd.	30006272	25-Jun-10	USD	50,177.21	2,195,758.00	231,978.00
Pricewaterhouse Coopers Overseas Ltd.	30006279	25-Jun-10	USD	65,096.60	2,849,929.00	300,953.00
Pricewaterhouse Coopers Overseas Ltd.	30006258	25-Jun-10	USD	28,189.59	1,234,140.00	130,325.00
Pricewaterhouse Coopers Overseas Ltd.	30006259	25-Jun-10	USD	27,883.84	1,220,755.00	128,912.00
Pricewaterhouse Coopers Overseas Ltd.	30007586	13-Aug-10	USD	15,011.66	657,210.00	69,401.00
<b>Total of Taxable Invoices</b>				<b>234,045.50</b>	<b>10,496,654.00</b>	<b>1,102,369.00</b>
<b>NON-TAXABLE INVOICES (AS PER NOTE BELOW)</b>						
Name of Debtor	Invoice No.	Date	Currency	Amount (foreign currency)	Amount (INR)	WHT (INR)
ING Vysya Bank Ltd.	30004628	11-May-10	Euro	5,049.00	314,855.64	-
Wipro Technologies Ltd.	30004606	11-May-10	Euro	2,265.00	141,245.40	-
Wipro Technologies Ltd.	30005415	31-May-10	Euro	1,915.00	119,419.40	-
Wipro Technologies Ltd.	30005899	22-Jun-10	Euro	1,770.00	110,377.20	-
Wipro Technologies Ltd.	30007806	23-Aug-10	Euro	5,890.00	367,300.40	-
Wipro Technologies Ltd.	30008453	22-Sep-10	Euro	2,955.00	184,273.80	-
Wipro Technologies Ltd.	30010370	23-Nov-10	Euro	1,495.00	93,228.20	-
Wipro Technologies Ltd.	30011499	16-Dec-10	Euro	1,215.00	75,767.40	-
Wipro Technologies Ltd.	31000605	24-Jan-11	Euro	5,211.00	200,237.96	-
Wipro Technologies Ltd.	31001025	28-Jan-11	Euro	2,490.00	155,276.40	-
Wipro Technologies Ltd.	31002103	24-Feb-11	Euro	4,155.00	259,105.80	-
Wipro Technologies Ltd.	31008625	31-Mar-11	Euro	7,403.00	461,651.08	-
<b>Total of Non-taxable invoices</b>				<b>39,813.00</b>	<b>2,482,788.68</b>	<b>-</b>

**Note for : Invoices treated as non taxable**

Scope of Work in these invoices is to arrange for work permits for expatriates from the client - Wipro & ING Vysya. The same does not constitute income as per Sec.9(1)(vii)(b) of the Income Tax Act. These have taken in the ITR for disclosure purpose.. Conversion has been done as per Rule 115 of the Income Tax Rules on the basis of SBI TT Buying rate as on 31st March 2011.

7.1. Thus it could be seen that the services are rendered to the same parties and invoices are raised to the same parties with the same dates between the original and the revised return of income filed by the assessee as far as non-taxable services are concerned. However, the currency in which the invoices were raised in the original return was in Poland Currency and in the revised return was Euro Currency. This has led to minor difference in value of Rs 81,253/- ( 24,82,739 -24,01,486). With regard to taxable services, though the income is increased in the revised return, the same had been fully subjected to deduction of tax at source and assessee had also made good the deficit in tax by paying self assessment tax of Rs 5,815/- on 28.9.2012 before filing the revised

return. We find that the assessee had duly disclosed under which section, the exemption is claimed in respect of non-taxable services portion in the return of income itself. Later the hard copy of the revised return was also filed by the assessee together with the note for claiming exemption which is enclosed in page 6 of the paper book reproduced supra. Moreover, the assessee had also brought all these facts before the Id CIT in response to show cause notice issued u/s 263 of the Act vide separate written submissions dated 15.10.2015 which are enclosed in pages 95 to 100 of the paper book. Hence even though there is an error in the order of the Id AO by under assessing the income by not considering the additional income offered in the revised return, there could not be any prejudice to the interest of the revenue in this regard as there was no change in tax liability. We find from the records that the assessee had filed all the requisite details called for by the Id AO vide letter dated 3.3.2014 filed before the Id AO on 5.3.2014. The Id AO after considering all the contents of this letter and on verification of the same had come to a conclusion of not making any additions to the returned income. Though the order sheet entries does not contemplate calling of specific details by the Id AO from the assessee prior to 5.3.2014, it cannot be brushed aside that the assessee would not come forward to file details before the Id AO that were not called for by the Id AO. No assessee would do the same. Hence it could be safely concluded that the letter dated 3.3.2014 filed on 5.3.2014 was filed by the assessee before the Id AO pursuant to specific details called for by the Id AO. We find that the entire details of taxable and non-taxable services together with the copy of revised return, copy of invoices and agreements entered into thereon were submitted before the Id AO. Hence it clearly tantamounts to proper enquiry made by the Id AO. Moreover, the details submitted by the assessee vide letter dated 3.3.2014 did not call for any further enquiry as the entire income was duly disclosed by the assessee in the revised return properly. In this regard, the reliance placed by the Id CIT on the decision of *Hon'ble Delhi High Court in the case of Gee Vee Enterprises vs Addl CIT reported in 99 ITR 375 (Del)* would actually support the case of the assessee and not the

revenue in the facts and circumstances of the case of the assessee. There is no incorrect assumption of facts and wrong application of law neither on the part of the Id AO nor has been pointed out by the Id CIT in his section 263 order. Hence it could be safely concluded that though not considering the revised return while completing the assessment on 10.3.2014 would make the order of the Id AO erroneous, it does not cause any prejudice to the interest of the revenue as all the requisite details were already on record with supporting evidences and the same were duly examined by the Id AO. Hence it is not the case of lack of enquiry on the part of the Id AO on the list of taxable and non-taxable services disclosed by the assessee. We hold that the twin conditions precedent for invoking revisionary jurisdiction u/s 263 of the Act is conspicuously absent in the instant case and accordingly by placing reliance on the decision of the *Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd vs CIT reported in 243 ITR 83 (SC)*, revisionary jurisdiction u/s 263 of the Act cannot be invoked by the Id CIT. We also find that the *Hon'ble Jurisdictional High Court* had considered all the aspects that are relevant to the case before us in *CIT vs J.L.Morrison (India) Ltd reported in 366 ITR 593 (Cal)* wherein it was held as under:-

*86. Whether the assessment order dated 28th March, 2008 was passed without application of mind is basically a question of fact. The learned Tribunal has held that the assessment order was not passed without application of mind. The records of the assessment including the order sheets go to show that appropriate enquiry was made and the assessee was heard from time to time. In deciding the question Court has to bear in mind the presumption in law laid down in Section 114 Clause - e of the Evidence Act:—*

*"that judicial and official acts have been regularly performed;"*

*87. Therefore, the Court has to start with the presumption that the assessment order dated 28th March 2008 was regularly passed. There is evidence to show that the assessing officer had required the assessee to answer 17 questions and to file documents in regard thereto. It is difficult to proceed on the basis that the 17 questions raised by him did not require application of mind. Without application of mind the questions raised by him in the annexure to notice under Section 142 (1) of the Act could not have been formulated.*

*88. The Assessing Officer was required to examine the return filed by the assessee in order to ascertain his income and to levy appropriate tax on that basis. When the Assessing Officer was satisfied that the return, filed by the assessee, was in accordance*



*with law, he was under no obligation to justify as to why was he satisfied. On the top of that the Assessing Officer by his order dated 28th March, 2008 did not adversely affect any right of the assessee nor was any civil right of the assessee prejudiced. He was as such under no obligation in law to give reasons.*

*89. The fact, that all requisite papers were summoned and thereafter the matter was heard from time to time coupled with the fact that the view taken by him is not shown by the revenue to be erroneous and was also considered both by the Tribunal as also by us to be a possible view, strengthens the presumption under Clause (e) of Section 114 of the Evidence Act. A prima facie evidence, on the basis of the aforesaid presumption, is thus converted into a conclusive proof of the fact the order was passed by the assessing officer after due application of mind.*

*90. The judgments cited by Mr. Nizamuddin do not really support his contention. The judgment in the case of Meerut Roller Flour Mills (P.) Ltd. (supra) does not apply because the High court in that case was satisfied that the assessment order was passed without enquiry.*

7.2. In view of the aforesaid observations in the facts and circumstances of the case and respectfully following the judicial precedents relied upon hereinabove, we quash the revision order passed by the Id CIT u/s 263 of the Act and set aside the same. Accordingly, the grounds raised by the assessee are allowed.

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

**Order pronounced in the Court on 01.08.2018**

Sd/-  
[A.T. Varkey]  
Judicial Member

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 01.08.2018

SB, Sr. PS

Copy of the order forwarded to:

1. Pricewater House Coopers Pvt. Ltd., Plot No. 56 & 57, Block-DN, Sector-V, Salt Lake, Kolkata-700091, West Bengal.
2. CIT(IT & TP), 2<sup>nd</sup> Floor, Aayakar Bhawan Poorva, 110, Shantipally, Kolkata-700107.
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches