

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-3' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-2744/Del/2015
(ASSESSMENT YEAR-2004-05)**

Philco Engineers Pvt.Ltd., F-27, 1 st Floor, Okhla Industrial Area, Phase-I, New Delhi-110020. PAN-AAACP0640C (APPELLANT)	vs	ITO, Ward-14(2), New Delhi. (RESPONDENT)
---	----	--

Appellant by	None
Respondent by	Ms. Anima Barnwal, Sr.DR

Date of Hearing	21.07.2016
Date of Pronouncement	17.10.2016

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 03.02.2014 of CIT(A)-xvii, Delhi pertaining to 2004-05 assessment year on various grounds. Although, at the time of hearing, no one was present on behalf of the assessee. However, considering the material available on record, it was considered appropriate to proceed with the present appeal ex-parte qua the assessee appellant on merit after hearing the Ld.Sr.DR.

1.1. The following grounds have been raised by the assessee in the present appeal:-

1. *"The learned CIT(A) erred in law in upholding the issuance of notice u/s 147 of the Income Tax Act, 1961 as valid.*
2. *The learned CIT(A) erred in law in upholding the reopening of the completed assessment u/s 143(3) after 4 year as valid, in spite of the fact that there wasn't any failure on the part of the assessee to disclose truly and fully all material facts required for completing the assessment.*
3. *The learned CIT(A) erred in law in upholding the disallowance of commission paid to foreign agent amounting to Rs.8,77,117/- u/s 40(ia) of the Income Tax Act, 1961."*

2. The relevant facts of the case are that the assessment order u/s 143(3) dated 08.12.2006 wherein assessment was concluded at an income of at Rs.8,25,273/- was re-opened vide order dated 13.12.2011 wherein by an order u/s 144/147 concluded assessment at Rs.17,02,390/-.

2.1. The assessee assailed the ex-parte order on jurisdiction as well as on merits before the CIT(A). The CIT(A) in page 3 & 4 records that the opportunities granted to the assessee were not availed as the assessee failed to attend. In these circumstances, the appeal of the assessee was dismissed. However, a perusal of para 6.4 at page 7 of the impugned order also records that the assessee had filed additional evidences and considering the Remand Report of the AO, the appeal was dismissed. Considering the glaring factual contradiction in page 3 & 7 of the impugned order wherein firstly, the CIT(A) records that the assessee was not present on any of the days. Thereafter he records that additional evidence was filed and the assessee stated his version of the facts. In the face of the contradiction, it is deemed appropriate to set aside the order and restore the issue back to the AO which was the request of the Ld. Sr. DR who submitted that since the assessment order itself is u/s 144. In these circumstances, the AO would be the appropriate authority to address the issues which may need consideration.

3. It is hoped that the opportunity so provided is not abused by the assessee as failing which the AO would be at liberty to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

3.1. From a perusal of the record, it is seen that the address mentioned in the impugned order is as under:-

*“M/s. Philco Engineers (P.) Ltd.,
A-4, Okhla Industrial Area, Phase-I, New Delhi-110020.”*

3.2. The assessee on the other hand has mentioned the following address in Column No.10 before the ITAT:-

*“Philco Engineers Pvt.Ltd.,
F-27, 1st Floor, Okhla Industrial Area,
Phase-I, New Delhi-110020.”*

3.3. In the circumstances, the AO is directed to send notice to the latest address provided by the assessee to ensure compliance.

4. In the result, the appeal of the assessee is allowed for statistical purposes..

The order is pronounced in the open court on 17th October, 2016.

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

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI