

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member]

I.T.A. No. 566/Kol/2015  
Assessment Year: 2010-11

*D.C.I.T., Circle-8(2), Kolkata..... Appellant*  
*Aayakar Bhawan*  
*4<sup>th</sup> Floor*  
*P-7, Chowringhee Square*  
*Kolkata - 700 069*

*M/s. Power Max (India) Ltd.....Respondent*  
*19A, J.L. Nehru Road*  
*Kolkata - 700 087*  
*[PAN : AABCP 9559 R]*

I.T.A. No. 364/Kol/2015  
Assessment Year: 2010-11

*M/s. Power Max (India) Ltd.....Respondent*  
*19A, J.L. Nehru Road*  
*Kolkata - 700 087*  
*[PAN : AABCP 9559 R]*

*D.C.I.T., Circle-8(2), Kolkata..... Appellant*  
*Aayakar Bhawan*  
*4<sup>th</sup> Floor*  
*P-7, Chowringhee Square*  
*Kolkata - 700 069*

**Appearances by:**

*None, appeared on behalf of the assessee.*

*Shri David Z. Chawngthu, Addl. CIT, DR appearing on behalf of the Revenue.*

Date of concluding the hearing : December 7<sup>th</sup>, 2017

Date of pronouncing the order : December 21<sup>st</sup>, 2017

**O R D E R**

**Per J. Sudhakar Reddy :-**

These are cross-appeals directed against the order of the Id. Commissioner of Income Tax (Appeals)-3, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 16/02/2015, for the Assessment Year 2010-11.

2. Facts in brief:-

The assessee is a company and filed its return of income for the Assessment Year 2010-11 on 22/12/2010, declaring total income of Rs.1,85,93,534/-. The assessee is in the business of erection and servicing of boilers and pipe lines. As the assessee claimed that a devastating fire had destroyed all his documents including computers, no details, as sought for by the Assessing Officer could be filed. The observed that the assessee company is an Income Tax assessee for more than 25 years and had been declaring taxable profit more than the book profit. The table of the assessee's turnover, book profit, taxable profit and tax paid is given at para 3.1. of his order. He held that the assessee had no control over the incident of fire and it is not a case of non-cooperation from the assessee. Nevertheless, he made an addition of 1 per cent of the turnover as income of the assessee. Further he made a disallowance u/s 14A of the Act and u/s 36(1)(va) of the Act.

On appeal the Id. First Appellate Authority, granted part relief by directing the Id. Assessing Officer to apply the net profit rate of the immediately preceding year to the turnover and treat the same as undisclosed income of Rs.10,80,378/-, as an addition, in the place of addition of Rs.46,97,295/-, made by the Assessing Officer @ 1 per cent of the turnover. On the disallowance u/s 14A of the Act, he restricted the disallowance to Rs.32,849/-.

2.1. Aggrieved, both the assessee and the revenue are in appeal before us.

3. The Id. Counsel for the assessee, filed an application for adjournment. We reject the same as in our view, it is not a fit case for grant of adjournment. Accordingly, we dispose off the case *ex-parte, qua* the assessee, on merits, after hearing the Id. D/R.

4. Heard the Id. D/R. The submission of the assessee that there was a fire accident and consequently certain records have been destroyed and it would be difficult for the company to compile the details from 20 different sites operating during the year, is not disputed by the revenue. In fact, the Assessing Officer accepted that this issue is beyond the control of the assessee. Under these circumstances, making an addition of 1 per cent of the turnover by the Assessing Officer, cannot be upheld on facts. The Id. First Appellate Authority, has directed

the Assessing Officer to adopt 4.8 per cent as net profit rate in place of 3.95 per cent declared by the assessee. The assessee, before the Id. CIT(A) furnished that the net profit rate for the previous 5 years come to 3.55 per cent. In our view, under these circumstances of the case, this factual submission of the assessee cannot be disputed. The net profit rate disclosed by the assessee during the impugned Assessment Year, is 3.95 per cent and is more than 3.55 per cent, which is an average for the last 5 years. Thus, no separate addition is called for on this accent. Thus, the addition on undisclosed income to the extent sustained by the Id. CIT(A), is hereby deleted.

4.1. In the result, Ground No. 1 of the revenue is dismissed and Ground No. 2 of the assessee is allowed.

5. The next issue is on the disallowance u/s 14A r.w.r. 8D(2)(ii).

5.1. The Id. CIT(A) has come to a factual finding that the assessee's own funds are more than the investments made by it and that the borrowed funds have not been utilized for investments. Against shareholders funds of Rs.6.43 Crores, investments was approximately about Rs.65.69 Lakhs. This factual position could not be controverted by the Id. D/R. Thus, we uphold this finding of the Id. CIT(A) and dismiss this ground of the revenue.

6. All other grounds are general in nature.

7. In the result, the appeal of the assessee is allowed and appeal of the revenue is dismissed.

***Kolkata, the 21<sup>st</sup> day of December, 2017.***

***Sd/-***  
**[Aby T. Varkey]**  
Judicial Member

***Sd/-***  
**[J. Sudhakar Reddy]**  
Accountant Member

Dated : 21.12.2017  
{SC SPS}

Copy of the order forwarded to:

**1. M/s. Power Max (India) Ltd**  
**19A, J.L. Nehru Road**  
**Kolkata – 700 087**

**2. D.C.I.T., Circle-8(2), Kolkata**  
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**Kolkata – 700 069**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

 By order

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