

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.6001/Del/2016
Assessment Year: 2010-11

M/s. Dynamic Engineers 62-C, Sahipur Village,, Shalimar Bagh, New Delhi-110088	Vs	ACIT Circle – 19 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Vinay Bahl, CA
Respondent by	Ms. Ashima Neb, Sr. DR

Date of hearing:	28/08/2019
Date of Pronouncement:	13/09/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 22.09.2016 of the CIT(A)-2, New Delhi relating to A. Y. 2010-11.

2. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of manufacturing and trading of electrical, Electronics, Refrigeration and Air conditioning parts. It filed its return of income on 13.10.2010 declaring total income of Rs.1,69,97,990/-. The Assessing

Officer completed the assessment u/s 143 (3) determining the total income at Rs.2,25,48,120/- wherein he made addition of Rs.46,77,200/- on account of suppression of profit, Rs.1,16,223/- u/s.14 A read with Rule 8 D and Rs.7,56,704/- on account of rebates and discounts.

3. During the course of appeal proceedings the Ld. CIT(A) asked the assessee to produce the books of account in order to examine the claim of assessee. It was submitted to the Ld. CIT(A) that books were stolen and therefore, could not be produce.

4. The Ld. CIT(A) noted from the assessment record that the assessee had produced copy of ledger account etc in its submission dated 24.01.2013 and, therefore, it is apparent that the assessee was maintaining books of account. On being questioned by the CIT(A) as to whether the accounts were being maintained in computer software it was submitted that the assessee was maintaining the accounts in the computer software. However, they do not have any record and printed copy of the same has been stolen. The Ld. CIT(A) observed that when the assessee is maintaining the accounts on computer, therefore, it is impossible that they are not having any copy of the same. He, therefore, held that the submission of the assessee cannot be examined in absence of books of account. He also rejected the claim of the assessee that there was no need of having backup of the records especially when the income tax proceedings were still pending in the case of the assessee. He, therefore, upheld the addition made by the

Assessing Officer on account of estimation of net profit. So far as the disallowance made by the Assessing Officer u/s.14A read with Rule 8 D is concerned the Ld. CIT(A) directed the Assessing Officer to restrict the disallowance to 67,139/- as against Rs.1,16,223/- disallowed by the Assessing Officer. He, however, upheld the addition of Rs.7,56,704/- made by the Assessing Officer out of rebate and discount.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

1. *That the order passed u/s. 143 (3) of the Act dated 08.03.2013 by the ACIT, Circle – 19 (1), New Delhi and the orders passed by the CIT(A)-XII, New Delhi dated 22.09.2016 are bad in law and against the facts of the case.*

2. *That the Assessing Officer was incorrect to make the following disallowances, without proper appreciation of the facts of the case and evidences on record furnished by the appellant:-*

	<i>On account of</i>	<i>Amount (Rs.)</i>
A.	<i>Para 1 of Asstt. Order – Net Profit</i>	<i>46,77,200</i>
B.	<i>Para 2 of Asstt. Order – disallowance U/s. 14A</i>	<i>1,16,223</i>
C.	<i>Para 3 of Asstt. Order – Rebate & discount</i>	<i>7,56,704</i>
	Total	55,50,127

3. *That a detailed statement of facts and submissions shall be filed before the date of hearing.*

4. *That the appellant craves to add, amend, alter, withdraw any ground of appeal.*

6. The Ld. Counsel for the assessee at the outset filed a copy of the FIR filed on 21.04.2015 for lost bag containing account

records of the assessee. He submitted that assessee in the mean time has reconstructed its books of account and given an opportunity the assessee is in a position to produce the same either before the Assessing Officer or before the CIT(A). He accordingly submitted that the matter may be set aside to the file of the Assessing Officer or CIT(A) as the case may be since the addition was sustained by the CIT(A) mainly on account of non production of books of account.

7. The Ld. DR on the other hand strongly supported the order of the CIT(A) and submitted that the appeal filed by the assessee should be dismissed since the books of account so reconstructed now cannot be relied upon.

8. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find as against the returned income of Rs.1,69,97,990/-, the Assessing Officer completed the assessment on a total income of Rs.2,25,48,120/- by making three additions totaling to Rs.55,50,127/-, the details of which have already been given at paragraph 2 of this order. We find the Ld. CIT(A) asked the assessee to produce the books of account, however, the assessee failed to produce the same on the ground that the books of account were stolen. We find the Ld. CIT(A) sustained the addition of Rs.46,77,200/- made by the Assessing Officer on account of estimating the net profit and Rs.7,56,704/-out of rebate and discount. He, however, restricted the disallowance made by the Assessing Officer u/s.14A read with Rule 8 D to Rs.67,139/-as against Rs.1,16,223/- disallowed by the

Assessing Officer. It is the submission of the Ld. Counsel for the assessee that the books of account were stolen for which the FIR has been lodged. It is also his submission that the assessee in the mean time has reconstructed its books of account on the basis of various details available with it and therefore given an opportunity, the assessee is in a position to substantiate its case before any of the lower authorities. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the Ld. CIT(A) with a direction to grant one more opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The grounds raised by the assessee are accordingly allowed for statistical purpose.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 13.09.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:-13 .09.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	28.08.2019
Date on which the typed draft is placed before the dictating Member	29.08.2019
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	