

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

**I.T.A.No. 2171/Del/2016
[Assessment Year: 2010-11]**

M/s Earthcon Systems India
Pvt. Ltd., B-28, Shivalik,
Malaviya Nagar, New Delhi
PAN-AACCE1076B

vs DCIT, Circle-1(1),
New Delhi

(Appellant)

(Respondent)

Appellant by Sh. Ajay Jain, CA
Respondent by Smt. Aparna Karan, CIT DR
Date of Hearing 29.08.2019
Date of Pronouncement 07.10.2019

ORDER

PER K. NARSIMHA CHARY, J.M.

Aggrieved by the order dated 01.02.2016 in Appeal No. 159/2012-13 passed by the Id. Commissioner of Income Tax (Appeals)-3, Delhi ('Id. CIT(A)'), M/s Earthcon Systems India Pvt. Ltd., ('the Assessee) filed this appeal.

2. Briefly stated facts of the case are that the assessee is a company engaged in the business of Contractors, Architectural works, Civil engineering works, Structural design and other related activities in

relation to infrastructure development. For the assessment year 2010-11 they have filed their return of income 13.10.2010 declaring an income of Rs. 55,81,220/-. During the course of assessment proceedings, the AO required the assessee to produce the wage register for the "own labour expenses", stock register along with relevant bills and vouchers in original etc. The assessee however did not produce the stock register along with the bills and vouchers but produced the wage register. On verification of the wage register, the learned AO found that the register is containing the Revenue stamps with thumb impressions whereas the Photostatcopies of the same did not contain any Revenue stamps but there were only thumb impressions. Learned AO further found that the wage register was appearing to be prepared with new papers.

3. Learned AO further found that the assessee had not been maintaining any opening in stock register and not produced the movement register or the supply register of the stock in the absence of the production of such registers and verifications thereof the genuineness of the accounts cannot be determined and therefore learned AO rejected the books of accounts of the assessee under section 145(3) of the Income Tax Act, 1961 ("the Act") and added a sum of Rs. 1.5 Crores out of the out of the total labour charges.

4. Aggrieved by the same assessee preferred an appeal before the learned CIT(A). It could be seen from the impugned order that learned CIT(A) issued notice under section 250 of the Act on 18.9.2013 fixing the date of hearing on 10.10.2013. It is the observation of the learned CIT(A) that subsequently the matter under went seven adjournments but on none of the dates of hearing the assessee cooperated for the disposal of

the appeal on merits and on many dates there was no representation for the assessee.

5. In this circumstances, having found no option learned CIT(A) disposed of the appeal *ex parte* but instead of advertng to the merits while passing the impugned order, the learned CIT(A) dismissed the same in limine by drawing an inference that the assessee had lost interest in pursuing the matter and not provided any written submissions supported by evidence.

6. Assessing is challenging the said order before us in this appeal on several grounds, but the main plank of the argument of learned AR is that even in the absence of the assessee nothing prevented the learned CIT(A) the learned CIT(A) to look into the record to find out the justification of addition or otherwise made by the learned AR. If according to the learned AR, the grounds are not sufficient to reject the books of accounts of the assessee not to make the huge addition of Rs. 1.5 Crores.

7. Per contra it is the submission of the learned DR that since the assessee failed to appear and cooperate with the first Appellate Authority for disposal of the matter on merits and therefore the learned CIT(A) did not find any option but to dismiss the appeal in limine.

8. We have gone through the record in the light of the submissions made on either side.

9. Records speaks that though the learned CIT(A) granted several adjournments, the assessee failed to avail the same leave no option to the learned CIT(A) but to proceed *ex parte*. However the *ex parte* does not mean the dismissal of the appeal in limine. The assessment order available before the learned CIT(A) and the learned CIT(A) could have

called for the assessment record and to have look at the material furnished by the assessee before the Id. AO to consider the veracity of the observations made by the AO before us that the fact findings returned by the could be of some help to the Tribunal at second appeal stage. Since the learned CIT(A) dismissed the appeal in limini without adverting to the merits of the case or the correctness of the observations made by the learned AO with reference to the evidence that was available before the authorities, we feel handicapped to proceed further in this appeal.

10. Both the counsel submitted that for this reason the matter could be remanded to the file of the learned CIT(A) with a direction to dispose of the appeal on merits so that the reasons given by the first Appellate Authority could be amended by this Tribunal. We find this suggestion a reasonable one. We, therefore, set aside the impugned order and remanded the matter back to the file of the learned CIT(A) for disposal of the same on merits by giving an opportunity to the assessee and if for any reason the assessee does not cooperate with the first Appellate process learned CIT(A) is free to dispose of the appeal *ex parte* but on merits.

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

Order pronounced in the open court on 07th October, 2019.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER
Date: 07/10/2019
SH

Sd/-
(K.NARASIMHACHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By order

Assistant Registrar

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