

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK
'SMC' BENCH, CUTTACK**

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA Nos.76, 77 & 78/CTK/2017

Assessment Years : 2009-2010, 2010-11 & 2011-12

Khusida Bibi, Ghantapada, New Fish Godown, Near Railway Station, Talcher, Angul.	Vs.	ITO, Ward -2, Denkanal
PAN/GIR No. AGNPB 8072 A		
(Appellant)	..	(Respondent)

ITA Nos.79, 80 & 81/CTK/2017

Assessment Years : 2009-2010, 2010-11 & 2011-12

Imran Khan, Ghantapada, New Fish Godown, Near Railway Station, Talcher, Angul.	Vs.	ITO, Ward -2, Denkanal
PAN/GIR No. ARQPK 3999 P		
(Appellant)	..	(Respondent)

ITA Nos.82, 83 & 84/CTK/2017

Assessment Years : 2009-2010, 2010-11 & 2011-12

Tayab Khan, Ghantapada, New Fish Godown, Near Railway Station, Talcher, Angul.	Vs.	ITO, Ward -2, Denkanal
PAN/GIR No. AJRPK 1265 H		
	..	(Respondent)

Assessee by : Shri D.K.Sheth/Mohit Sheth
Revenue by : Shri B.N.Dash, DR

**Date of Hearing : 30 /05/ 2017
Date of Pronouncement : /05/ 2017**

ORDER

These are appeals filed by the different assessees against the separate orders of CIT(A)-2, Bhubaneswar, all dated 1.9.2016, for the assessment years 2009-10, 2010-2011 & 2011-12, respectively.

2. At the outset, Id Authorised Representatives of the assessee submitted that in all these appeals the common ground of appeal taken is that the CIT(A) erred in confirming the levy of penalty of Rs.25,000/- u/s.271A of the Act for non-maintenance of books of account .

3. For the sake of convenience, the facts in the case of Khusida Bibi in ITA No.76/CTK/2017 for the assessment year 2009-2010 is adjudicated and the decision will apply mutatis-mutandis to other appeals of the assessees.

4. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. The undisputed facts of the case are that the Assessing Officer observed that the assessee failed to keep and maintain books of account as per provisions of section 44AA of the Income tax Act, 1961, which provides that where income from business or profession exceeds Rs.1,20,000/- or the total sales, turnover or gross receipts of the business, in business or profession exceeds Rs.10 lakhs. He noted that during the years under consideration, the income from trading of fish of the assessee has exceeded Rs.1,20,000/- and, therefore, he

levied penalty of R.25,000/- u/s.271A of the Act for non-maintenance of books of account in violation of section 44AA of the Act

4 On appeal, the CIT(A) observed that the Assessing Officer estimated the assessee's income @ 5% of turnover of Rs.3,00,64,000/- amounting to Rs.20,09,590/-, which on appeal, was estimated by the CIT(A) @ 2% of Rs.3,00,64,000/-. Thus, the CIT(A) held that the assessee's contention that even in the absence of books of account, the assessee's income could be derived was not correct.

5. Further, the CIT(A) observed that the assessee has stated that fish is a perishable commodity and as the turnover is very high, it was difficult for the assessee to maintain books of account. He observed that every commodity has its own peculiarity and books of account can be maintained after the transaction of purchase and sale is over on the basis of weight and the agreed price. Similarly, the details of expenses are available with the assessee as the assessee makes the payment of it and hence, the explanation of the assessee for non-maintenance of the books of account is not valid. He observed that the Chandigarh Benches of the Tribunal in the case of Pirthi Chand vs ITO, 10 SOT 657 (Chd) has observed that since the income of the assessee from kiryana business was more than Rs.1,20,000/-, assessee's case was covered by provisions of section 44AA of the Act and the Assessing Officer was justified in his action in levying penalty under section 271A of the Act. He further observed that similarly Agra Bench of the Tribunal in the case of Ashok Kumar Varshney vs ITO,

28 taxmann.com 266 (Agra) held that the assessee was running a retail cloth shop and the total turnover of the assessee was more than Rs.10 lakhs and the assessee did not maintain any books of account or other documents in support of income declared in return and, therefore, the Assessing Officer was justified in levying penalty under section 271A of the Act for non-maintenance of books of account as per provisions of section 44AA of the Act. Hence, he confirmed the levy of penalty under section 271A of the Act.

6. Before me Id A.R. of the assessee reiterated the submissions made before the lower authorities.

7. Ld D.R. supported the orders of lower authorities.

8. I find that no positive material has been brought on record to controvert the findings of the CIT(A) that the income computed under the head "business or profession and gains" of the assessee in the present appeals was more than Rs.1,20,000/- and the turnover in each case was more than Rs.10,00,000/-. No specific error could be pointed out by Id A.R. of the assessee in the order of the CIT(A). Further, no good reasons could be shown as to why the CIT(A) was not justified in following the decisions of the Chandigarh Benches of the Tribunal in the case of Pirthi Chand(supra) and the Agra Bench of the Tribunal in the case of Ashok Kumar Varshney (supra). Hence, I find no good reason to interfere with the order of the CIT(A) which is confirmed and the grounds of appeal of the assessee is dismissed

9. In the result, the appeals filed by the assesseees are dismissed.

Order pronounced in the open court on 31 /05/2017 .

Sd/-

(N.S Saini)

ACCOUNTANT MEMBER

Cuttack; Dated 31 /05/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellants concerned :
2. The respondent: ITO, Ward -2, Denkanal
3. The CIT(A)2 Bhubaneswar
4. Pr.CIT-2, Bhubaneswar,
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack